

As Reported by the Senate Judiciary Committee

132nd General Assembly

Regular Session

2017-2018

Sub. H. B. No. 595

Representatives Cupp, Rezabek

**Cosponsors: Representatives Seitz, Riedel, Manning, Anielski, Ashford, Blessing,
Brown, Craig, Dever, Ginter, Green, Hambley, Holmes, Leland, Miller, Perales,
Rogers, Wiggam, Wilkin**

Senator Coley

A BILL

To amend sections 313.14, 1901.26, 1907.24, 1
2101.24, 2105.19, 2107.01, 2107.05, 2107.07, 2
2107.08, 2107.09, 2107.10, 2107.11, 2107.12, 3
2107.16, 2107.18, 2107.20, 2107.22, 2107.33, 4
2107.52, 2107.71, 2109.41, 2129.05, 2137.01, 5
2323.30, 2323.31, 2323.33, 2701.09, 2721.03, 6
3105.011, 3109.06, 4705.09, 5163.21, 5802.03, 7
5806.04, 5808.19, and 5815.16, to enact sections 8
2111.182, 2111.52, 2113.032, 2151.233, 2151.234, 9
2151.235, 2151.236, 2323.311, 2746.10, 3109.061, 10
5802.05, 5817.01, 5817.02, 5817.03, 5817.04, 11
5817.05, 5817.06, 5817.07, 5817.08, 5817.09, 12
5817.10, 5817.11, 5817.12, 5817.13, and 5817.14, 13
and to repeal sections 2107.081, 2107.082, 14
2107.083, 2107.084, and 2107.085 of the Revised 15
Code to permit nonelderly, disabled applicants 16
or recipients of Medicaid benefits or their 17
spouses to establish their own special needs 18
trust on or after December 13, 2016, to specify 19
domestic relations and juvenile court 20
jurisdiction in certain matters, and relative to 21

procedures for the waiver of certain fees for	22
indigent litigants in civil actions, procedures	23
for a testator to file a declaratory judgment	24
action to declare the validity of a will prior	25
to death and the settlor of a trust to file such	26
an action to declare its validity, exceptions to	27
antilapse provisions in class gifts in wills and	28
trusts, admission of authenticated copies of	29
wills of persons not domiciled in Ohio,	30
incorporation of a written trust into a will,	31
testimony of witnesses in admission of will to	32
probate, trusts for a minor, arbitration of	33
trust disputes, the creation of county and	34
multicounty guardianship services boards, the	35
coroner's disposition of person dying of	36
suspicious or unusual death, an application for	37
the release of medical records and medical	38
billing records, adding involuntary manslaughter	39
not resulting from a felony vehicular homicide	40
offense to the list of offenses excluding an	41
individual from inheriting from a decedent,	42
attorney-client privilege when the client is	43
acting as a fiduciary, and the placement of	44
fiduciary funds in interest on lawyer's trust	45
accounts.	46

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

Section 1. That sections 313.14, 1901.26, 1907.24,	47
2101.24, 2105.19, 2107.01, 2107.05, 2107.07, 2107.08, 2107.09,	48

2107.10, 2107.11, 2107.12, 2107.16, 2107.18, 2107.20, 2107.22, 49
2107.33, 2107.52, 2107.71, 2109.41, 2129.05, 2137.01, 2323.30, 50
2323.31, 2323.33, 2701.09, 2721.03, 3105.011, 3109.06, 4705.09, 51
5163.21, 5802.03, 5806.04, 5808.19, and 5815.16 be amended and 52
sections 2111.182, 2111.52, 2113.032, 2151.233, 2151.234, 53
2151.235, 2151.236, 2323.311, 2746.10, 3109.061, 5802.05, 54
5817.01, 5817.02, 5817.03, 5817.04, 5817.05, 5817.06, 5817.07, 55
5817.08, 5817.09, 5817.10, 5817.11, 5817.12, 5817.13, and 56
5817.14 of the Revised Code be enacted to read as follows: 57

Sec. 313.14. (A) (1) The coroner shall make a reasonable 58
effort to notify any known relatives of a deceased person who 59
meets death in the manner described by section 313.12 of the 60
Revised Code by letter or otherwise. ~~The next of kin, other~~ 61
~~relatives, or friends of the deceased person, in the order~~ 62
~~named, shall have prior right as to disposition of the body of~~ 63
~~such deceased person. If relatives of the deceased are unknown,~~ 64
~~the coroner shall make a diligent effort to ascertain the next~~ 65
~~of kin, other relatives, or friends of the deceased person~~ 66
coroner shall also make a reasonable effort to determine the 67
identity of the person who has been assigned the rights of 68
disposition for the deceased person under sections 2108.70 to 69
2108.90 of the Revised Code and shall notify that person. After 70
the coroner has completed the performance of the coroner's legal 71
duties with respect to the body of the deceased person, the 72
coroner shall return the body to that person. 73

(2) The coroner shall take charge and possession of all 74
moneys, clothing, and other valuable personal effects of ~~such~~ 75
the deceased person, found in connection with or pertaining to 76
~~such~~ the body, and shall store ~~such~~ the possessions in the 77
county coroner's office or such other suitable place as is 78
provided for ~~such~~ that storage by the board of county 79

commissioners. If the coroner considers it advisable, the 80
coroner may, after taking adequate precautions for the security 81
of ~~such~~ those possessions, store the possessions where the 82
coroner finds them until other storage space becomes available. 83
The person who has been assigned the rights of disposition for 84
the deceased person under sections 2108.70 to 2108.90 of the 85
Revised Code may request the coroner to give those possessions 86
to that person. After the person who has been assigned the 87
rights of disposition for the deceased person under sections 88
2108.70 to 2108.90 of the Revised Code, upon the person's 89
request under this division, receives the possessions of the 90
deceased person from the coroner, that person shall deliver the 91
possessions to the executor or administrator of the estate of 92
the deceased person or to any other person who is legally 93
entitled to any of those possessions. 94

(B) In cases in which the cost of the burial is paid by 95
the county, after using such of the clothing as is necessary in 96
the burial of the body, the coroner shall sell at public auction 97
the valuable personal effects of ~~such~~ the deceased persons, 98
found in connection with or pertaining to the unclaimed dead 99
body, except firearms, which shall be disposed of as provided in 100
division (C) of this section. The coroner shall make a verified 101
inventory of ~~such~~ the effects and they shall be sold within 102
eighteen months after burial, or after delivery of ~~such~~ the body 103
in accordance with section 1713.34 of the Revised Code. All 104
moneys derived from ~~such~~ the sale shall be deposited in the 105
county treasury. A notice of ~~such~~ the sale shall be given in one 106
newspaper of general circulation in the county, for five days in 107
succession, and the sale shall be held immediately thereafter. 108
The cost of such advertisement and notices shall be paid by the 109
board upon the submission of a verified statement ~~therefor~~ for 110

that cost, certified to the coroner. 111

(C) If a firearm is included in the personal effects of a 112
deceased person who meets death in the manner described by 113
section 313.12 of the Revised Code, the coroner shall deliver 114
the firearm to the chief of police of the municipal corporation 115
within which the body is found, or to the sheriff of the county 116
if the body is not found within a municipal corporation. Upon 117
delivery of the firearm to the chief of police or the sheriff, 118
the chief of police or sheriff shall give the coroner a receipt 119
for the firearm that states the date of delivery and an accurate 120
description of the firearm. The firearm shall be used for 121
evidentiary purposes only. 122

The person who has been assigned the rights of disposition 123
for the deceased person's next of kin or other relative person 124
under sections 2108.70 to 2108.90 of the Revised Code may 125
request that the firearm be given to ~~the next of kin or other~~ 126
~~relative~~ that person once the firearm is no longer needed for 127
evidentiary purposes. The chief of police or the sheriff shall 128
give the firearm to ~~the next of kin or other relative~~ that 129
person who requested the firearm only if the ~~next of kin or~~ 130
~~other relative person~~ may lawfully possess the firearm under 131
applicable law of this state or the United States. The chief of 132
police or the sheriff shall keep a record identifying the ~~next~~ 133
~~of kin or other relative person~~ to whom the firearm is given, 134
the date the firearm was given to ~~the next of kin or other~~ 135
~~relative~~ that person, and an accurate description of the 136
firearm. The person to whom the firearm is given upon the 137
person's request under this division shall deliver the firearm 138
to the executor or administrator of the estate of the deceased 139
person or to any other person who is legally entitled to the 140
firearm. 141

If ~~a next of kin or other relative~~ the person who has been 142
assigned the rights of disposition for the deceased person under 143
sections 2108.70 to 2108.90 of the Revised Code does not request 144
the firearm or is not entitled to possess the firearm, the 145
firearm shall be used at the discretion of the chief of police 146
or the sheriff. 147

(D) This section does not invalidate section 1713.34 of 148
the Revised Code. 149

Sec. 1901.26. (A) Subject to division (E) of this section, 150
costs in a municipal court shall be fixed and taxed as follows: 151

(1) (a) The municipal court shall require an advance 152
deposit for the filing of any new civil action or proceeding 153
when required by division (C) of this section, subject to its 154
waiver pursuant to that division, and in all other cases, by 155
rule, shall establish a schedule of fees and costs to be taxed 156
in any civil or criminal action or proceeding. 157

(b) (i) The legislative authority of a municipal 158
corporation may by ordinance establish a schedule of fees to be 159
taxed as costs in any civil, criminal, or traffic action or 160
proceeding in a municipal court for the performance by officers 161
or other employees of the municipal corporation's police 162
department or marshal's office of any of the services specified 163
in sections 311.17 and 509.15 of the Revised Code. No fee in the 164
schedule shall be higher than the fee specified in section 165
311.17 of the Revised Code for the performance of the same 166
service by the sheriff. If a fee established in the schedule 167
conflicts with a fee for the same service established in another 168
section of the Revised Code or a rule of court, the fee 169
established in the other section of the Revised Code or the rule 170
of court shall apply. 171

(ii) When an officer or employee of a municipal police department or marshal's office performs in a civil, criminal, or traffic action or proceeding in a municipal court a service specified in section 311.17 or 509.15 of the Revised Code for which a taxable fee has been established under this or any other section of the Revised Code, the applicable legal fees and any other extraordinary expenses, including overtime, provided for the service shall be taxed as costs in the case. The clerk of the court shall pay those legal fees and other expenses, when collected, into the general fund of the municipal corporation that employs the officer or employee.

(iii) If a bailiff of a municipal court performs in a civil, criminal, or traffic action or proceeding in that court a service specified in section 311.17 or 509.15 of the Revised Code for which a taxable fee has been established under this section or any other section of the Revised Code, the fee for the service is the same and is taxable to the same extent as if the service had been performed by an officer or employee of the police department or marshal's office of the municipal corporation in which the court is located. The clerk of that court shall pay the fee, when collected, into the general fund of the entity or entities that fund the bailiff's salary, in the same prorated amount as the salary is funded.

(iv) Division (A) (1) (b) of this section does not authorize or require any officer or employee of a police department or marshal's office of a municipal corporation or any bailiff of a municipal court to perform any service not otherwise authorized by law.

