

H.B. 356
As Introduced

Topic: Concurrent jurisdiction in criminal environmental pollution cases;
Ohio Legacy Trust Act changes

_____ moved to amend as follows:

In line 1 of the title, delete "section" and insert 1
"sections"; after "1901.181" insert ", 5816.02, 5816.05, 5816.06, 2
5816.09, 5816.10, and 5816.14" 3

In line 2 of the title, delete "Cleveland"; after "Housing" 4
insert "Division of the Cleveland Municipal" 5

In line 5 of the title, after "code" insert "and concurrent 6
jurisdiction with the Court of Common Pleas in criminal cases 7
related to environmental pollution and to make changes to the Ohio 8
Legacy Trust Act" 9

In line 6, delete "section" and insert "sections"; after 10
"1901.181" insert ", 5816.02, 5816.05, 5816.06, 5816.09, 5816.10, 11
and 5816.14" 12

In line 72, after "has" insert "the following"; after 13
"jurisdiction" insert ":", 14

(1) Jurisdiction" 15

In line 78, delete the underlined period and insert an 16
underlined semicolon 17

After line 78 insert: 18

"(2) Concurrent jurisdiction with the court of common pleas in all criminal actions or proceedings related to the pollution of the air, ground, or water within the territory of the municipal court, for which a sentence of death cannot be imposed under Chapter 2903. of the Revised Code." 19
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Sec. 5816.02. As used in this chapter, unless the context otherwise requires: 24
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(A)(1) "Advisor" means a person to whom both of the following apply: 26
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(a) The person satisfies the eligibility criteria specified in division (A) of section 5816.11 of the Revised Code. 28
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(b) The person is given the authority by the terms of a legacy trust to remove or appoint one or more trustees of the trust or to direct, consent to, or disapprove a trustee's actual or proposed investment, distribution, or other decisions. 30
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(2) Any person to whom division (A)(1) of this section applies is considered an advisor even if that person is denominated by another title, such as protector. 34
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(B) "Asset" means property of a transferor but does not include any of the following: 37
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(1) Property to the extent it is encumbered by a valid lien; 39

(2) Property to the extent it is exempt at the time of a qualified disposition under any applicable nonbankruptcy law, including, but not limited to, section 2329.66 of the Revised Code; 40
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(3) Property held in the form of a tenancy by the entirety to the extent that, under the law governing the entirety estate at the time of a qualified disposition, it is not subject to 44
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process by a creditor holding a claim against only one tenant;	47
(4) Any property transferred from a nonlegacy trust to a	48
legacy trust to the extent that the property would not be subject	49
to attachment under the applicable nonbankruptcy law governing	50
that nonlegacy trust.	51
(C) "Bankruptcy Code" means the United States Bankruptcy	52
Code, 11 U.S.C. Chapter 11, as amended.	53
(D) "Beneficiary" has the same meaning as in section 5801.01	54
of the Revised Code.	55
(E) "Claim" means a right to payment, whether or not the	56
right is reduced to judgment or is liquidated, unliquidated,	57
fixed, contingent, matured, unmatured, disputed, undisputed,	58
legal, equitable, secured, or unsecured.	59
(F) "Creditor" means a person who has a claim against a	60
transferor and any transferee or assignee of, or successor to,	61
that claim.	62
(G) "Debt" means a liability on a claim.	63
(H) "Disposition" means a <u>direct or indirect</u> transfer,	64
conveyance, or assignment of property, including, but not limited	65
to, a partial, contingent, undivided, or co-ownership interest in	66
property. "Disposition" includes the exercise of a general power	67
so as to cause a transfer of property to a trustee or trustees but	68
does not include any of the following:	69
(1) The release or relinquishment of an interest in property	70
that, until the release or relinquishment, was the subject of a	71
qualified disposition;	72
(2) The exercise of a limited power so as to cause a transfer	73
of property to a trustee or trustees;	74

