H.B. 357
As Introduced

**Topic:** Ohio Legacy Trust Act changes

______________________________ moved to amend as follows:

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

In line 5 of the title, after "pollution" insert "and to make changes to the Ohio Legacy Trust Act"

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

After line 76, insert:

"Sec. 5816.02. As used in this chapter, unless the context otherwise requires:

(A)(1) "Advisor" means a person to whom both of the following apply:

(a) The person satisfies the eligibility criteria specified in division (A) of section 5816.11 of the Revised Code.

(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."
(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.

(B) "Asset" means property of a transferor but does not include any of the following:

(1) Property to the extent it is encumbered by a valid lien;

(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;

(3) Property held in the form of a tenancy by the entireties to the extent that, under the law governing the entireties estate at the time of a qualified disposition, it is not subject to process by a creditor holding a claim against only one tenant;

(4) Any property transferred from a nonlegacy trust to a legacy trust to the extent that the property would not be subject to attachment under the applicable nonbankruptcy law governing that nonlegacy trust.

(C) "Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. Chapter 11, as amended.

(D) "Beneficiary" has the same meaning as in section 5801.01 of the Revised Code.

(E) "Claim" means a right to payment, whether or not the right is reduced to judgment or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(F) "Creditor" means a person who has a claim against a transferor and any transferee or assignee of, or successor to,
that claim.

(G) "Debt" means a liability on a claim.

(H) "Disposition" means a direct or indirect transfer, conveyance, or assignment of property, including, but not limited to, a partial, contingent, undivided, or co-ownership interest in property. "Disposition" includes the exercise of a general power so as to cause a transfer of property to a trustee or trustees but does not include any of the following:

(1) The release or relinquishment of an interest in property that, until the release or relinquishment, was the subject of a qualified disposition;

(2) The exercise of a limited power so as to cause a transfer of property to a trustee or trustees;

(3) A disclaimer of an interest in a trust, bequest, devise, or inheritance.


(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.

(K)(1) "Legacy trust" means a trust evidenced by a written trust instrument to which all of the following apply:

(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.

(b) The trust expressly incorporates the laws of this state to wholly or partially govern its validity, construction, and
administration.

(c) The trust expressly states that it is irrevocable.

(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.

(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.

(L) "Lien" has the same meaning as in section 1336.01 of the Revised Code.

(M) "Nonlegacy trust" means any trust other than a legacy trust.

(N) "Nonqualified trustee" means any trustee other than a qualified trustee.

(O) "Person" has the same meaning as in section 5801.01 of the Revised Code.

(P) "Property" has the same meaning as in section 5801.01 of the Revised Code.

(Q) "Qualified affidavit" means an affidavit that meets the requirements of section 5816.06 of the Revised Code.

(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.

(S) "Qualified trustee" means a person who is not a transferor and to whom both of the following apply:

(1)(a) The person, if a natural person, is a resident of this
(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 either of the following applies:

(i) The activities of that person are subject to supervision by the Ohio superintendent of banks financial institutions, the federal deposit insurance corporation, the comptroller of the currency, or the office of thrift supervision or a successor of any of them.

(ii) 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 regardless of the family trust company's licensing status:

(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.

(II) The family trust company shall open and maintain at least one bank or brokerage account in this state.

(III) The family trust company shall maintain in this state, on an exclusive or nonexclusive basis, electronic or physical records for the legacy trust.

(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.

(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.

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.

(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 electronic or physical 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.

(T) "Spendthrift provision" has the same meaning as in 
section 5801.01 of the Revised Code.

(U) "Spouse" and "former spouse" means only the person to 
whom a transferor was married on or before a qualified disposition 
is made.

(V) "Transferor" means a person who directly or indirectly 
makes a disposition.

(W) "Valid lien" has the same meaning as in section 1336.01 
of the Revised Code.

Sec. 5816.05. A legacy trust may allow or provide for any or 
all of the following rights, powers, interests, or provisions, none of which grants, or is considered to be, either alone or in 
any combination, a right or power to revoke a trust or to 
voluntarily or involuntarily transfer an interest in that trust:
(A) A provision that, upon the happening of a defined event or a stated contingency, results in the termination of a transferor's right to mandatory income or principal;

(B) The power of a transferor to veto a distribution from the trust;

(C) A power of appointment, other than a power to appoint to a transferor, a creditor of the transferor, the estate of the transferor, or a creditor of the transferor's estate, that is exercisable by will or by other written instrument of a transferor effective upon the death of the transferor or during the lifetime of the transferor;

(D) The right of a transferor to receive trust income as set forth in the trust instrument.