(2) The municipal court, by rule, may require an advance deposit for the filing of any civil action or proceeding and

publication fees as provided in section 2701.09 of the Revised 202
Code. The court ~~may shall~~ waive the requirement for advance 203
~~deposit upon affidavit or other evidence that a party is unable~~ 204
~~to make the required deposit~~ for a party that the court 205
determines qualifies as an indigent litigant as set forth in 206
section 2323.311 of the Revised Code. 207

(3) When a jury trial is demanded in any civil action or 208
proceeding, the party making the demand may be required to make 209
an advance deposit as fixed by rule of court, unless, ~~upon~~ 210
~~affidavit or other evidence,~~ the court ~~concludes that the party~~ 211
~~is unable to make the required deposit~~ determines that the party 212
qualifies as an indigent litigant as set forth in section 213
2323.311 of the Revised Code. If a jury is called, the fees of a 214
jury shall be taxed as costs. 215

(4) In any civil or criminal action or proceeding, each 216
witness shall receive twelve dollars for each full day's 217
attendance and six dollars for each half day's attendance. Each 218
witness in a municipal court that is not a county-operated 219
municipal court also shall receive fifty and one-half cents for 220
each mile necessarily traveled to and from the witness's place 221
of residence to the action or proceeding. 222

(5) A reasonable charge for driving, towing, carting, 223
storing, keeping, and preserving motor vehicles and other 224
personal property recovered or seized in any proceeding may be 225
taxed as part of the costs in a trial of the cause, in an amount 226
that shall be fixed by rule of court. 227

(6) Chattel property seized under any writ or process 228
issued by the court shall be preserved pending final disposition 229
for the benefit of all persons interested and may be placed in 230
storage when necessary or proper for that preservation. The 231

custodian of any chattel property so stored shall not be 232
required to part with the possession of the property until a 233
reasonable charge, to be fixed by the court, is paid. 234

(7) The municipal court, as it determines, may refund all 235
deposits and advance payments of fees and costs, including those 236
for jurors and summoning jurors, when they have been paid by the 237
losing party. 238

(8) Charges for the publication of legal notices required 239
by statute or order of court may be taxed as part of the costs, 240
as provided by section 7.13 of the Revised Code. 241

(B) (1) (a) The municipal court may determine that, for the 242
efficient operation of the court, additional funds are necessary 243
to acquire and pay for special projects of the court including, 244
but not limited to, the acquisition of additional facilities or 245
the rehabilitation of existing facilities, the acquisition of 246
equipment, the hiring and training of staff, community service 247
programs, mediation or dispute resolution services, the 248
employment of magistrates, the training and education of judges, 249
acting judges, and magistrates, and other related services. Upon 250
that determination, the court by rule may charge a fee, in 251
addition to all other court costs, on the filing of each 252
criminal cause, civil action or proceeding, or judgment by 253
confession. 254

(b) If the municipal court offers a special program or 255
service in cases of a specific type, the municipal court by rule 256
may assess an additional charge in a case of that type, over and 257
above court costs, to cover the special program or service. The 258
municipal court shall adjust the special assessment 259
periodically, but not retroactively, so that the amount assessed 260
in those cases does not exceed the actual cost of providing the 261

service or program. 262

(c) Any fee or charge assessed under division (B) (1) (a) or 263
(b) of this section on the filing of a civil action or 264
proceeding shall be waived if the court determines that the 265
person on whom the fee or charge is assessed qualifies as an 266
indigent litigant as set forth in section 2323.311 of the 267
Revised Code. 268

(d) All moneys collected under division (B) of this 269
section shall be paid to the county treasurer if the court is a 270
county-operated municipal court or to the city treasurer if the 271
court is not a county-operated municipal court for deposit into 272
either a general special projects fund or a fund established for 273
a specific special project. Moneys from a fund of that nature 274
shall be disbursed upon an order of the court in an amount no 275
greater than the actual cost to the court of a project. If a 276
specific fund is terminated because of the discontinuance of a 277
program or service established under division (B) of this 278
section, the municipal court may order that moneys remaining in 279
the fund be transferred to an account established under this 280
division for a similar purpose. 281

(2) As used in division (B) of this section: 282

(a) "Criminal cause" means a charge alleging the violation 283
of a statute or ordinance, or subsection of a statute or 284
ordinance, that requires a separate finding of fact or a 285
separate plea before disposition and of which the defendant may 286
be found guilty, whether filed as part of a multiple charge on a 287
single summons, citation, or complaint or as a separate charge 288
on a single summons, citation, or complaint. "Criminal cause" 289
does not include separate violations of the same statute or 290
ordinance, or subsection of the same statute or ordinance, 291

unless each charge is filed on a separate summons, citation, or 292
complaint. 293

(b) "Civil action or proceeding" means any civil 294
litigation that must be determined by judgment entry. 295

(c) The municipal court shall collect in all its divisions 296
except the small claims division the sum of twenty-six dollars 297
as additional filing fees in each new civil action or proceeding 298
for the charitable public purpose of providing financial 299
assistance to legal aid societies that operate within the state 300
and to support the office of the state public defender. The 301
municipal court shall collect in its small claims division the 302
sum of eleven dollars as additional filing fees in each new 303
civil action or proceeding for the charitable public purpose of 304
providing financial assistance to legal aid societies that 305
operate within the state and to support the office of the state 306
public defender. This division does not apply to any execution 307
on a judgment, proceeding in aid of execution, or other post- 308
judgment proceeding arising out of a civil action. The filing 309
fees required to be collected under this division shall be in 310
addition to any other court costs imposed in the action or 311
proceeding and shall be collected at the time of the filing of 312
the action or proceeding. The court shall not waive the payment 313
of the additional filing fees in a new civil action or 314
proceeding unless the court waives the advanced payment of all 315
filing fees in the action or proceeding for the party that the 316
court determines is qualified as an indigent litigant as set 317
forth in section 2323.311 of the Revised Code. All such moneys 318
collected during a month except for an amount equal to up to one 319
per cent of those moneys retained to cover administrative costs 320
shall be transmitted on or before the twentieth day of the 321
following month by the clerk of the court to the treasurer of 322

state in a manner prescribed by the treasurer of state or by the 323
Ohio legal assistance foundation. The treasurer of state shall 324
deposit four per cent of the funds collected under this division 325
to the credit of the civil case filing fee fund established 326
under section 120.07 of the Revised Code and ninety-six per cent 327
of the funds collected under this division to the credit of the 328
legal aid fund established under section 120.52 of the Revised 329
Code. 330

The court may retain up to one per cent of the moneys it 331
collects under this division to cover administrative costs, 332
including the hiring of any additional personnel necessary to 333
implement this division. If the court fails to transmit to the 334
treasurer of state the moneys the court collects under this 335
division in a manner prescribed by the treasurer of state or by 336
the Ohio legal assistance foundation, the court shall forfeit 337
the moneys the court retains under this division to cover 338
administrative costs, including the hiring of any additional 339
personnel necessary to implement this division, and shall 340
transmit to the treasurer of state all moneys collected under 341
this division, including the forfeited amount retained for 342
administrative costs, for deposit in the legal aid fund. 343

(D) In the Cleveland municipal court, reasonable charges 344
for investigating titles of real estate to be sold or disposed 345
of under any writ or process of the court may be taxed as part 346
of the costs. 347

(E) Under the circumstances described in sections 2969.21 348
to 2969.27 of the Revised Code, the clerk of the municipal court 349
shall charge the fees and perform the other duties specified in 350
those sections. 351

(F) As used in this section: 352

(1) "Full day's attendance" means a day on which a witness 353
is required or requested to be present at an action or 354
proceeding before and after twelve noon, regardless of whether 355
the witness actually testifies. 356

(2) "Half day's attendance" means a day on which a witness 357
is required or requested to be present at an action or 358
proceeding either before or after twelve noon, but not both, 359
regardless of whether the witness actually testifies. 360

Sec. 1907.24. (A) Subject to division (C) of this section, 361
a county court shall fix and tax fees and costs as follows: 362

(1) The county court shall require an advance deposit for 363
the filing of any new civil action or proceeding when required 364
by division (C) of this section, subject to its waiver pursuant 365
to that division, and, in all other cases, shall establish a 366
schedule of fees and costs to be taxed in any civil or criminal 367
action or proceeding. 368

(2) The county court by rule may require an advance 369
deposit for the filing of a civil action or proceeding and 370
publication fees as provided in section 2701.09 of the Revised 371
Code. The court ~~may~~ shall waive an advance deposit requirement 372
~~upon the presentation of an affidavit or other evidence that~~ 373
~~establishes that a party is unable to make the requisite deposit~~ 374
for a party that the court determines qualifies as an indigent 375
litigant as set forth in section 2323.311 of the Revised Code. 376

(3) When a party demands a jury trial in a civil action or 377
proceeding, the county court may require the party to make an 378
advance deposit as fixed by rule of court, unless the court 379
~~concludes, on the basis of an affidavit or other evidence~~ 380
~~presented by the party, that the party is unable to make the~~ 381

~~requisite deposit determines that the party qualifies as an~~ 382
~~indigent litigant as set forth in section 2323.311 of the~~ 383
~~Revised Code.~~ If a jury is called, the county court shall tax 384
the fees of a jury as costs. 385

(4) In a civil or criminal action or proceeding, the 386
county court shall fix the fees of witnesses in accordance with 387
sections 2335.06 and 2335.08 of the Revised Code. 388

(5) A county court may tax as part of the costs in a trial 389
of the cause, in an amount fixed by rule of court, a reasonable 390
charge for driving, towing, carting, storing, keeping, and 391
preserving motor vehicles and other personal property recovered 392
or seized in a proceeding. 393

(6) The court shall preserve chattel property seized under 394
a writ or process issued by the court pending final disposition 395
for the benefit of all interested persons. The court may place 396
the chattel property in storage when necessary or proper for its 397
preservation. The custodian of chattel property so stored shall 398
not be required to part with the possession of the property 399
until a reasonable charge, to be fixed by the court, is paid. 400

(7) The county court, as it determines, may refund all 401
deposits and advance payments of fees and costs, including those 402
for jurors and summoning jurors, when they have been paid by the 403
losing party. 404

(8) The court may tax as part of costs charges for the 405
publication of legal notices required by statute or order of 406
court, as provided by section 7.13 of the Revised Code. 407

(B) (1) (a) The county court may determine that, for the 408
efficient operation of the court, additional funds are necessary 409
to acquire and pay for special projects of the court including, 410

but not limited to, the acquisition of additional facilities or 411
the rehabilitation of existing facilities, the acquisition of 412
equipment, the hiring and training of staff, community service 413
programs, mediation or dispute resolution services, the 414
employment of magistrates, the training and education of judges, 415
acting judges, and magistrates, and other related services. Upon 416
that determination, the court by rule may charge a fee, in 417
addition to all other court costs, on the filing of each 418
criminal cause, civil action or proceeding, or judgment by 419
confession. 420

(b) If the county court offers a special program or 421
service in cases of a specific type, the county court by rule 422
may assess an additional charge in a case of that type, over and 423
above court costs, to cover the special program or service. The 424
county court shall adjust the special assessment periodically, 425
but not retroactively, so that the amount assessed in those 426
cases does not exceed the actual cost of providing the service 427
or program. 428

(c) Any fee or charge assessed under division (B)(1)(a) or 429
(b) of this section on the filing of a civil action or 430
proceeding shall be waived if the court determines that the 431
person on whom the fee or charge is assessed qualifies as an 432
indigent litigant as set forth in section 2323.311 of the 433
Revised Code. 434

(d) All moneys collected under division (B) of this 435
section shall be paid to the county treasurer for deposit into 436
either a general special projects fund or a fund established for 437
a specific special project. Moneys from a fund of that nature 438
shall be disbursed upon an order of the court in an amount no 439
greater than the actual cost to the court of a project. If a 440

specific fund is terminated because of the discontinuance of a 441
program or service established under division (B) of this 442
section, the county court may order that moneys remaining in the 443
fund be transferred to an account established under this 444
division for a similar purpose. 445