(3) A disclaimer of an interest in a trust, bequest, devise, or inheritance.	75 76
(I) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended.	77 78
(J) "Investment decision" means any participation in any decision regarding the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of or rights in investments.	79 80 81 82
(K)(1) "Legacy trust" means a trust evidenced by a written trust instrument to which all of the following apply:	83 84
(a) The trust has, names, or appoints at least one qualified trustee for or in connection with the property that is the subject of a qualified disposition.	85 86 87
(b) The trust expressly incorporates the laws of this state to wholly or partially govern its validity, construction, and administration.	88 89 90
(c) The trust expressly states that it is irrevocable.	91
(d) The trust has a spendthrift provision applicable to the interests of any beneficiary in the trust property, including any interests of a transferor in the trust property.	92 93 94
(2) A trust that satisfies the criteria specified in division (K)(1) of this section is considered a legacy trust even if the trust instrument also allows for one or more nonqualified trustees and regardless of the language used to satisfy those criteria.	95 96 97 98
(L) "Lien" has the same meaning as in section 1336.01 of the Revised Code.	99 100
(M) "Nonlegacy trust" means any trust other than a legacy trust.	101 102

(N) "Nonqualified trustee" means any trustee other than a qualified trustee.	103 104
(O) "Person" has the same meaning as in section 5801.01 of the Revised Code.	105 106
(P) "Property" has the same meaning as in section 5801.01 of the Revised Code.	107 108
(Q) "Qualified affidavit" means an affidavit that meets the requirements of section 5816.06 of the Revised Code.	109 110
(R) "Qualified disposition" means a disposition by or from a transferor to any trustee of a trust that is, was, or becomes a legacy trust.	111 112 113
(S) "Qualified trustee" means a person who is not a transferor and to whom both of the following apply:	114 115
(1)(a) The person, if a natural person, is a resident of this state.	116 117
(b) The person, if not a natural person, is authorized by the law of this state or by a court of competent jurisdiction of this state to act as a trustee and whose <u>either of the following applies:</u>	118 119 120 121
(i) <u>The activities of that person</u> are subject to supervision by the Ohio superintendent of banks <u>financial institutions</u> , the federal deposit insurance corporation, the comptroller of the currency, or the office of thrift supervision or a successor of any of them.	122 123 124 125 126
(ii) <u>That person is a "family trust company," as defined in section 1112.01 of the Revised Code, and that family trust company may be licensed or unlicensed for purposes of Chapter 1112. of the Revised Code, provided that all of the following also apply</u>	127 128 129 130

<u>regardless of the family trust company's licensing status:</u>	131
<u>(I) The family trust company shall maintain an office in this state, on either an exclusive basis or on a shared basis with one or more other persons.</u>	132 133 134
<u>(II) The family trust company shall open and maintain at least one bank or brokerage account in this state.</u>	135 136
<u>(III) The family trust company shall maintain in this state, on an exclusive or nonexclusive basis, electronic or physical records for the legacy trust.</u>	137 138 139
<u>(IV) The family trust company shall satisfy all of the requirements imposed by divisions (B), (C), (D), and (E)(1) of section 1112.14 of the Revised Code.</u>	140 141 142
<u>(V) No beneficiary of a legacy trust, when acting for or on behalf of a family trust company, or when acting as an officer, manager, director, employee, or other agent or representative of a family trust company, may have any vote or authority regarding any decision to make or withhold any distribution from such legacy trust to or for the benefit of that beneficiary.</u>	143 144 145 146 147 148
<u>Nothing in division (S)(1)(b)(ii) of this section shall prohibit a beneficiary from exercising any rights, powers, privileges, or authority granted to that beneficiary by or in any trust instrument governing a legacy trust.</u>	149 150 151 152
(2) The person maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains <u>electronic or physical</u> records for the legacy trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the legacy trust, or otherwise materially participates in the administration of the legacy trust.	153 154 155 156 157 158 159

