

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 1  
"sections"; after "1901.181" insert ", 5816.02, 5816.05, 5816.06, 2  
5816.09, 5816.10, and 5816.14" 3

In line 5 of the title, after "pollution" insert "and to make 4  
changes to the Ohio Legacy Trust Act" 5

In line 6, delete "section" and insert "sections"; after 6  
"1901.181" insert ", 5816.02, 5816.05, 5816.06, 5816.09, 5816.10, 7  
and 5816.14" 8

After line 76, insert: 9

**"Sec. 5816.02.** As used in this chapter, unless the context 10  
otherwise requires: 11

(A)(1) "Advisor" means a person to whom both of the following 12  
apply: 13

(a) The person satisfies the eligibility criteria specified 14  
in division (A) of section 5816.11 of the Revised Code. 15

(b) The person is given the authority by the terms of a 16  
legacy trust to remove or appoint one or more trustees of the 17  
trust or to direct, consent to, or disapprove a trustee's actual 18  
or proposed investment, distribution, or other decisions. 19

(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 entirety to the extent that, under the law governing the entirety 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. 48

(G) "Debt" means a liability on a claim. 49

(H) "Disposition" means a direct or indirect transfer, 50  
conveyance, or assignment of property, including, but not limited 51  
to, a partial, contingent, undivided, or co-ownership interest in 52  
property. "Disposition" includes the exercise of a general power 53  
so as to cause a transfer of property to a trustee or trustees but 54  
does not include any of the following: 55

(1) The release or relinquishment of an interest in property 56  
that, until the release or relinquishment, was the subject of a 57  
qualified disposition; 58

(2) The exercise of a limited power so as to cause a transfer 59  
of property to a trustee or trustees; 60

(3) A disclaimer of an interest in a trust, bequest, devise, 61  
or inheritance. 62

(I) "Internal Revenue Code" means the "Internal Revenue Code 63  
of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended. 64

(J) "Investment decision" means any participation in any 65  
decision regarding the retention, purchase, sale, exchange, 66  
tender, or other transaction affecting the ownership of or rights 67  
in investments. 68

(K)(1) "Legacy trust" means a trust evidenced by a written 69  
trust instrument to which all of the following apply: 70

(a) The trust has, names, or appoints at least one qualified 71  
trustee for or in connection with the property that is the subject 72  
of a qualified disposition. 73

(b) The trust expressly incorporates the laws of this state 74  
to wholly or partially govern its validity, construction, and 75

administration.	76
(c) The trust expressly states that it is irrevocable.	77
(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.	78 79 80
(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.	81 82 83 84
(L) "Lien" has the same meaning as in section 1336.01 of the Revised Code.	85 86
(M) "Nonlegacy trust" means any trust other than a legacy trust.	87 88
(N) "Nonqualified trustee" means any trustee other than a qualified trustee.	89 90
(O) "Person" has the same meaning as in section 5801.01 of the Revised Code.	91 92
(P) "Property" has the same meaning as in section 5801.01 of the Revised Code.	93 94
(Q) "Qualified affidavit" means an affidavit that meets the requirements of section 5816.06 of the Revised Code.	95 96
(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.	97 98 99
(S) "Qualified trustee" means a person who is not a transferor and to whom both of the following apply:	100 101
(1)(a) The person, if a natural person, is a resident of this	102

state. 103

(b) The person, if not a natural person, is authorized by the 104  
law of this state or by a court of competent jurisdiction of this 105  
state to act as a trustee and ~~whose~~ either of the following 106  
applies: 107

(i) The activities of that person are subject to supervision 108  
by the Ohio superintendent of ~~banks~~ financial institutions, the 109  
federal deposit insurance corporation, the comptroller of the 110  
currency, or the office of thrift supervision or a successor of 111  
any of them. 112

(ii) That person is a "family trust company," as defined in 113  
section 1112.01 of the Revised Code, and that family trust company 114  
may be licensed or unlicensed for purposes of Chapter 1112. of the 115  
Revised Code, provided that all of the following also apply 116  
regardless of the family trust company's licensing status: 117

(I) The family trust company shall maintain an office in this 118  
state, on either an exclusive basis or on a shared basis with one 119  
or more other persons. 120

(II) The family trust company shall open and maintain at 121  
least one bank or brokerage account in this state. 122

(III) The family trust company shall maintain in this state, 123  
on an exclusive or nonexclusive basis, electronic or physical 124  
records for the legacy trust. 125

(IV) The family trust company shall satisfy all of the 126  
requirements imposed by divisions (B), (C), (D), and (E)(1) of 127  
section 1112.14 of the Revised Code. 128