(2) As used in division (B) of this section: 446

(a) "Criminal cause" means a charge alleging the violation 447
of a statute or ordinance, or subsection of a statute or 448
ordinance, that requires a separate finding of fact or a 449
separate plea before disposition and of which the defendant may 450
be found guilty, whether filed as part of a multiple charge on a 451
single summons, citation, or complaint or as a separate charge 452
on a single summons, citation, or complaint. "Criminal cause" 453
does not include separate violations of the same statute or 454
ordinance, or subsection of the same statute or ordinance, 455
unless each charge is filed on a separate summons, citation, or 456
complaint. 457

(b) "Civil action or proceeding" means any civil 458
litigation that must be determined by judgment entry. 459

(C) Subject to division (E) of this section, the county 460
court shall collect in all its divisions except the small claims 461
division the sum of twenty-six dollars as additional filing fees 462
in each new civil action or proceeding for the charitable public 463
purpose of providing financial assistance to legal aid societies 464
that operate within the state and to support the office of the 465
state public defender. Subject to division (E) of this section, 466
the county court shall collect in its small claims division the 467
sum of eleven dollars as additional filing fees in each new 468
civil action or proceeding for the charitable public purpose of 469
providing financial assistance to legal aid societies that 470

operate within the state and to support the office of the state 471
public defender. This division does not apply to any execution 472
on a judgment, proceeding in aid of execution, or other post- 473
judgment proceeding arising out of a civil action. The filing 474
fees required to be collected under this division shall be in 475
addition to any other court costs imposed in the action or 476
proceeding and shall be collected at the time of the filing of 477
the action or proceeding. The court shall not waive the payment 478
of the additional filing fees in a new civil action or 479
proceeding unless the court waives the advanced payment of all 480
filing fees in the action or proceeding for the party that the 481
court determines is qualified as an indigent litigant as set 482
forth in section 2323.311 of the Revised Code. All such moneys 483
collected during a month except for an amount equal to up to one 484
per cent of those moneys retained to cover administrative costs 485
shall be transmitted on or before the twentieth day of the 486
following month by the clerk of the court to the treasurer of 487
state in a manner prescribed by the treasurer of state or by the 488
Ohio legal assistance foundation. The treasurer of state shall 489
deposit four per cent of the funds collected under this division 490
to the credit of the civil case filing fee fund established 491
under section 120.07 of the Revised Code and ninety-six per cent 492
of the funds collected under this division to the credit of the 493
legal aid fund established under section 120.52 of the Revised 494
Code. 495

The court may retain up to one per cent of the moneys it 496
collects under this division to cover administrative costs, 497
including the hiring of any additional personnel necessary to 498
implement this division. If the court fails to transmit to the 499
treasurer of state the moneys the court collects under this 500
division in a manner prescribed by the treasurer of state or by 501

the Ohio legal assistance foundation, the court shall forfeit 502
the moneys the court retains under this division to cover 503
administrative costs, including the hiring of any additional 504
personnel necessary to implement this division, and shall 505
transmit to the treasurer of state all moneys collected under 506
this division, including the forfeited amount retained for 507
administrative costs, for deposit in the legal aid fund. 508

(D) The county court shall establish by rule a schedule of 509
fees for miscellaneous services performed by the county court or 510
any of its judges in accordance with law. If judges of the court 511
of common pleas perform similar services, the fees prescribed in 512
the schedule shall not exceed the fees for those services 513
prescribed by the court of common pleas. 514

(E) Under the circumstances described in sections 2969.21 515
to 2969.27 of the Revised Code, the clerk of the county court 516
shall charge the fees and perform the other duties specified in 517
those sections. 518

Sec. 2101.24. (A) (1) Except as otherwise provided by law, 519
the probate court has exclusive jurisdiction: 520

(a) To take the proof of wills and to admit to record 521
authenticated copies of wills executed, proved, and allowed in 522
the courts of any other state, territory, or country. If the 523
probate judge is unavoidably absent, any judge of the court of 524
common pleas may take proof of wills and approve bonds to be 525
given, but the record of these acts shall be preserved in the 526
usual records of the probate court. 527

(b) To grant and revoke letters testamentary and of 528
administration; 529

(c) To direct and control the conduct and settle the 530

accounts of executors and administrators and order the	531
distribution of estates;	532
(d) To appoint the attorney general to serve as the	533
administrator of an estate pursuant to section 2113.06 of the	534
Revised Code;	535
(e) To appoint and remove guardians, conservators, and	536
testamentary trustees, direct and control their conduct, and	537
settle their accounts;	538
(f) To grant marriage licenses;	539
(g) To make inquests respecting persons who are so	540
mentally impaired as a result of a mental or physical illness or	541
disability, as a result of intellectual disability, or as a	542
result of chronic substance abuse, that they are unable to	543
manage their property and affairs effectively, subject to	544
guardianship;	545
(h) To qualify assignees, appoint and qualify trustees and	546
commissioners of insolvents, control their conduct, and settle	547
their accounts;	548
(i) To authorize the sale of lands, equitable estates, or	549
interests in lands or equitable estates, and the assignments of	550
inchoate dower in such cases of sale, on petition by executors,	551
administrators, and guardians;	552
(j) To authorize the completion of real property contracts	553
on petition of executors and administrators;	554
(k) To construe wills;	555
(l) To render declaratory judgments, including, but not	556
limited to, those rendered pursuant to section 2107.084 <u>Chapter</u>	557
<u>5817.</u> of the Revised Code;	558

(m) To direct and control the conduct of fiduciaries and settle their accounts;	559 560
(n) To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee;	561 562 563
(o) To terminate a testamentary trust in any case in which a court of equity may do so;	564 565
(p) To hear and determine actions to contest the validity of wills;	566 567
(q) To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption;	568 569 570
(r) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;	571 572
(s) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;	573 574
(t) To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;	575 576 577
(u) To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337.16 of the Revised Code;	578 579 580
(v) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;	581 582 583
(w) To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-	584 585

sustaining treatment in connection with certain patients	586
allegedly in a terminal condition or in a permanently	587
unconscious state pursuant to division (E) of section 2133.08 of	588
the Revised Code, in accordance with that division;	589
(x) To hear and determine applications that pertain to the	590
withholding or withdrawal of nutrition and hydration from	591
certain patients allegedly in a permanently unconscious state	592
pursuant to section 2133.09 of the Revised Code, in accordance	593
with that section;	594
(y) To hear and determine applications of attending	595
physicians in accordance with division (B) of section 2133.15 of	596
the Revised Code;	597
(z) To hear and determine actions relative to the use or	598
continuation of comfort care in connection with certain	599
principals under durable powers of attorney for health care,	600
declarants under declarations, or patients in accordance with	601
division (E) of either section 1337.16 or 2133.12 of the Revised	602
Code;	603
(aa) To hear and determine applications for an order	604
relieving an estate from administration under section 2113.03 of	605
the Revised Code;	606
(bb) To hear and determine applications for an order	607
granting a summary release from administration under section	608
2113.031 of the Revised Code;	609
(cc) To hear and determine actions relating to the	610
exercise of the right of disposition, in accordance with section	611
2108.90 of the Revised Code;	612
(dd) To hear and determine actions relating to the	613
disinterment and reinterment of human remains under section	614

517.23 of the Revised Code; 615

(ee) To hear and determine petitions for an order for 616
treatment of a person suffering from alcohol and other drug 617
abuse filed under section 5119.93 of the Revised Code and to 618
order treatment of that nature in accordance with, and take 619
other actions afforded to the court under, sections 5119.90 to 620
5119.98 of the Revised Code. 621

(2) In addition to the exclusive jurisdiction conferred 622
upon the probate court by division (A) (1) of this section, the 623
probate court shall have exclusive jurisdiction over a 624
particular subject matter if both of the following apply: 625

(a) Another section of the Revised Code expressly confers 626
jurisdiction over that subject matter upon the probate court. 627

(b) No section of the Revised Code expressly confers 628
jurisdiction over that subject matter upon any other court or 629
agency. 630

(B) (1) The probate court has concurrent jurisdiction with, 631
and the same powers at law and in equity as, the general 632
division of the court of common pleas to issue writs and orders, 633
and to hear and determine actions as follows: 634

(a) If jurisdiction relative to a particular subject 635
matter is stated to be concurrent in a section of the Revised 636
Code or has been construed by judicial decision to be 637
concurrent, any action that involves that subject matter; 638

(b) Any action that involves an inter vivos trust; a trust 639
created pursuant to section 5815.28 of the Revised Code; a 640
charitable trust or foundation; subject to divisions (A) (1) (t) 641
and (y) of this section, a power of attorney, including, but not 642
limited to, a durable power of attorney; the medical treatment 643

of a competent adult; or a writ of habeas corpus; 644

(c) Subject to section 2101.31 of the Revised Code, any 645
action with respect to a probate estate, guardianship, trust, or 646
post-death dispute that involves any of the following: 647

(i) A designation or removal of a beneficiary of a life 648
insurance policy, annuity contract, retirement plan, brokerage 649
account, security account, bank account, real property, or 650
tangible personal property; 651

(ii) A designation or removal of a payable-on-death 652
beneficiary or transfer-on-death beneficiary; 653

(iii) A change in the title to any asset involving a joint 654
and survivorship interest; 655

(iv) An alleged gift; 656

(v) The passing of assets upon the death of an individual 657
otherwise than by will, intestate succession, or trust. 658

(2) Any action that involves a concurrent jurisdiction 659
subject matter and that is before the probate court may be 660
transferred by the probate court, on its order, to the general 661
division of the court of common pleas. 662

(3) Notwithstanding that the probate court has exclusive 663
jurisdiction to render declaratory judgments under Chapter 5817. 664
of the Revised Code, the probate court may transfer the 665
proceeding to the general division of the court of common pleas 666
pursuant to division (A) of section 5817.04 of the Revised Code. 667

(C) The probate court has plenary power at law and in 668
equity to dispose fully of any matter that is properly before 669
the court, unless the power is expressly otherwise limited or 670
denied by a section of the Revised Code. 671

(D) The jurisdiction acquired by a probate court over a matter or proceeding is exclusive of that of any other probate court, except when otherwise provided by law.

Sec. 2105.19. (A) Except as provided in division (C) of this section, no person who is convicted of, pleads guilty to, or is found not guilty by reason of insanity of a violation of or complicity in the violation of section 2903.01, 2903.02, or 2903.03 of the Revised Code or a violation of division (A) of section 2903.04 of the Revised Code that is not a proximate result of a felony violation of section 2903.06 of the Revised Code, or of an existing or former law of any other state, the United States, or a foreign nation, substantially equivalent to a violation of or complicity in the violation of any of these sections, no person who is indicted for a violation of or complicity in the violation of any of those sections or laws and subsequently is adjudicated incompetent to stand trial on that charge, and no juvenile who is found to be a delinquent child by reason of committing an act that, if committed by an adult, would be a violation of or complicity in the violation of any of those sections or laws, shall in any way benefit by the death. All property of the decedent, and all money, insurance proceeds, or other property or benefits payable or distributable in respect of the decedent's death, shall pass or be paid or distributed as if the person who caused the death of the decedent had predeceased the decedent.