(T) "Spendthrift provision" has the same meaning as in	160
section 5801.01 of the Revised Code.	161
(U) "Spouse" and "former spouse" means only the person to	162
whom a transferor was married on or before a qualified disposition	163
is made.	164
(V) "Transferor" means a person who directly or indirectly	165
makes a disposition.	166
(W) "Valid lien" has the same meaning as in section 1336.01	167
of the Revised Code.	168
Sec. 5816.05. A legacy trust may allow or provide for any or	169
all of the following rights, powers, interests, or provisions,	170
none of which grants, or is considered to be, either alone or in	171
any combination, a right or power to revoke a trust or to	172
voluntarily or involuntarily transfer an interest in that trust:	173
(A) A provision that, upon the happening of a defined event	174
<u>or a stated contingency</u> , results in the termination of a	175
transferor's right to mandatory income or principal;	176
(B) The power of a transferor to veto a distribution from the	177
trust;	178
(C) A power of appointment, other than a power to appoint to	179
a transferor, a creditor of the transferor, the estate of the	180
transferor, or a creditor of the transferor's estate, that is	181
exercisable by will or by other written instrument of a transferor	182
effective upon the death of the transferor or during the lifetime	183
of the transferor;	184
(D) The right of a transferor to receive trust income as set	185
forth in the trust instrument.	186
(E) Both of the following:	187

(1) A transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in section 664 of the Internal Revenue Code;

(2) The transferor's right, at any time and from time to time by written instrument delivered to the trustee, to release the transferor's retained interest in that unitrust or annuity trust, in whole or in part, in favor of one or more charitable organizations that have a succeeding beneficial interest in that unitrust or annuity trust;

(F) The power of a transferor to consume, invade, or appropriate property of the trust, but only if limited in each calendar year to five per cent of the value of the trust principal at the time of the exercise of the power;

(G) A transferor's potential or actual receipt or use of principal or income of the trust if the potential or actual receipt or use is or would be the result of any of the following that applies with respect to one or more of the qualified trustees:

(1) A qualified trustee's acting in the trustee's discretion. For purposes of division (G)(1) of this section, a qualified trustee shall have discretion with respect to the distribution or use of principal or income unless the discretion is expressly denied to the trustee by the terms of the trust instrument.

(2) A qualified trustee's acting pursuant to a standard in the trust instrument that governs the distribution or use of principal or income;

(3) A qualified trustee's acting at the direction of an advisor who is acting in the advisor's discretion or pursuant to a

standard in the trust instrument that governs the distribution or 217
 use of principal or income. If an advisor is authorized to direct 218
 that distribution or use, the advisor's authority shall be 219
 discretionary unless otherwise expressly stated in the trust 220
 instrument. 221

(H) The right of a transferor to remove any advisor and 222
 appoint a new advisor who satisfies the eligibility criteria set 223
 forth in division (A) of section 5816.11 of the Revised Code; 224

(I) The right of a transferor to remove any trustee and 225
 appoint a new trustee; 226

(J) A transferor's potential or actual use of real property 227
 or tangible personal property, including, but not limited to, 228
 property held under a qualified personal residence trust as 229
 described in section 2702(c) of the Internal Revenue Code and 230
 regulations promulgated under that section, or a transferor's 231
 possession and enjoyment of a qualified interest as defined in 232
 section 2702(b) of the Internal Revenue Code; 233

(K) Any provision requiring or permitting the potential or 234
 actual use of trust income or principal to pay, in whole or in 235
 part, income taxes due on the income of the trust, including, but 236
 not limited to, any provision permitting that use in the 237
 discretion of any one or more of the qualified trustees acting in 238
 the qualified trustee's discretion or at the direction of an 239
 advisor who is acting in the advisor's discretion; 240

(L) The ability of a qualified trustee, whether pursuant to 241
 the qualified trustee's discretion or the terms of the legacy 242
 trust instrument or at the direction of an advisor, to pay after 243
 the death of a transferor all or any part of the debts of the 244
 transferor outstanding on or before the transferor's death, the 245
 expenses of administering the transferor's estate, or any estate, 246