(V) No beneficiary of a legacy trust, when acting for or on 129  
behalf of a family trust company, or when acting as an officer, 130  
manager, director, employee, or other agent or representative of a 131

family trust company, may have any vote or authority regarding any 132  
decision to make or withhold any distribution from such legacy 133  
trust to or for the benefit of that beneficiary. 134

Nothing in division (S)(1)(b)(ii) of this section shall 135  
prohibit a beneficiary from exercising any rights, powers, 136  
privileges, or authority granted to that beneficiary by or in any 137  
trust instrument governing a legacy trust. 138

(2) The person maintains or arranges for custody in this 139  
state of some or all of the property that is the subject of the 140  
qualified disposition, maintains electronic or physical records 141  
for the legacy trust on an exclusive or nonexclusive basis, 142  
prepares or arranges for the preparation of required income tax 143  
returns for the legacy trust, or otherwise materially participates 144  
in the administration of the legacy trust. 145

(T) "Spendthrift provision" has the same meaning as in 146  
section 5801.01 of the Revised Code. 147

(U) "Spouse" and "former spouse" means only the person to 148  
whom a transferor was married on or before a qualified disposition 149  
is made. 150

(V) "Transferor" means a person who directly or indirectly 151  
makes a disposition. 152

(W) "Valid lien" has the same meaning as in section 1336.01 153  
of the Revised Code. 154

**Sec. 5816.05.** A legacy trust may allow or provide for any or 155  
all of the following rights, powers, interests, or provisions, 156  
none of which grants, or is considered to be, either alone or in 157  
any combination, a right or power to revoke a trust or to 158  
voluntarily or involuntarily transfer an interest in that trust: 159

(A) A provision that, upon the happening of a defined event	160
<u>or a stated contingency</u> , results in the termination of a	161
transferor's right to mandatory income or principal;	162
(B) The power of a transferor to veto a distribution from the	163
trust;	164
(C) A power of appointment, other than a power to appoint to	165
a transferor, a creditor of the transferor, the estate of the	166
transferor, or a creditor of the transferor's estate, that is	167
exercisable by will or by other written instrument of a transferor	168
effective upon the death of the transferor or during the lifetime	169
of the transferor;	170
(D) The right of a transferor to receive trust income as set	171
forth in the trust instrument.	172
(E) Both of the following:	173
(1) A transferor's potential or actual receipt of income or	174
principal from a charitable remainder unitrust or charitable	175
remainder annuity trust as those terms are defined in section 664	176
of the Internal Revenue Code;	177
(2) The transferor's right, at any time and from time to time	178
by written instrument delivered to the trustee, to release the	179
transferor's retained interest in that unitrust or annuity trust,	180
in whole or in part, in favor of one or more charitable	181
organizations that have a succeeding beneficial interest in that	182
unitrust or annuity trust;	183
(F) The power of a transferor to consume, invade, or	184
appropriate property of the trust, but only if limited in each	185
calendar year to five per cent of the value of the trust principal	186
at the time of the exercise of the power;	187
(G) A transferor's potential or actual receipt or use of	188

principal or income of the trust if the potential or actual	189
receipt or use is or would be the result of any of the following	190
that applies with respect to one or more of the qualified	191
trustees:	192
(1) A qualified trustee's acting in the trustee's discretion.	193
For purposes of division (G)(1) of this section, a qualified	194
trustee shall have discretion with respect to the distribution or	195
use of principal or income unless the discretion is expressly	196
denied to the trustee by the terms of the trust instrument.	197
(2) A qualified trustee's acting pursuant to a standard in	198
the trust instrument that governs the distribution or use of	199
principal or income;	200
(3) A qualified trustee's acting at the direction of an	201
advisor who is acting in the advisor's discretion or pursuant to a	202
standard in the trust instrument that governs the distribution or	203
use of principal or income. If an advisor is authorized to direct	204
that distribution or use, the advisor's authority shall be	205
discretionary unless otherwise expressly stated in the trust	206
instrument.	207
(H) The right of a transferor to remove any advisor and	208
appoint a new advisor who satisfies the eligibility criteria set	209
forth in division (A) of section 5816.11 of the Revised Code;	210
(I) The right of a transferor to remove any trustee and	211
appoint a new trustee;	212
(J) A transferor's potential or actual use of real property	213
or tangible personal property, including, but not limited to,	214
property held under a qualified personal residence trust as	215
described in section 2702(c) of the Internal Revenue Code and	216
regulations promulgated under that section, or a transferor's	217



possession and enjoyment of a qualified interest as defined in 218  
 section 2702(b) of the Internal Revenue Code; 219