(B) A person prohibited by division (A) of this section from benefiting by the death of another is a constructive trustee for the benefit of those entitled to any property or benefit that the person has obtained, or over which the person has exerted control, because of the decedent's death. A person who purchases any such property or benefit from the constructive

trustee, for value, in good faith, and without notice of the 703
constructive trustee's disability under division (A) of this 704
section, acquires good title, but the constructive trustee is 705
accountable to the beneficiaries for the proceeds or value of 706
the property or benefit. 707

(C) A person who is prohibited from benefiting from a 708
death pursuant to division (A) of this section either because 709
the person was adjudicated incompetent to stand trial or was 710
found not guilty by reason of insanity, or the person's guardian 711
appointed pursuant to Chapter 2111. of the Revised Code or other 712
legal representative, may file a complaint to declare the 713
person's right to benefit from the death in the probate court in 714
which the decedent's estate is being administered or that 715
released the estate from administration. The complaint shall be 716
filed no later than sixty days after the person is adjudicated 717
incompetent to stand trial or found not guilty by reason of 718
insanity. The court shall notify each person who is a devisee or 719
legatee under the decedent's will, or if there is no will, each 720
person who is an heir of the decedent pursuant to section 721
2105.06 of the Revised Code that a complaint of that nature has 722
been filed within ten days after the filing of the complaint. 723
The person who files the complaint, and each person who is 724
required to be notified of the filing of the complaint under 725
this division, is entitled to a jury trial in the action. To 726
assert the right, the person desiring a jury trial shall demand 727
a jury in the manner prescribed in the Civil Rules. 728

A person who files a complaint pursuant to this division 729
shall be restored to the person's right to benefit from the 730
death unless the court determines, by a preponderance of the 731
evidence, that the person would have been convicted of a 732
violation of, or complicity in the violation of, section 733

2903.01, 2903.02, or 2903.03 of the Revised Code or a violation 734
of division (A) of section 2903.04 of the Revised Code that is 735
not a proximate result of a felony violation of section 2903.06 736
of the Revised Code, or of a law of another state, the United 737
States, or a foreign nation that is substantially similar to any 738
of those sections, if the person had been brought to trial in 739
the case in which the person was adjudicated incompetent or if 740
the person were not insane at the time of the commission of the 741
offense. 742

Sec. 2107.01. As used in Chapters 2101. to 2131. of the 743
Revised Code: 744

(A) "Will" includes codicils to wills admitted to probate, 745
lost, spoliated, or destroyed wills, and instruments ~~admitted to~~ 746
~~probate declared valid under division (A) (1) of section 2107.01-~~ 747
~~5817.10~~ of the Revised Code, but "will" does not include inter 748
vivos trusts or other instruments that have not been admitted to 749
probate. 750

(B) "Testator" means any person who makes a will. 751

Sec. 2107.05. (A) An existing document, book, record, or 752
memorandum may be incorporated in a will by reference, if 753
referred to as being in existence at the time the will is 754
executed. That document, book, record, or memorandum shall be 755
deposited in the probate court when the will is probated or 756
within thirty days after the will is probated, unless the court 757
grants an extension of time for good cause shown. A copy may be 758
substituted for the original document, book, record, or 759
memorandum if the copy is certified to be correct by a person 760
authorized to take acknowledgments. 761

(B) Notwithstanding division (A) of this section, if a 762

will incorporates a trust instrument only in the event that a 763
bequest or devise to the trust is ineffective, the trust 764
instrument shall be deposited in the probate court not later 765
than thirty days after the final determination that such bequest 766
or devise is ineffective. 767

(C) If a testator intends to incorporate a trust 768
instrument in a will, the testator's will shall manifest that 769
intent through the use of the term "incorporate," "made a part 770
of," or similar language. In the absence of such clear and 771
express intent, a trust instrument shall not be incorporated 772
into or made a part of the will. Any language in the testator's 773
will that only identifies a trust shall not be sufficient to 774
manifest an intent to incorporate that trust instrument by 775
reference in the will. 776

(D) The amendment of this section by adding divisions (B) 777
and (C) applies, and shall be construed as applying, to the 778
wills of testators who die on or after the effective date of 779
this amendment. 780

Sec. 2107.07. A will may be deposited by the testator, or 781
by some person for the testator, in the office of the judge of 782
the probate court in the county in which the testator lives, 783
before or after the death of the testator, and if deposited 784
after the death of the testator, with or without applying for 785
its probate. Upon the payment of the fee of twenty-five dollars 786
to the court, the judge shall receive, keep, and give a 787
certificate of deposit for the will. That will shall be safely 788
kept until delivered or disposed of as provided by section 789
2107.08 of the Revised Code. If the will is not delivered or 790
disposed of as provided in that section within one hundred years 791
after the date the will was deposited, the judge may dispose of 792

the will in any manner the judge considers feasible. The judge 793
shall retain an electronic copy of the will prior to its 794
disposal after one hundred years under this section. 795

Every will that is so deposited shall be enclosed in a 796
sealed envelope that shall be indorsed with the name of the 797
testator. The judge shall indorse on the envelope the date of 798
delivery and the person by whom the will was delivered. The 799
envelope may be indorsed with the name of a person to whom it is 800
to be delivered after the death of the testator. The will shall 801
not be opened or read until delivered to a person entitled to 802
receive it, until the testator files a complaint in the probate 803
court for a declaratory judgment of the validity of the will 804
pursuant to section ~~2107.081-5817.02~~ of the Revised Code, or 805
until otherwise disposed of as provided in section 2107.08 of 806
the Revised Code. Subject to section 2107.08 of the Revised 807
Code, the deposited will shall not be a public record until the 808
time that an application is filed to probate it. 809

Sec. 2107.08. During the lifetime of a testator, the 810
testator's will, deposited according to section 2107.07 of the 811
Revised Code, shall be delivered only to the testator, to some 812
person authorized by the testator by a written order, or to a 813
probate court for a determination of its validity when the 814
testator so requests. After the testator's death, the will shall 815
be delivered to the person named in the indorsement on the 816
envelope of the will, if there is a person named who demands it. 817
If the testator has filed a complaint in the probate court for a 818
judgment declaring the validity of the will pursuant to section 819
~~2107.081-5817.02~~ of the Revised Code and ~~the court has rendered~~ 820
~~the a judgment is rendered pursuant to division (A) (1) of~~ 821
section 5817.10 of the Revised Code declaring the will valid, 822
~~the probate judge with possession of the court who rendered the~~ 823

judgment shall deliver the will to the proper probate court as 824
determined under section 2107.11 of the Revised Code, upon the 825
death of the testator, for probate. 826

If no person named in the indorsement demands the will and 827
it is not one that has been declared valid pursuant to division 828
(A) (1) of section ~~2107.084~~ 5817.10 of the Revised Code, it shall 829
be publicly opened in the probate court within one month after 830
notice of the testator's death and retained in the office of the 831
probate judge until offered for probate. If the jurisdiction 832
belongs to any other probate court, the will shall be delivered 833
to the person entitled to its custody, to be presented for 834
probate in the other court. If the probate judge who opens the 835
will has jurisdiction of it, the probate judge immediately shall 836
give notice of its existence to the executor named in the will 837
or, if any, to the persons holding a power to nominate an 838
executor as described in section 2107.65 of the Revised Code, 839
or, if it is the case, to the executor named in the will and to 840
the persons holding a power to nominate a coexecutor as 841
described in that section. If no executor is named and no 842
persons hold a power to nominate an executor as described in 843
that section, the probate judge shall give notice to other 844
persons immediately interested. 845

Sec. 2107.09. (A) If real property is devised or personal 846
property is bequeathed by a will, the executor or any interested 847
person may cause the will to be brought before the probate court 848
of the county in which the decedent was domiciled. By judicial 849
order, the court may compel the person having the custody or 850
control of the will to produce it before the court for the 851
purpose of being proved. 852

If the person having the custody or control of the will 853

intentionally conceals or withholds it or neglects or refuses to 854
produce it for probate without reasonable cause, the person may 855
be committed to the county jail and kept in custody until the 856
will is produced. The person also shall be liable to any party 857
aggrieved for the damages sustained by that neglect or refusal. 858

Any judicial order issued pursuant to this section may be 859
issued into any county in the state and shall be served and 860
returned by the officer to whom it is delivered. 861

The officer to whom the process is delivered shall be 862
liable for neglect in its service or return in the same manner 863
as sheriffs are liable for neglect in not serving or returning a 864
capias issued upon an indictment. 865

(B) In the case of a will that has been declared valid 866
pursuant to division (A) (1) of section 2107.084-5817.10 of the 867
Revised Code, the ~~probate judge~~ of the probate court or of the 868
general division of the court of common pleas to which the 869
proceeding was transferred pursuant to division (A) of section 870
5817.04 of the Revised Code who made the declaration ~~or who has~~ 871
~~possession of the will~~ shall cause ~~the will and~~ the judgment 872
declaring ~~validity~~ the will valid to be brought before the 873
proper probate court as determined by section 2107.11 of the 874
Revised Code at a time after the death of the testator. If the 875
death of the testator is brought to the attention of the ~~probate~~ 876
applicable judge by an interested party, the judge shall cause 877
the judgment declaring the will valid to be brought before the 878
proper probate court at that time. 879

Sec. 2107.10. (A) No property or right, testate or 880
intestate, shall pass to a beneficiary named in a will who knows 881
of the existence of the will for one year after the death of the 882
testator and has the power to control it and, without reasonable 883

cause, intentionally conceals or withholds it or neglects or 884
refuses within that one year to cause it to be offered for or 885
admitted to probate. The property devised or bequeathed to that 886
beneficiary shall pass as if the beneficiary had predeceased the 887
testator. 888

(B) No property or right, testate or intestate, passes to 889
a beneficiary named in a will when the will was declared valid 890
~~and filed with a probate judge by a court pursuant to division~~ 891
(A) (1) of section 2107.084-5817.10 of the Revised Code, the 892
declaration ~~and filing~~ took place in a county different from the 893
county in which the will of the testator would be probated under 894
section 2107.11 of the Revised Code, and the named beneficiary 895
knew of the declaration ~~and filing~~ and of the death of the 896
testator and did not notify the ~~probate judge with whom of the~~ 897
court in which the will was filed declared valid. This division 898
does not preclude a named beneficiary from acquiring property or 899
rights from the estate of the testator for failing to notify a 900
~~probate judge of that court~~ if the named beneficiary reasonably 901
believes that the judge has previously been notified of the 902
testator's death. 903

Sec. 2107.11. (A) A will shall be admitted to probate: 904

(1) In the county in this state in which the testator was 905
domiciled at the time of the testator's death; 906

(2) In any county of this state where any real property or 907
personal property of the testator is located if, at the time of 908
the testator's death, the testator was not domiciled in this 909
state, and provided that the will has not previously been 910
admitted to probate in this state or in the state of the 911
testator's domicile; 912

(3) In the county of this state in which a ~~probate~~ court 913
rendered a judgment declaring that the will was valid ~~and in~~ 914
~~which the will was filed with the probate court pursuant to~~ 915
division (A) (1) of section 5817.10 of the Revised Code. 916

(B) For the purpose of division (A) (2) of this section, 917
intangible personal property is located in the place where the 918
instrument evidencing a debt, obligation, stock, or chose in 919
action is located or if there is no instrument of that nature 920
where the debtor resides. 921

Sec. 2107.12. When a will is presented for probate or for 922
a declaratory judgment of its validity pursuant to ~~section~~ 923
~~2107.081 Chapter 5817.~~ of the Revised Code, persons interested 924
in its outcome may contest the jurisdiction of the court to 925
entertain the application. Preceding a hearing of a contest as 926
to jurisdiction, all parties named in such will as legatees, 927
devisees, trustees, or executors shall have notice ~~thereof of~~ 928
the hearing in such manner as may be ordered by the court. 929