gift, generation skipping transfer, or inheritance tax;	247
(M) Any provision that pours back after the death of a transferor all or part of the trust property to the transferor's estate or any trust;	248 249 250
(N) <u>A power held by a transferor allowing the transferor, while acting in a nonfiduciary capacity, to substitute property of equivalent value for any property that is part of the principal of the legacy trust;</u>	251 252 253 254
(O) Any other rights, powers, interests, or provisions permitted or allowed by any other section of this chapter.	255 256
Sec. 5816.06. (A) Except as otherwise provided in this section, a transferor shall sign a qualified affidavit before or substantially contemporaneously with making a qualified disposition.	257 258 259 260
(B) A qualified affidavit shall be notarized and shall contain all of the following statements under oath:	261 262
(1) The property being transferred to the trust was not derived from unlawful activities.	263 264
(2) The transferor has full right, title, and authority to transfer the property to the legacy trust.	265 266
(3) The transferor will not be rendered insolvent immediately after the transfer of the property to the legacy trust.	267 268
(4) The transferor does not intend to defraud any creditor by transferring the property to the legacy trust.	269 270
(5) There are no pending or threatened court actions against the transferor, except for any court action identified by the affidavit or an attachment to the affidavit.	271 272 273

(6) The transferor is not involved in any administrative proceeding, except for any proceeding identified by the affidavit or an attachment to the affidavit.	274 275 276
(7) The transferor does not contemplate at the time of the transfer the filing for relief under the Bankruptcy Code.	277 278
(C) A qualified affidavit is considered defective if it materially fails to meet the requirements set forth in division (B) of this section, but a qualified affidavit is not considered defective due to any one or more of the following:	279 280 281 282
(1) Any nonsubstantive variances from the language set forth in division (B) of this section;	283 284
(2) Any statements or representations in addition to those set forth in division (B) of this section if the statements or representations do not materially contradict the statements or representations required by that division;	285 286 287 288
(3) Any technical errors in the form, substance, or method of administering an oath if those errors were not the fault of the affiant, and the affiant reasonably relied upon another person to prepare or administer the oath.	289 290 291 292
(D)(1) A qualified affidavit is not required from a transferor who is not a beneficiary of the legacy trust that receives the disposition.	293 294 295
(2) A subsequent qualified affidavit is not required in connection with any qualified disposition made after the execution of an earlier qualified affidavit if that disposition is a part of, is required by, or is the direct result of, a prior qualified disposition that was made in connection with that earlier qualified affidavit.	296 297 298 299 300 301
(E) If a qualified affidavit is required by this section and	302

a transferor fails to timely sign a qualified affidavit or signs a defective qualified affidavit, then, subject to the normal rules of evidence, that failure or defect may be considered as evidence in any proceeding commenced pursuant to section 5816.07 of the Revised Code, but the legacy trust or the validity of any attempted qualified disposition shall not be affected in any other way due to that failure or defect.

Sec. 5816.09. Any successor or replacement trustees of a legacy trust shall be determined or selected in the following manners:

(A)(1) Division (A)(2) of this section applies if in any action involving a legacy trust or any trustee of the legacy trust a court ~~takes an action~~ enters or issues any order in which or by which the court declines to apply the law of this state in determining any of the following matters:

(a) The validity, construction, or administration of the trust;

(b) The effect of any term or condition of the trust, including, but not limited to, a spendthrift provision;

(c) The rights and remedies of any creditor or other suitor in connection with a qualified disposition.

(2) Immediately upon the court's ~~action under~~ entry or issuance of an order referred to in division (A)(1) of this section, and without the need for any other order of any court, any qualified trustee who is a party to that action shall cease in all respects to be a trustee of the legacy trust, and the position of trustee shall be occupied in accordance with the terms of the trust instrument that governed the legacy trust immediately before that cessation, or, if the terms of the trust instrument do not

provide for another trustee and the trust would otherwise be 332
 without a trustee, any court of this state, upon the application 333
 of any beneficiary of the legacy trust, shall appoint a successor 334
 qualified trustee upon the terms and conditions that it determines 335
 to be consistent with the purposes of the trust and this chapter. 336
 Upon a qualified trustee ceasing to be a trustee pursuant to 337
 division (A)(2) of this section, that qualified trustee shall have 338
 no power or authority other than to convey trust property to any 339
 other trustee that is appointed, installed, or serving in 340
 accordance with that division. 341