(E) Both of the following:

(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 
use of principal or income. If an advisor is authorized to direct 
that distribution or use, the advisor's authority shall be 
discretionary unless otherwise expressly stated in the trust 
instrument.

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

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

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

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

(L) The ability of a qualified trustee, whether pursuant to the qualified trustee's discretion or the terms of the legacy trust instrument or at the direction of an advisor, to pay after the death of a transferor all or any part of the debts of the transferor outstanding on or before the transferor's death, the expenses of administering the transferor's estate, or any estate, gift, generation skipping transfer, or inheritance tax;

(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;

(N) 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;

(O) Any other rights, powers, interests, or provisions permitted or allowed by any other section of this chapter.

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.
(B) A qualified affidavit shall be notarized and shall contain all of the following statements under oath:

(1) The property being transferred to the trust was not derived from unlawful activities.

(2) The transferor has full right, title, and authority to transfer the property to the legacy trust.

(3) The transferor will not be rendered insolvent immediately after the transfer of the property to the legacy trust.

(4) The transferor does not intend to defraud any creditor by transferring the property to the legacy trust.

(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.

(6) The transferor is not involved in any administrative proceeding, except for any proceeding identified by the affidavit or an attachment to the affidavit.

(7) The transferor does not contemplate at the time of the transfer the filing for relief under the Bankruptcy Code.

(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:

(1) Any nonsubstantive variances from the language set forth in division (B) of this section;

(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;
(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.

(D)(1) A qualified affidavit is not required from a transferor who is not a beneficiary of the legacy trust that receives the disposition.

(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.

(E) If a qualified affidavit is required by this section and 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 enters any order in 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 without a trustee, any court of this state, upon the application of any beneficiary of the legacy trust, shall appoint a successor qualified trustee upon the terms and conditions that it determines to be consistent with the purposes of the trust and this chapter. Upon a qualified trustee ceasing to be a trustee pursuant to division (A)(2) of this section, that qualified trustee shall have no power or authority other than to convey trust property to any other trustee that is appointed, installed, or serving in accordance with that division.

(3) For purposes of division (A) of this section, "court";

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

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

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

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

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

Sec. 5816.10. (A) In the event of any conflict between any provision of this chapter and any provision of Chapter 1336. of the Revised Code or any other provision of law similar to any provision of Chapter 1336. of the Revised Code, including, but not limited to, any similar provision of law adopted, promulgated, or enacted by a jurisdiction other than this state, the provision of this chapter shall control and prevail to the maximum extent permitted by the Ohio Constitution and the United States Constitution. When determining whether a provision of law is similar to any provision of Chapter 1336. of the Revised Code, a court shall be liberal in finding that such similarity exists.

(B) A statement in a trust instrument stating that it "shall be governed by the laws of Ohio" or other statement to similar effect or of similar import is considered to expressly incorporate the laws of this state to govern the validity, construction, and administration of that trust instrument and to satisfy division (K)(1)(b) of section 5816.02 of the Revised Code.
(C) A disposition by a nonqualified trustee to a qualified trustee shall not be treated as other than a qualified disposition solely because the nonqualified trustee is a trustee of a nonlegacy trust.

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

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

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

(3) There is no qualified trustee serving but within one 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 event of any conflict between this division and any other provision of this chapter, this division shall control.

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

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

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

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

(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.

(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:

(i) The date of the original qualified disposition of the
item to a trustee of the first legacy trust;

(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;

   (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;

   (iv) The earliest date determined by any combination of divisions (I)(1)(b)(i) to (iii) of this section.

(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.

(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.

(4) The dispositions covered by division (I) of this section 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 77, delete "section" and insert "sections"; after "1901.181" insert ", 5816.02, 5816.05, 5816.06, 5816.09, 5816.10, and 5816.14"

In line 78, delete "is" and insert "are"

The motion was __________ agreed to.