When ~~such that~~ contest is made, the parties may call 930
witnesses and shall be heard upon the question involved. The 931
decision of the court as to its jurisdiction may be reviewed on 932
error. 933

Sec. 2107.16. (A) When offered for probate, a will may be 934
admitted to probate and allowed upon such proof as would be 935
satisfactory, and in like manner as if an absent or incompetent 936
witness were dead: 937

(1) If it appears to the probate court that a witness to 938
such will has gone to parts unknown; 939

(2) If the witness was competent at the time of attesting 940
its execution and afterward became incompetent; 941

(3) If testimony of a witness cannot be obtained within a reasonable time. 942
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(B) When offered for probate, a will shall be admitted to probate and allowed when there has been a prior judgment by a probate court declaring that the will is valid pursuant to division (A) (1) of section 2107.084-5817.10 of the Revised Code, if the will ~~has not been removed from the possession of the probate judge and has not been modified or revoked under division (C) or (D) of section 2107.084 of the Revised Code.~~ 944
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Sec. 2107.18. The probate court shall admit a will to probate if it appears from the face of the will, or if the probate court requires, in its discretion, the testimony of the witnesses to a will and it appears from that testimony, that the execution of the will complies with the law in force at the time of the execution of the will in the jurisdiction in which the testator was physically present when it was executed, with the law in force in this state at the time of the death of the testator, or with the law in force in the jurisdiction in which the testator was domiciled at the time of the testator's death. 951
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The probate court shall admit a will to probate when there has been a prior judgment by a ~~probate court~~ declaring that the will is valid, rendered pursuant to division (A) (1) of section 2107.084-5817.10 of the Revised Code, if the will ~~has not been removed from the possession of the probate judge and has not been modified or revoked under division (C) or (D) of section 2107.084 of the Revised Code.~~ 961
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Sec. 2107.20. When admitted to probate every will shall be filed in the office of the probate judge and recorded, together with any testimony or prior judgment of a ~~probate court~~ declaring the will valid pursuant to division (A) (1) of section 968
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5817.10 of the Revised Code, by the judge or the clerk of the 972
probate court in a book to be kept for that purpose. 973

A copy of the recorded will, with a copy of the order of 974
probate annexed to the copy of the recorded will, certified by 975
the judge under seal of the judge's court, shall be as effectual 976
in all cases as the original would be, if established by proof. 977

Sec. 2107.22. (A) (1) (a) When a will has been admitted to 978
probate by a probate court and another will of later date is 979
presented to the same court for probate, notice of the will of 980
later date shall be given to those persons required to be 981
notified under section 2107.19 of the Revised Code, and to the 982
fiduciaries and beneficiaries under the will of earlier date. 983
The probate court may admit the will of later date to probate 984
the same as if no earlier will had been so admitted if it 985
appears from the face of the will of later date, or if an 986
interested person makes a demand as described in division (A) (1) 987
(b) of this section and it appears from the testimony of the 988
witnesses to the will given in accordance with that division, 989
that the execution of the will complies with the law in force at 990
the time of the execution of the will in the jurisdiction in 991
which the testator was physically present when it was executed, 992
with the law in force in this state at the time of the death of 993
the testator, or with the law in force in the jurisdiction in 994
which the testator was domiciled at the time of the testator's 995
death. 996

(b) Upon the demand of a person interested in having a 997
will of later date admitted to probate, the probate court shall 998
cause at least two of the witnesses to the will of later date, 999
and any other witnesses that the interested person desires to 1000
have appear, to come before the probate court and provide 1001

testimony. If the interested person so requests, the probate court shall issue a subpoena to compel the presence of any such witness before the probate court to provide testimony.

Witnesses before the probate court pursuant to this division shall be examined, and may be cross-examined, in open court, and their testimony shall be reduced to writing and then filed in the records of the probate court pertaining to the testator's estate.

(2) When an authenticated copy of a will has been admitted to record by a probate court, and an authenticated copy of a will of later date that was executed and proved as required by law, is presented to the same court for record, it shall be admitted to record in the same manner as if no authenticated copy of the will of earlier date had been so admitted.

(3) If a probate court admits a will of later date to probate, or an authenticated copy of a will of later date to record, its order shall operate as a revocation of the order admitting the will of earlier date to probate, or shall operate as a revocation of the order admitting the authenticated copy of the will of earlier date to record. The probate court shall enter on the record of the earlier will a marginal note "later will admitted to probate ..." (giving the date admitted).

(B) When a will that has been declared valid pursuant to division (A) (1) of section 2107.084-5817.10 of the Revised Code has been admitted to probate by a probate court, and an authenticated copy of another will of later date that was executed and proved as required by law is presented to the same court for record, the will of later date shall be admitted the same as if no other will had been admitted and the proceedings shall continue as provided in this section.

Sec. 2107.33. (A) A will shall be revoked in the following	1032
manners:	1033
(1) By the testator by tearing, canceling, obliterating,	1034
or destroying it with the intention of revoking it;	1035
(2) By some person, at the request of the testator and in	1036
the testator's presence, by tearing, canceling, obliterating, or	1037
destroying it with the intention of revoking it;	1038
(3) By some person tearing, canceling, obliterating, or	1039
destroying it pursuant to the testator's express written	1040
direction;	1041
(4) By some other written will or codicil, executed as	1042
prescribed by this chapter;	1043
(5) By some other writing that is signed, attested, and	1044
subscribed in the manner provided by this chapter.	1045
(B) A will that has been declared valid and is in the	1046
possession of a probate judge also may be revoked according to	1047
division (C) of section 2107.084 of the Revised Code.	1048
(C) If a testator removes a will that has been declared	1049
valid and is in the possession of a probate judge pursuant to	1050
section 2107.084 of the Revised Code from the possession of the	1051
judge, the declaration of validity that was rendered no longer	1052
has any effect.	1053
(D) If after executing a will, a testator is divorced,	1054
obtains a dissolution of marriage, has the testator's marriage	1055
annulled, or, upon actual separation from the testator's spouse,	1056
enters into a separation agreement pursuant to which the parties	1057
intend to fully and finally settle their prospective property	1058
rights in the property of the other, whether by expected	1059

inheritance or otherwise, any disposition or appointment of 1060
property made by the will to the former spouse or to a trust 1061
with powers created by or available to the former spouse, any 1062
provision in the will conferring a general or special power of 1063
appointment on the former spouse, and any nomination in the will 1064
of the former spouse as executor, trustee, or guardian shall be 1065
revoked unless the will expressly provides otherwise. 1066

~~(E)~~ (C) Property prevented from passing to a former spouse 1067
or to a trust with powers created by or available to the former 1068
spouse because of revocation by this section shall pass as if 1069
the former spouse failed to survive the decedent, and other 1070
provisions conferring some power or office on the former spouse 1071
shall be interpreted as if the spouse failed to survive the 1072
decedent. If provisions are revoked solely by this section, they 1073
shall be deemed to be revived by the testator's remarriage with 1074
the former spouse or upon the termination of a separation 1075
agreement executed by them. 1076

~~(F)~~ (D) A bond, agreement, or covenant made by a testator, 1077
for a valuable consideration, to convey property previously 1078
devised or bequeathed in a will does not revoke the devise or 1079
bequest. The property passes by the devise or bequest, subject 1080
to the remedies on the bond, agreement, or covenant, for a 1081
specific performance or otherwise, against the devisees or 1082
legatees, that might be had by law against the heirs of the 1083
testator, or the testator's next of kin, if the property had 1084
descended to them. 1085

~~(G)~~ (E) A testator's revocation of a will shall be valid 1086
only if the testator, at the time of the revocation, has the 1087
same capacity as the law requires for the execution of a will. 1088

~~(H)~~ (F) As used in this section: 1089

(1) "Trust with powers created by or available to the former spouse" means a trust that is revocable by the former spouse, with respect to which the former spouse has a power of withdrawal, or with respect to which the former spouse may take a distribution that is not subject to an ascertainable standard but does not mean a trust in which those powers of the former spouse are revoked by section 5815.31 of the Revised Code or similar provisions in the law of another state.

(2) "Ascertainable standard" means a standard that is related to a trust beneficiary's health, maintenance, support, or education.

Sec. 2107.52. (A) As used in this section:

(1) "Class member" means an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(2) "Descendant of a grandparent" means an individual who qualifies as a descendant of a grandparent of the testator or of the donor of a power of appointment under either of the following:

(a) The rules of construction applicable to a class gift created in the testator's will if the devise or the exercise of the power of appointment is in the form of a class gift;

(b) The rules for intestate succession if the devise or the exercise of the power of appointment is not in the form of a class gift.

(3) "Devise" means an alternative devise, a devise in the form of a class gift, or an exercise of a power of appointment.

- (4) "Devisee" means any of the following: 1118
- (a) A class member if the devise is in the form of a class 1119
gift; 1120
- (b) An individual or class member who was deceased at the 1121
time the testator executed the testator's will or an individual 1122
or class member who was then living but who failed to survive 1123
the testator; 1124
- (c) An appointee under a power of appointment exercised by 1125
the testator's will. 1126
- (5) "Per stirpes" means that the shares of the descendants 1127
of a devisee who does not survive the testator are determined in 1128
the same way they would have been determined under division (A) 1129
of section 2105.06 of the Revised Code if the devisee had died 1130
intestate and unmarried on the date of the testator's death. 1131
- (6) "Stepchild" means a child of the surviving, deceased, 1132
or former spouse of the testator or of the donor of a power of 1133
appointment and not of the testator or donor. 1134
- (7) "Surviving devisee" or "surviving descendant" means a 1135
devisee or descendant, whichever is applicable, who survives the 1136
testator by at least one hundred twenty hours. 1137
- (8) "Testator" includes the donee of a power of 1138
appointment if the power is exercised in the testator's will. 1139
- (B) (1) As used in "surviving descendants" in divisions (B) 1140
(2) (a) and (b) of this section, "descendants" means the 1141
descendants of a deceased devisee or class member under the 1142
applicable division who would take under a class gift created in 1143
the testator's will. 1144
- (2) Unless a contrary intent appears in the will, if a 1145

devisee fails to survive the testator and is a grandparent, a 1146
descendant of a grandparent, or a stepchild of either the 1147
testator or the donor of a power of appointment exercised by the 1148
testator's will, either of the following applies: 1149

(a) If the devise is not in the form of a class gift and 1150
the deceased devisee leaves surviving descendants, a substitute 1151
gift is created in the devisee's surviving descendants. The 1152
surviving descendants take, per stirpes, the property to which 1153
the devisee would have been entitled had the devisee survived 1154
the testator. 1155

(b) If the devise is in the form of a class gift, other 1156
than a devise to "issue," "descendants," "heirs of the body," 1157
"heirs," "next of kin," "relatives," or "family," or a class 1158
described by language of similar import that includes more than 1159
one generation, a substitute gift is created in the surviving 1160
descendants of any deceased devisee. The property to which the 1161
devisees would have been entitled had all of them survived the 1162
testator passes to the surviving devisees and the surviving 1163
descendants of the deceased devisees. Each surviving devisee 1164
takes the share to which the surviving devisee would have been 1165
entitled had the deceased devisees survived the testator. Each 1166
deceased devisee's surviving descendants who are substituted for 1167
the deceased devisee take, per stirpes, the share to which the 1168
deceased devisee would have been entitled had the deceased 1169
devisee survived the testator. For purposes of division (B) (2) 1170
(b) of this section, "deceased devisee" means a class member who 1171
failed to survive the testator by at least one hundred twenty 1172
hours and left one or more surviving descendants. 1173

(C) For purposes of this section, each of the following 1174
applies: 1175

(1) Attaching the word "surviving" or "living" to a devise, such as a gift "to my surviving (or living) children," is not, in the absence of other language in the will or other evidence to the contrary, a sufficient indication of an intent to negate the application of division (B) of this section.