(3) For purposes of division (A) of this section, ~~"court":~~ 342

(a) "Court" includes a judicial tribunal, an administrative 343
 tribunal, or other adjudicative body or panel. 344

(b) "Order" includes any order, writ, judgment, entry, edict, 345
mandate, directive, instruction, or decree issued or entered by 346
any court. 347

(B) In all cases other than the situation described in 348
 division (A) of this section, both of the following apply: 349

(1) If a legacy trust ceases to have at least one qualified 350
 trustee, the vacancy in the qualified trusteeship shall be filled 351
 pursuant to section 5807.04 of the Revised Code except to the 352
 extent that the legacy trust expressly provides otherwise. 353

(2) If a legacy trust ceases to have at least one trustee, 354
 the vacancy in the trusteeship shall be filled pursuant to section 355
 5807.04 of the Revised Code, and the successor trustee shall be a 356
 qualified trustee unless the legacy trust instrument expressly 357
 provides otherwise. 358

Sec. 5816.10. (A) In the event of any conflict between any 359
 provision of this chapter and any provision of Chapter 1336. of 360

the Revised Code or any other provision of law similar to any 361
 provision of Chapter 1336. of the Revised Code, including, but not 362
limited to, any similar provision of law adopted, promulgated, or 363
enacted by a jurisdiction other than this state, the provision of 364
 this chapter shall control and prevail to the maximum extent 365
permitted by the Ohio Constitution and the United States 366
Constitution. When determining whether a provision of law is 367
similar to any provision of Chapter 1336. of the Revised Code, a 368
court shall be liberal in finding that such similarity exists. 369

(B) A statement in a trust instrument stating that it "shall 370
 be governed by the laws of Ohio" or other statement to similar 371
 effect or of similar import is considered to expressly incorporate 372
 the laws of this state to govern the validity, construction, and 373
 administration of that trust instrument and to satisfy division 374
 (K)(1)(b) of section 5816.02 of the Revised Code. 375

(C) A disposition by a nonqualified trustee to a qualified 376
 trustee shall not be treated as other than a qualified disposition 377
 solely because the nonqualified trustee is a trustee of a 378
 nonlegacy trust. 379

(D) A disposition to any nonqualified trustee of a legacy 380
 trust shall be treated as a qualified disposition if at the time 381
 of the disposition any of the following applies: 382

(1) There is at least one qualified trustee serving pursuant 383
 to the terms of that legacy trust. 384

(2) There is no qualified trustee serving but the 385
 circumstances require the appointment or installation of a 386
 qualified trustee pursuant to division (A)(2) of section 5816.09 387
 of the Revised Code. 388

(3) There is no qualified trustee serving but within one 389

hundred eighty days after the date of disposition a qualified trustee fills the vacancy in the qualified trusteeship or an application to appoint a qualified trustee is filed pursuant to division (B) of section 5816.09 of the Revised Code.

(E) If a disposition is made by a trustee of a nonlegacy trust to a trustee of a legacy trust, both of the following apply:

(1) Except to the extent expressly stated otherwise by the terms of that disposition, the disposition shall be considered a qualified disposition for the benefit of all of the persons who are the beneficiaries of both the nonlegacy trust and the legacy trust.

(2) The date of the disposition to the legacy trust shall be considered to be the date on which the property that was part of the nonlegacy trust was first continuously subject to any law of a jurisdiction other than this state that is similar to this chapter. ~~A court shall liberally construe and apply division (E)(2) of this section~~ When applying division (E)(2) of this section, a court shall be liberal in finding that such continuity and similarity exist.

(F) A legacy trust may contain any terms or conditions that provide for changes in or to the place of administration, situs, governing law, trustees or advisors, or the terms or conditions of the legacy trust or for other changes permitted by law.