(K) Any provision requiring or permitting the potential or 220  
 actual use of trust income or principal to pay, in whole or in 221  
 part, income taxes due on the income of the trust, including, but 222  
 not limited to, any provision permitting that use in the 223  
 discretion of any one or more of the qualified trustees acting in 224  
 the qualified trustee's discretion or at the direction of an 225  
 advisor who is acting in the advisor's discretion; 226

(L) The ability of a qualified trustee, whether pursuant to 227  
 the qualified trustee's discretion or the terms of the legacy 228  
 trust instrument or at the direction of an advisor, to pay after 229  
 the death of a transferor all or any part of the debts of the 230  
 transferor outstanding on or before the transferor's death, the 231  
 expenses of administering the transferor's estate, or any estate, 232  
 gift, generation skipping transfer, or inheritance tax; 233

(M) Any provision that pours back after the death of a 234  
 transferor all or part of the trust property to the transferor's 235  
 estate or any trust; 236

(N) A power held by a transferor allowing the transferor, 237  
while acting in a nonfiduciary capacity, to substitute property of 238  
equivalent value for any property that is part of the principal of 239  
the legacy trust; 240

(O) Any other rights, powers, interests, or provisions 241  
 permitted or allowed by any other section of this chapter. 242

**Sec. 5816.06.** (A) Except as otherwise provided in this 243  
 section, a transferor shall sign a qualified affidavit before or 244  
 substantially contemporaneously with making a qualified 245  
 disposition. 246

(B) A qualified affidavit shall be notarized and shall	247
contain all of the following statements under oath:	248
(1) The property being transferred to the trust was not	249
derived from unlawful activities.	250
(2) The transferor has full right, title, and authority to	251
transfer the property to the legacy trust.	252
(3) The transferor will not be rendered insolvent immediately	253
after the transfer of the property to the legacy trust.	254
(4) The transferor does not intend to defraud any creditor by	255
transferring the property to the legacy trust.	256
(5) There are no pending or threatened court actions against	257
the transferor, except for any court action identified by the	258
affidavit or an attachment to the affidavit.	259
(6) The transferor is not involved in any administrative	260
proceeding, except for any proceeding identified by the affidavit	261
or an attachment to the affidavit.	262
(7) The transferor does not contemplate at the time of the	263
transfer the filing for relief under the Bankruptcy Code.	264
(C) A qualified affidavit is considered defective if it	265
materially fails to meet the requirements set forth in division	266
(B) of this section, but a qualified affidavit is not considered	267
defective due to any one or more of the following:	268
(1) Any nonsubstantive variances from the language set forth	269
in division (B) of this section;	270
(2) Any statements or representations in addition to those	271
set forth in division (B) of this section if the statements or	272
representations do not materially contradict the statements or	273
representations required by that division;	274

(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 ~~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;	304 305
(b) The effect of any term or condition of the trust, including, but not limited to, a spendthrift provision;	306 307
(c) The rights and remedies of any creditor or other suitor in connection with a qualified disposition.	308 309
(2) Immediately upon the court's <del>action under</del> <u>entry or issuance of an order referred to in</u> division (A)(1) of this section, and without the need for any <u>other</u> 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.	310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327
(3) For purposes of division (A) of this section, <del>"court":</del>	328
(a) <u>"Court"</u> includes a judicial tribunal, an administrative tribunal, or other adjudicative body or panel.	329 330
(b) <u>"Order" includes any order, writ, judgment, entry, edict, mandate, directive, instruction, or decree issued or entered by</u>	331 332

any court. 333

(B) In all cases other than the situation described in 334  
division (A) of this section, both of the following apply: 335

(1) If a legacy trust ceases to have at least one qualified 336  
trustee, the vacancy in the qualified trusteeship shall be filled 337  
pursuant to section 5807.04 of the Revised Code except to the 338  
extent that the legacy trust expressly provides otherwise. 339

(2) If a legacy trust ceases to have at least one trustee, 340  
the vacancy in the trusteeship shall be filled pursuant to section 341  
5807.04 of the Revised Code, and the successor trustee shall be a 342  
qualified trustee unless the legacy trust instrument expressly 343  
provides otherwise. 344

**Sec. 5816.10.** (A) In the event of any conflict between any 345  
provision of this chapter and any provision of Chapter 1336. of 346  
the Revised Code or any other provision of law similar to any 347  
provision of Chapter 1336. of the Revised Code, including, but not 348  
limited to, any similar provision of law adopted, promulgated, or 349  
enacted by a jurisdiction other than this state, the provision of 350  
this chapter shall control and prevail to the maximum extent 351  
permitted by the Ohio Constitution and the United States 352  
Constitution. When determining whether a provision of law is 353  
similar to any provision of Chapter 1336. of the Revised Code, a 354  
court shall be liberal in finding that such similarity exists. 355