(2) Attaching other words of survivorship to a devise, such as "to my child, if my child survives me," is, in the absence of other language in the will or other evidence to the contrary, a sufficient indication of an intent to negate the application of division (B) of this section.

(3) A residuary clause is not a sufficient indication of an intent to negate the application of division (B) of this section unless the will specifically provides that upon lapse or failure the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause.

(4) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power of appointment.

(D) Except as provided in division (A), (B), or (C) of this section, each of the following applies:

(1) A devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(2) If the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interest of each in the remaining part of the

residue. 1205

(3) If a residuary devise fails for any reason in its 1206
entirety, the residue passes by intestate succession. 1207

(E) This section applies only to outright devises and 1208
appointments. Devises and appointments in trust, including to a 1209
testamentary trust, are subject to section 5808.19 of the 1210
Revised Code. 1211

(F) This section applies to wills of decedents who die on 1212
or after ~~the effective date of this section~~ March 22, 2012. 1213

Sec. 2107.71. (A) A person interested in a will or codicil 1214
admitted to probate in the probate court that has not been 1215
declared valid by judgment of a ~~probate court~~ pursuant to 1216
division (A) (1) of section 2107.084-5817.10 of the Revised Code 1217
~~or that has been declared valid by judgment of a probate court~~ 1218
~~pursuant to section 2107.084 of the Revised Code but has been~~ 1219
~~removed from the possession of the probate judge,~~ may contest 1220
its validity by filing a complaint in the probate court in the 1221
county in which the will or codicil was admitted to probate. 1222

(B) Except as otherwise provided in this division, no 1223
person may contest the validity of any will or codicil as to 1224
facts decided if it was submitted to a probate court by the 1225
testator during the testator's lifetime and declared valid by 1226
judgment of ~~the probate a court and filed with the judge of the~~ 1227
~~probate court~~ pursuant to division (A) (1) of section 2107.084- 1228
5817.10 of the Revised Code ~~and if the will was not removed from~~ 1229
~~the possession of the probate judge.~~ A person may contest the 1230
validity of that will, ~~modification,~~ or codicil as to those 1231
facts if the person is one who should have been named a party 1232
defendant in the action in which the will, ~~modification,~~ or 1233

codicil was declared valid, pursuant to division (A) of section 1234
~~2107.081 or 2107.084~~ 5817.05 of the Revised Code, and if the 1235
person was not named a defendant and properly served in that 1236
action. Upon the filing of a complaint contesting the validity 1237
of a will or codicil that is authorized by this division, the 1238
court shall proceed with the action ~~in the same manner as if the~~ 1239
~~will, modification, or codicil had not been previously declared~~ 1240
~~valid under sections 2107.081 to 2107.085 of the Revised Code.~~ 1241

(C) No person may introduce, as evidence in an action 1242
authorized by this section contesting the validity of a will, 1243
the fact that the testator of the will did not file a complaint 1244
for a judgment declaring its validity under ~~section 2107.081~~ 1245
Chapter 5817. of the Revised Code. 1246

Sec. 2109.41. (A) Immediately after appointment and 1247
throughout the ~~administration of a trust~~ term of the 1248
appointment, but subject to section 2109.372 of the Revised Code 1249
and except as provided in division (C) of this section, every 1250
fiduciary, pending payment of current obligations of the 1251
fiduciary's trust or estate, distribution, or investment 1252
pursuant to law, shall deposit all funds received by the 1253
fiduciary in the fiduciary's name as such fiduciary in one or 1254
more depositories. Each depository shall be a bank, savings 1255
bank, savings and loan association, or credit union located in 1256
this state. A corporate fiduciary, authorized to receive 1257
deposits of fiduciaries, may be the ~~depository~~ depository of 1258
funds held by it as fiduciary. All deposits made pursuant to 1259
division (A) of this section shall be in such class of account 1260
as will be most advantageous to the trust or estate, and each 1261
depository shall pay interest at the highest rate customarily 1262
paid to its patrons on deposits in accounts of the same class. 1263

(B) The placing of funds in such depositaries under the joint control of the fiduciary and a surety on the bond of the fiduciary shall not increase the liability of the fiduciary.

(C) A fiduciary of a trust or estate may transfer funds received by the fiduciary in the fiduciary's name as such fiduciary to the fiduciary's attorney for deposit in an interest on lawyer's trust account established under division (A) (1) (b) of section 4705.09 of the Revised Code that is maintained by the attorney if ~~both of the following conditions are satisfied:~~

~~(1) The the attorney, in consultation with the fiduciary, has determined that the funds are nominal in amount and or will be held in the interest on lawyer's trust account for a short period of time.~~

~~(2) The probate court, upon petition by the fiduciary, has approved the deposit.~~

(D) Notwithstanding any contrary provision in this chapter, a probate court examining a trust or estate may only access the account information of an interest on lawyer's trust account created under this section for purposes of obtaining information related to that particular trust or estate and shall not access records of the interest on lawyer's trust account that pertain to assets of any other estate or trust held in the interest on lawyer's trust account.

Sec. 2111.182. If a minor is entitled to money or property whether by settlement or judgment for personal injury or damage to tangible or intangible property, inheritance or otherwise, the probate court may order that all or a portion of the amount received by the minor be deposited into a trust for the benefit of that beneficiary until the beneficiary reaches twenty-five

years of age, and order the distribution of the amount in 1293
accordance with the provisions of the trust. Prior to the 1294
appointment as a trustee of a trust created pursuant to this 1295
section, the person to be appointed shall be approved by a 1296
parent or guardian of the minor beneficiary of the trust, unless 1297
otherwise ordered by the probate court. 1298

Sec. 2111.52. (A) A probate court may accept funds or 1299
other program assistance from, or charge fees for services 1300
described in division (C) of this section rendered to, 1301
individuals, corporations, agencies, or organizations, 1302
including, but not limited to, a county board of alcohol, drug 1303
addiction, and mental health services or a county board of 1304
developmental disabilities, unless a county board of alcohol, 1305
drug addiction, and mental health services or a county board of 1306
developmental disabilities does not agree to the payment of 1307
those fees. Any funds or fees received by the probate court 1308
under this division shall be paid into the county treasury and 1309
credited to a fund to be known as the county probate court 1310
guardianship services fund. 1311

(B) The probate courts of two or more counties may accept 1312
funds or other program assistance from, or charge fees for 1313
services described in division (C) of this section rendered to, 1314
individuals, corporations, agencies, or organizations, 1315
including, but not limited to, a county board of alcohol, drug 1316
addiction, and mental health services or a county board of 1317
developmental disabilities, unless a county board of alcohol, 1318
drug addiction, and mental health services or a county board of 1319
developmental disabilities does not agree to the payment of 1320
those fees. Any funds or fees received by the probate courts of 1321
two or more counties under this division shall be paid into the 1322
county treasury of one or more of the counties and credited to a 1323

fund to be known as the multicounty probate court guardianship 1324
services fund. 1325

(C) The moneys in a county or multicounty probate court 1326
guardianship services fund shall be used for services to help 1327
ensure the treatment of any person who is under the care of a 1328
county board of alcohol, drug addiction, and mental health 1329
services or a county board of developmental disabilities, or any 1330
other guardianships. These services include, but are not limited 1331
to, involuntary commitment proceedings and the establishment and 1332
management of adult guardianships, including all associated 1333
expenses, for wards who are under the care of a county board of 1334
alcohol, drug addiction, and mental health services, a county 1335
board of developmental disabilities, or any other guardianships. 1336

(D) If a judge of a probate court determines that some of 1337
the moneys in the county or multicounty probate court 1338
guardianship services fund are needed for the efficient 1339
operation of the county or multicounty guardianship service 1340
board created under division (F) of this section, the moneys may 1341
be used for the acquisition of equipment, the hiring and 1342
training of staff, community services programs, volunteer 1343
guardianship training services, the employment of magistrates, 1344
and any other services necessary for the fulfillment of the 1345
duties of the county or multicounty guardianship service board. 1346

(E) The moneys in the county or multicounty probate court 1347
guardianship services fund that may be used in part for the 1348
establishment and management of adult guardianships under 1349
division (C) of this section may be utilized to establish a 1350
county or multicounty guardianship service. 1351

(F) (1) A county or multicounty guardianship service under 1352
division (E) of this section is established by creating a county 1353

or multicounty guardianship service board. The judge of the 1354
probate court shall appoint one member. The board of directors 1355
of a participating county board of developmental disabilities 1356
shall appoint one member. The board of directors of a 1357
participating county board of alcohol, drug addiction, and 1358
mental health services shall appoint one member. Additional 1359
members of the guardianship service board may be added if the 1360
member or members of a guardianship service board unanimously 1361
agree. If neither the county board of developmental disabilities 1362
nor the county board of alcohol, drug addiction, and mental 1363
health services chooses to participate in the guardianship 1364
service board, the probate court may appoint additional members 1365
to the guardianship service board. The term of appointment of 1366
each member is four years. 1367

(2) The county or multicounty guardianship services board 1368
may appoint a director of the board. The board shall determine 1369
the compensation of the director based on the availability of 1370
funds contained in the county or multicounty probate court 1371
guardianship services fund. 1372

(3) The county or multicounty guardianship services board 1373
may receive appointments from one or more county probate courts 1374
to serve as guardians of both the person and estate of wards. 1375
The director or any designee of a county or multicounty 1376
guardianship services board may act on behalf of the board in 1377
relation to all guardianship matters. 1378

(4) The director of a county or multicounty guardianship 1379
services board may hire employees subject to available funds in 1380
the county or multicounty probate court guardianship services 1381
fund. 1382

(5) The county or multicounty guardianship services board 1383

may charge a reasonable fee for services provided to wards. A 1384
probate judge shall approve any fees charged by the board under 1385
division (F)(5) of this section. 1386

(6) The county or multicounty guardianship services board 1387
that is created under division (F)(1) of this section shall 1388
promulgate all rules and regulations necessary for the efficient 1389
operation of the board and the county or multicounty 1390
guardianship services. 1391

Sec. 2113.032. Any person who is eligible to be appointed 1392
as a personal representative of an estate under the law of this 1393
state or named as executor in a will may file an application 1394
with the probate court in the county in which the decedent 1395
resided seeking the release of the decedent's medical records 1396
and medical billing records for use in evaluating a potential 1397
wrongful death, personal injury, or survivorship action on 1398
behalf of the decedent. The application shall include a 1399
decedent's estate form listing the decedent's known surviving 1400
spouse, children, next of kin, legatees, and devisees, if any. 1401
The application may be filed prior to the filing of any 1402
application for authority to administer the decedent's estate. 1403
Nothing in this section requires that an application to 1404
administer the decedent's estate be filed if no estate is needed 1405
to be administered, unless otherwise required by law. The 1406
probate court shall send a copy of the application to those 1407
persons listed on the decedent's estate form described in this 1408
section unless otherwise directed by the court. Upon the filing 1409
of the application and the payment of a filing fee as determined 1410
by the court, and not earlier than ten days following the 1411
probate court's transmission of a copy of the application to 1412
those persons listed on the decedent's estate form, the probate 1413
court may order that the medical records and medical billing 1414

records be released without a hearing or with a hearing if 1415
needed. The court's order shall direct all medical providers 1416
that provided medical care or treatment to the decedent to 1417
release those medical records and medical billing records to the 1418
applicant for the limited purpose of deciding whether or not to 1419
file a wrongful death, personal injury, or survivorship action. 1420
The medical records and medical billing records are confidential 1421
and shall not be made available for public viewing unless 1422
otherwise provided for by law or subsequent court order. Upon 1423
obtaining the requested applicable records, and before the 1424
expiration of the applicable statute of limitations, the 1425
applicant shall file a report with the court certifying that all 1426
requested medical records and medical billing records have been 1427
received and shall indicate whether an administration of the 1428
decedent's estate will be filed. 1429