(G) Any valid lien attaching to property before a disposition of that property to a trustee of a legacy trust shall survive the disposition, and the trustee shall take title to the property subject to the valid lien and subject to any agreements that created or perfected the valid lien. Nothing in this chapter shall be construed to authorize any disposition that is prohibited by the terms of any agreements, notes, guaranties, mortgages,

indentures, instruments, undertakings, or other documents. In the 420
 event of any conflict between this division and any other 421
 provision of this chapter, this division shall control. 422

(H) To the maximum extent permitted by the Ohio Constitution 423
 and the United States Constitution, the courts of this state shall 424
 exercise jurisdiction over any legacy trust, any legacy trust 425
matter, or any qualified disposition and shall adjudicate any case 426
 or controversy brought before them regarding, arising out of, or 427
 related to, any legacy trust, any legacy trust matter, or any 428
 qualified disposition if that case or controversy is otherwise 429
 within the subject matter jurisdiction of the court. Subject to 430
 the Ohio Constitution and the United States Constitution, no court 431
 of this state shall dismiss or otherwise decline to adjudicate any 432
 case or controversy described in this division on the ground that 433
 a court of another jurisdiction has acquired or may acquire proper 434
 jurisdiction over, or may provide proper venue for, that case or 435
 controversy or the parties to the case or controversy. Nothing in 436
 this division shall be construed to do either of the following: 437

(1) Prohibit a transfer or other reassignment of any case or 438
 controversy from one court of this state to another court of this 439
 state; 440

(2) Expand or limit the subject matter jurisdiction of any 441
 court of this state. 442

(I)(1) If any disposition is made by a trustee of a legacy 443
trust, referred to in division (I) of this section as the "first 444
legacy trust," to a trustee of a second legacy trust, referred to 445
in division (I) of this section as the "second legacy trust," 446
whether pursuant to section 5808.18 of the Revised Code or any 447
other applicable law, then all of the following apply to any 448
property involved in such disposition: 449

(a) Except to the extent expressly stated otherwise by the terms of that disposition, the disposition shall be considered a qualified disposition for the benefit of all persons who are the beneficiaries of both the first legacy trust and the second legacy trust. 450
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(b) An item of property shall be treated as having been transferred to a trustee of the second legacy trust on the earlier of any of the following: 455
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(i) The date of the original qualified disposition of the item to a trustee of the first legacy trust; 458
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(ii) If, before being held by the trustee of the first legacy trust, the item previously was held by a trustee of a predecessor legacy trust, or by one or more trustees of a consecutive and uninterrupted series of predecessor legacy trusts, then the date of the original qualified disposition to the first trustee to hold that item as part of any such predecessor legacy trust; 460
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(iii) If, before being held by the trustee of the first legacy trust, that item was held by a trustee of a nonlegacy trust referred to in division (E)(2) of this section, then the date determined pursuant to that division; 466
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(iv) The earliest date determined by any combination of divisions (I)(1)(b)(i) to (iii) of this section. 470
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(2) For purposes of division (I)(1)(b) of this section, any reference to an item of property shall include any proceeds of or substitutes for that item. 472
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(3) Notwithstanding division (S) of section 5816.02 of the Revised Code, a qualified trustee of the first legacy trust may serve as a qualified trustee of the second legacy trust. 475
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(4) The dispositions covered by division (I) of this section 478

include, but are not limited to, any disposition that is made by a trustee of the first legacy trust acting pursuant to a direction issued by a person having the power to direct a distribution of trust property pursuant to the trust instrument governing the first legacy trust, including, but not limited to, a power to direct as provided in division (G) of section 5808.18 of the Revised Code.

(J) Any reference in this chapter to an "action" or a "proceeding" shall be broadly construed to encompass any suit or proceeding in any jurisdiction or before any judicial tribunal, administrative tribunal, or other adjudicative body or panel.

(K) This chapter and its provisions reflect and embody the strong public policy of this state.

Sec. 5816.14. This chapter applies to qualified dispositions made on or after ~~the effective date of this section~~ March 27, 2013, except that division (S)(1)(b)(ii) of section 5816.02 of the Revised Code applies to any legacy trust settled or administered on or after the effective date of this amendment.

In line 79, delete "section" and insert "sections"; after "1901.181" insert ", 5816.02, 5816.05, 5816.06, 5816.09, 5816.10, and 5816.14"

In line 80, delete "is" and insert "are"

The motion was _____ agreed to.