(B) A statement in a trust instrument stating that it "shall 356  
be governed by the laws of Ohio" or other statement to similar 357  
effect or of similar import is considered to expressly incorporate 358  
the laws of this state to govern the validity, construction, and 359  
administration of that trust instrument and to satisfy division 360  
(K)(1)(b) of section 5816.02 of the Revised Code. 361

(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~~ 391  
~~(E)(2) of this section~~ When applying division (E)(2) of this 392  
section, a court shall be liberal in finding that such continuity 393  
and similarity exist. 394

(F) A legacy trust may contain any terms or conditions that 395  
provide for changes in or to the place of administration, situs, 396  
governing law, trustees or advisors, or the terms or conditions of 397  
the legacy trust or for other changes permitted by law. 398

(G) Any valid lien attaching to property before a disposition 399  
of that property to a trustee of a legacy trust shall survive the 400  
disposition, and the trustee shall take title to the property 401  
subject to the valid lien and subject to any agreements that 402  
created or perfected the valid lien. Nothing in this chapter shall 403  
be construed to authorize any disposition that is prohibited by 404  
the terms of any agreements, notes, guaranties, mortgages, 405  
indentures, instruments, undertakings, or other documents. In the 406  
event of any conflict between this division and any other 407  
provision of this chapter, this division shall control. 408

(H) To the maximum extent permitted by the Ohio Constitution 409  
and the United States Constitution, the courts of this state shall 410  
exercise jurisdiction over any legacy trust, any legacy trust 411  
matter, or any qualified disposition and shall adjudicate any case 412  
or controversy brought before them regarding, arising out of, or 413  
related to, any legacy trust, any legacy trust matter, or any 414  
qualified disposition if that case or controversy is otherwise 415  
within the subject matter jurisdiction of the court. Subject to 416  
the Ohio Constitution and the United States Constitution, no court 417  
of this state shall dismiss or otherwise decline to adjudicate any 418  
case or controversy described in this division on the ground that 419  
a court of another jurisdiction has acquired or may acquire proper 420

jurisdiction over, or may provide proper venue for, that case or 421  
controversy or the parties to the case or controversy. Nothing in 422  
this division shall be construed to do either of the following: 423

(1) Prohibit a transfer or other reassignment of any case or 424  
controversy from one court of this state to another court of this 425  
state; 426

(2) Expand or limit the subject matter jurisdiction of any 427  
court of this state. 428

(I)(1) If any disposition is made by a trustee of a legacy 429  
trust, referred to in division (I) of this section as the "first 430  
legacy trust," to a trustee of a second legacy trust, referred to 431  
in division (I) of this section as the "second legacy trust," 432  
whether pursuant to section 5808.18 of the Revised Code or any 433  
other applicable law, then all of the following apply to any 434  
property involved in such disposition: 435

(a) Except to the extent expressly stated otherwise by the 436  
terms of that disposition, the disposition shall be considered a 437  
qualified disposition for the benefit of all persons who are the 438  
beneficiaries of both the first legacy trust and the second legacy 439  
trust. 440

(b) An item of property shall be treated as having been 441  
transferred to a trustee of the second legacy trust on the earlier 442  
of any of the following: 443

(i) The date of the original qualified disposition of the 444  
item to a trustee of the first legacy trust; 445

(ii) If, before being held by the trustee of the first legacy 446  
trust, the item previously was held by a trustee of a predecessor 447  
legacy trust, or by one or more trustees of a consecutive and 448  
uninterrupted series of predecessor legacy trusts, then the date 449



of the original qualified disposition to the first trustee to hold  
that item as part of any such predecessor legacy trust;

450  
451

(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;

452  
453  
454  
455

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

456  
457

(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.

458  
459  
460

(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.

461  
462  
463

(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.

464  
465  
466  
467  
468  
469  
470  
471

(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.

472  
473  
474  
475

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

476  
477

Sec. 5816.14. This chapter applies to qualified dispositions 478  
 made on or after ~~the effective date of this section~~ March 27, 479  
2013, except that division (S)(1)(b)(ii) of section 5816.02 of the 480  
Revised Code applies to any legacy trust settled or administered 481  
on or after the effective date of this amendment." 482

In line 77, delete "section" and insert "sections"; after 483  
 "1901.181" insert ", 5816.02, 5816.05, 5816.06, 5816.09, 5816.10," 484  
 and 5816.14" 485

In line 78, delete "is" and insert "are" 486

The motion was \_\_\_\_\_ agreed to.