Sec. 2129.05. Authenticated copies of wills of persons not 1430
domiciled in this state, executed and proved according to the 1431
laws of any state or territory of the United States, relative to 1432
property in this state, may be admitted to record in the probate 1433
court of a county where a part of that property is situated. The 1434
authenticated copies, so recorded, shall be as valid as wills 1435
made in this state. 1436

When such a will, or authenticated copy, is admitted to 1437
record, a copy of the will or of the authenticated copy, with 1438
the copy of the order to record it annexed to that copy, 1439
certified by the probate judge under the seal of the probate 1440
court, may be filed and recorded in the office of the probate 1441
judge of any other county where a part of the property is 1442
situated, and it shall be as effectual as the authenticated copy 1443
of the will would be if approved and admitted to record by the 1444
court. 1445

Sec. 2137.01. As used in this chapter:	1446
(A) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.	1447 1448 1449 1450
(B) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated as agent, attorney in fact, or otherwise.	1451 1452 1453
(C) "Carries" means engages in the transmission of an electronic communication.	1454 1455
(D) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.	1456 1457 1458 1459
(E) "Content of an electronic communication" means information concerning the substance or meaning of the communication that meets all of the following conditions:	1460 1461 1462
(1) It has been sent or received by a user.	1463
(2) It is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public.	1464 1465 1466 1467
(3) It is not readily accessible to the public.	1468
(F) "Court" means the probate court for all matters in which the court has exclusive jurisdiction under section 2101.24 of the Revised Code. "Court" also includes the probate court or the general division of the court of common pleas for matters in which such courts have concurrent jurisdiction under section	1469 1470 1471 1472 1473

2101.24 of the Revised Code.	1474
(G) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.	1475 1476
(H) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.	1477 1478
(I) "Digital asset" means an electronic record in which an individual has a right or interest. "Digital asset" does not include an underlying asset or liability unless the asset or liability is itself an electronic record.	1479 1480 1481 1482
(J) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.	1483 1484 1485
(K) "Electronic communication" has the same meaning as in 18 U.S.C. 2510(12), as amended.	1486 1487
(L) "Electronic-communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.	1488 1489 1490
(M) "Fiduciary" means an original, additional, or successor agent, guardian, personal representative, or trustee.	1491 1492
(N) (1) "Guardian" means any person, association, or corporation appointed by the probate court to have the care and management of the person, the estate, or the person and the estate of an incompetent or minor. When applicable, "guardian" includes, but is not limited to, a limited guardian, an interim guardian, a standby guardian, and an emergency guardian appointed pursuant to division (B) of section 2111.02 of the Revised Code. "Guardian" also includes both of the following:	1493 1494 1495 1496 1497 1498 1499 1500
(a) An agency under contract with the department of	1501

developmental disabilities for the provision of protective 1502
service under sections 5123.55 to 5123.59 of the Revised Code 1503
when appointed by the probate court to have the care and 1504
management of the person of an incompetent; 1505

(b) A conservator appointed by the probate court in an 1506
order of conservatorship issued pursuant to section 2111.021 of 1507
the Revised Code. 1508

(2) "Guardian" does not include a guardian under sections 1509
5905.01 to 5905.19 of the Revised Code. 1510

(O) "Information" means data, text, images, videos, 1511
sounds, codes, computer programs, software, databases, or the 1512
like. 1513

(P) "Online tool" means an electronic service provided by 1514
a custodian that allows the user, in an agreement distinct from 1515
the terms-of-service agreement between the custodian and user, 1516
to provide directions for disclosure or nondisclosure of digital 1517
assets to a third person. 1518

(Q) "Person" means an individual, corporation, business 1519
trust, estate, trust, partnership, limited liability company, 1520
association, joint venture, government, governmental agency or 1521
instrumentality, public corporation, or any other legal or 1522
commercial entity. 1523

(R) "Personal representative" means an executor, 1524
administrator, special administrator, or other person acting 1525
under the authority of the probate court to perform 1526
substantially the same function under the law of this state. 1527
"Personal representative" also includes a commissioner in a 1528
release of assets from administration under section 2113.03 of 1529
the Revised Code and an applicant for summary release from 1530

administration under section 2113.031 of the Revised Code.	1531
(S) "Power of attorney" means a writing or other record	1532
that grants authority to an agent to act in the place of the	1533
principal.	1534
(T) "Principal" means an individual who grants authority	1535
to an agent in a power of attorney.	1536
(U) "Record" means information that is inscribed on a	1537
tangible medium or that is stored in an electronic or other	1538
medium and is retrievable in perceivable form.	1539
(V) "Remote-computing service" means a custodian that	1540
provides to a user computer-processing services or the storage	1541
of digital assets by means of an electronic communications	1542
system, as defined in 18 U.S.C. 2510(14), as amended.	1543
(W) "Terms-of-service agreement" means an agreement that	1544
controls the relationship between a user and a custodian.	1545
(X) "Trustee" means a fiduciary with legal title to	1546
property pursuant to an agreement or declaration that creates a	1547
beneficial interest in another. "Trustee" includes an original,	1548
additional, and successor trustee and a cotrustee.	1549
(Y) "User" means a person that has an account with a	1550
custodian.	1551
(Z) "Ward" means any person for whom a guardian is acting	1552
or for whom the probate court is acting pursuant to section	1553
2111.50 of the Revised Code. "Ward" includes a person for whom a	1554
conservator has been appointed by the probate court in an order	1555
of conservatorship issued pursuant to section 2111.021 of the	1556
Revised Code.	1557
(AA) "Will" includes codicils to wills admitted to	1558

probate, lost, spoliated, or destroyed wills, and instruments 1559
admitted to probate under ~~section 2107.081~~ Chapter 5817. of the 1560
Revised Code. "Will" does not include inter vivos trusts or 1561
other instruments that have not been admitted to probate. 1562

Sec. 2151.233. The juvenile court shall not exercise 1563
jurisdiction under division (A) (2), (A) (11), or (B) (4) of 1564
section 2151.23 of the Revised Code or section 2151.231 of the 1565
Revised Code to determine custody or support regarding a child 1566
if any of the following apply: 1567

(A) The child's parents are married. 1568

(B) The child's parents are not married and there is an 1569
existing order for custody or support regarding the child or the 1570
child's sibling over which the juvenile court does not have 1571
jurisdiction. 1572

(C) The determination is ancillary to the parents' pending 1573
action for divorce, dissolution of marriage, annulment, or legal 1574
separation. 1575

Sec. 2151.234. Section 2151.233 of the Revised Code shall 1576
not affect the authority of the juvenile court to issue a 1577
custody order under division (A) (1) of section 2151.23 of the 1578
Revised Code granting custody of the child to a relative or 1579
placing a child under a kinship care agreement. 1580

Sec. 2151.235. (A) A juvenile court may transfer 1581
jurisdiction over an action or an order it has issued for child 1582
support or custody as follows: 1583

(1) To the appropriate common pleas court with domestic 1584
relations jurisdiction, if the parents of the child subject to 1585
the action or order are married and not parties to a proceeding 1586
described in division (A) (3) of this section; 1587

(2) To the appropriate common pleas court with domestic relations jurisdiction, if the parents of the child are not married and there is an existing order for custody or support regarding the child or the child's sibling over which the juvenile court does not have jurisdiction; 1588
1589
1590
1591
1592

(3) To the common pleas court exercising jurisdiction over a pending divorce, dissolution of marriage, legal separation, or annulment proceeding to which the parents of the child subject to the action or order are parties; 1593
1594
1595
1596

(4) To the common pleas court exercising jurisdiction over a protection order issued under section 3113.31 of the Revised Code if the child or parents of the child are subject to both a child support order and the protection order. 1597
1598
1599
1600

(B) Jurisdiction of the action or order described in division (A) of this section shall be transferred and the receiving court shall have exclusive jurisdiction over the action or order if the following requirements are met: 1601
1602
1603
1604

(1) The common pleas court with domestic relations jurisdiction, juvenile court, or an interested party makes a motion to transfer jurisdiction; 1605
1606
1607

(2) The court receiving jurisdiction consents to the transfer; 1608
1609

(3) The juvenile court certifies all or part of the record in the action or related to the order to the court receiving jurisdiction. 1610
1611
1612

(C) This section applies to all orders in effect, and all actions or proceedings pending or initiated, on or after the effective date of H.B. 595 of the 132nd general assembly. 1613
1614
1615

Sec. 2151.236. If a child is subject to a support order 1616
issued by a common pleas court with domestic relations 1617
jurisdiction and if a juvenile court adjudicates the child to be 1618
delinquent, unruly, abused, neglected, or dependent and grants 1619
custody of the child to an individual or entity other than as 1620
set forth in the order issued by the common pleas court with 1621
domestic relations jurisdiction, the juvenile court shall notify 1622
the common pleas court with domestic relations jurisdiction and 1623
the child support enforcement agency serving the county of that 1624
court. The child support enforcement agency shall review the 1625
child support order pursuant to sections 3119.60 and 3119.63 to 1626
3119.76 of the Revised Code. 1627

Sec. 2323.30. In all actions in which the plaintiff is a 1628
nonresident of the county in which the action is brought, a 1629
partnership suing by its company name, an insolvent corporation, 1630
or any party required to furnish security under section 2323.31 1631
of the Revised Code, the plaintiff shall deposit cash or furnish 1632
security for costs. The surety must be a resident of the county 1633
and approved by the clerk. The obligation of the surety shall be 1634
complete by indorsing the summons or signing ~~his~~ the surety's 1635
name on the petition as surety for costs. The surety shall be 1636
bound for the payment of the costs which are adjudged against 1637
the plaintiff in the court in which the action is brought, or in 1638
any other court to which it is carried, and for all the costs 1639
taxed against the plaintiff in such action, whether ~~he~~ the 1640
plaintiff obtains a judgment or not. When a plaintiff makes 1641
~~affidavit of inability either to give security or a cash deposit~~ 1642
~~to secure costs~~ an application to be qualified as an indigent 1643
litigant as set forth in section 2323.311 of the Revised Code, 1644
the clerk shall receive and file the ~~petition~~ civil action or 1645
proceeding. ~~Such affidavit shall be filed with it and treated as~~ 1646

~~are similar papers. If the court approves the application, the~~ 1647
~~clerk shall waive the cash deposit or the security under this~~ 1648
~~section, and the court shall proceed on the action or~~ 1649
~~proceeding. If the court denies the application, the clerk shall~~ 1650
~~retain the filing of the civil action or proceeding, and the~~ 1651
~~court shall issue an order granting the applicant whose~~ 1652
~~application is denied thirty days to make the required cash~~ 1653
~~deposit or security prior to any dismissal or other action on~~ 1654
~~the filing.~~ 1655

Sec. 2323.31. The court of common pleas by rule may 1656
require an advance deposit for the filing of any civil action or 1657
proceeding ~~or of any responsive action by the defendant.~~ On the 1658
motion of ~~the defendant~~ any party, and if satisfied that such 1659
deposit is insufficient, the court may require it to be 1660
increased from time to time, so as to secure all costs that may 1661
accrue in the cause, or may require personal security to be 1662
given; ~~but~~ However, if a plaintiff party makes an affidavit of 1663
~~inability either to prepay or give security for costs~~ 1664
application to be qualified as an indigent litigant as set forth 1665
in section 2323.311 of the Revised Code, the clerk of the court 1666
shall receive and file the petition, civil action or proceeding 1667
or the responsive action by the defendant. ~~Such affidavit shall~~ 1668
~~be filed with the petition, and treated as are similar papers in~~ 1669
~~such cases~~ If the court approves the application, the clerk 1670
shall waive the advance deposit or personal security under this 1671
section and the court shall proceed with the action or 1672
proceeding or the defendant's responsive action. If the court 1673
denies the application, the clerk shall retain the filing of the 1674
civil action or proceeding or the defendant's responsive action, 1675
and the court shall issue an order granting the applicant whose 1676
application is denied thirty days to make the required deposit 1677

or personal security prior to any dismissal or other action on 1678
the filing of the civil action or proceeding or the defendant's 1679
responsive action. 1680

Sec. 2323.311. (A) For purposes of this section, "indigent 1681
litigant" means a litigant who is unable to make an advance 1682
deposit or security for fees or costs as set forth in a civil 1683
action or proceeding. 1684

(B) (1) In order to qualify as an indigent litigant, the 1685
applicant shall file with the court in which a civil action or 1686
proceeding is filed an affidavit of indigency in a form approved 1687
by the supreme court, or, until that court approves such a form, 1688
a form that requests substantially the same financial 1689
information as the financial disclosure and affidavit of 1690
indigency form used by the public defender for the appointment 1691
of counsel in a criminal case. 1692

(2) The applicant's attorney, or if the litigant is 1693
proceeding pro se, the applicant shall file the affidavit of 1694
indigency with the court in which the civil action or proceeding 1695
is filed. 1696

(3) Upon the filing of a civil action or proceeding and 1697
the affidavit of indigency under division (B) (1) of this 1698
section, the clerk of the court shall accept the action or 1699
proceeding for filing. 1700

(4) A judge or magistrate of the court shall review the 1701
affidavit of indigency as filed pursuant to division (B) (2) of 1702
this section and shall approve or deny the applicant's 1703
application to qualify as an indigent litigant. The judge or 1704
magistrate shall approve the application if the applicant's 1705
gross income does not exceed one hundred eighty-seven and five- 1706

tenths per cent of the federal poverty guidelines as determined 1707
by the United States department of health and human services for 1708
the state of Ohio and the applicant's monthly expenses are equal 1709
to or in excess of the applicant's liquid assets as specified in 1710
division (C) (2) of section 120-1-03 of the Administrative Code, 1711
as amended, or a substantially similar provision. If the 1712
application is approved, the clerk shall waive the advance 1713
deposit or security and the court shall proceed with the civil 1714
action or proceeding. If the application is denied, the clerk 1715
shall retain the filing of the action or proceeding, and the 1716
court shall issue an order granting the applicant whose 1717
application is denied thirty days to make the required advance 1718
deposit or security, prior to any dismissal or other action on 1719
the filing of the civil action or proceeding. 1720

(5) Following the filing of the civil action or proceeding 1721
with the clerk, the judge or magistrate, at any time while the 1722
action or proceeding is pending and on the motion of an 1723
applicant, on the motion of the opposing party, or on the 1724
court's own motion, may conduct a hearing to inquire into the 1725
applicant's status as an indigent litigant. The judge or 1726
magistrate shall affirm the applicant's status as an indigent 1727
litigant if the applicant's gross income does not exceed one 1728
hundred eighty-seven and five-tenths per cent of the federal 1729
poverty guidelines as determined by the United States department 1730
of health and human services for the state of Ohio and the 1731
applicant's monthly expenses are equal to or in excess of the 1732
applicant's liquid assets as specified in division (C) (2) of 1733
section 120-1-03 of the Administrative Code, as amended, or a 1734
substantially similar provision. If the court finds that the 1735
applicant qualifies as an indigent litigant, the court shall 1736
proceed with the action or proceeding. If the court finds that 1737

the applicant does not qualify as an indigent litigant or no 1738
longer qualifies as an indigent litigant if previously so 1739
qualified as provided in division (B)(4) of this section, the 1740
clerk shall retain the filing of the action or proceeding, and 1741
the court shall issue an order granting the applicant whose 1742
motion is denied thirty days to make a required deposit or 1743
security, prior to any dismissal or other action on the filing 1744
or pendency of the civil action or proceeding. 1745

(6) Nothing in this section shall prevent a court from 1746
approving or affirming an application to qualify as an indigent 1747
litigant for an applicant whose gross income exceeds one hundred 1748
eighty-seven and five-tenths per cent of the federal poverty 1749
guidelines as determined by the United States department of 1750
health and human services for the state of Ohio, or whose liquid 1751
assets equal or exceed the applicant's monthly expenses as 1752
specified in division (C)(2) of section 120-1-03 of the 1753
Administrative Code, as amended, or a substantially similar 1754
provision. 1755

(7) Any indigency finding by the court under this section 1756
shall excuse the indigent litigant from the obligation to prepay 1757
any subsequent fee or cost arising in the civil case or 1758
proceeding unless the court addresses the payment or nonpayment 1759
of that fee or cost specifically in a court order. 1760

(C) If the indigent litigant as the prevailing party 1761
proceeds with an execution on the court's judgment as set forth 1762
in Chapter 2327., 2329., 2331., or 2333. of the Revised Code, in 1763
order to provide for the recovery of applicable costs, any 1764
payment on any execution of the judgment in favor of the 1765
indigent litigant shall be made through the clerk of the court. 1766
The clerk shall apply that payment to any outstanding costs 1767

prior to any disbursement of funds to the indigent litigant. The 1768
requirement described in this division may be waived upon entry 1769
of the court by the judge or magistrate. The remedy set forth in 1770
this division shall not be the exclusive remedy of the clerk of 1771
court for the payment of costs. The clerk shall have all 1772
remedies available under the law. 1773

Sec. 2323.33. (A) If security for costs is not given in a 1774
case mentioned in sections 2323.30 to 2323.32, ~~inclusive,~~ of the 1775
Revised Code, at any time before the commencement of the trial, 1776
on motion of the defendant, and notice to the plaintiff, the 1777
court shall dismiss the action, unless in a reasonable time, 1778
which it may allow, security is given. 1779

(B) This section does not apply if a party makes an 1780
application under section 2323.30 or 2323.31 of the Revised Code 1781
to qualify as an indigent litigant as set forth in section 1782
2323.311 of the Revised Code. 1783

Sec. 2701.09. In any county in which a daily law journal 1784
is printed, the judges of the courts of record, other than the 1785
court of appeals, shall jointly designate such daily law journal 1786
as the journal in which shall be published all calendars of the 1787
courts of record in such county, which calendars shall contain 1788
the numbers and titles of causes, and names of attorneys 1789
appearing ~~therein~~ in the causes, together with the motion 1790
dockets and such particulars and notices respecting causes, as 1791
may be specified by the judges, and each notice required to be 1792
published by any of ~~such~~ those judges. 1793

In all cases, proceedings, administrations of estates, 1794
assignments, and matters pending in any of the courts of record 1795
of ~~such~~ the counties in which legal notices or advertisements 1796
are required to be published, ~~such~~ the law journal shall, once a 1797

week and on the same day of the week, publish an abstract of 1798
each such legal advertisement, but the jurisdiction over, or 1799
irregularity of, a proceeding, trial, or judgment shall not be 1800
affected by anything ~~therein~~ in the abstract of legal 1801
advertising. 1802

For the publication of such calendars, motion dockets, and 1803
notices, the fees for which are not fixed by law, the publisher 1804
of the paper shall receive a sum to be fixed by the judges for 1805
each case brought, to be paid in advance by the party filing the 1806
petition, transcripts for appeal, or lien, unless the party is 1807
determined by the court to qualify as an indigent litigant as 1808
set forth in section 2323.311 of the Revised Code, to be taxed 1809
in the costs and collected as other costs. For the publication 1810
of abstracts of legal advertising ~~such~~ the publisher shall 1811
receive a sum to be fixed by the judges for each case, 1812
proceeding, or matter, in which such advertising is had, to be 1813
taxed and collected as a part of the costs ~~thereof~~ of the case, 1814
proceeding, or matter. 1815

Sec. 2721.03. Subject to division (B) of section 2721.02 1816
of the Revised Code, any person interested under a deed, will, 1817
written contract, or other writing constituting a contract or 1818
any person whose rights, status, or other legal relations are 1819
affected by a constitutional provision, statute, rule as defined 1820
in section 119.01 of the Revised Code, municipal ordinance, 1821
township resolution, contract, or franchise may have determined 1822
any question of construction or validity arising under the 1823
instrument, constitutional provision, statute, rule, ordinance, 1824
resolution, contract, or franchise and obtain a declaration of 1825
rights, status, or other legal relations under it. 1826

The testator of a will may have the validity of the will 1827

determined at any time during the testator's lifetime pursuant 1828
to ~~sections 2107.081 to 2107.085 Chapter 5817.~~ of the Revised 1829
Code. The settlor of a trust may have the validity of the trust 1830
determined at any time during the settlor's lifetime pursuant to 1831
Chapter 5817. of the Revised Code. 1832

Sec. 2746.10. If with respect to the filing of any civil 1833
action or proceeding or of a responsive action by a defendant in 1834
any court of record, a party qualifies as an indigent litigant 1835
as set forth in section 2323.311 of the Revised Code, the clerk 1836
of the court shall receive and file the civil action or 1837
proceeding or the defendant's responsive action and the court 1838
shall waive any advance deposit or security for filing of the 1839
civil action or proceeding or the defendant's responsive action, 1840
any payment in advance for any taxable costs, including fees for 1841
publication or service of process by other means, and any 1842
payment in advance of any fee required in connection with 1843
prosecuting or advancing the civil action or proceeding or the 1844
defendant's responsive action. 1845

Sec. 3105.011. (A) The court of common pleas including 1846
divisions of courts of domestic relations, has full equitable 1847
powers and jurisdiction appropriate to the determination of all 1848
domestic relations matters. This section is not a determination 1849
by the general assembly that such equitable powers and 1850
jurisdiction do not exist with respect to any such matter. 1851

(B) For purposes of this section, "domestic relations 1852
matters" means both of the following: 1853

(1) Any matter committed to the jurisdiction of the 1854
division of domestic relations of common pleas courts under 1855
section 2301.03 of the Revised Code; 1856

(2) Actions and proceedings under Chapters 3105., 3109., 1857
3111., 3113., 3115., 3119., 3121., 3123., 3125., and 3127. of 1858
the Revised Code. 1859

Sec. 3109.06. Except as provided in division (K) of 1860
section 2301.03 of the Revised Code, any court, other than a 1861
juvenile court, that has jurisdiction in any case respecting the 1862
allocation of parental rights and responsibilities for the care 1863
of a child under eighteen years of age and the designation of 1864
the child's place of residence and legal custodian or in any 1865
case respecting the support of a child under eighteen years of 1866
age, may, on its own motion or on motion of any interested 1867
party, ~~with the consent of the juvenile court,~~ certify the 1868
record in the case or so much of the record and such further 1869
information, in narrative form or otherwise, as the court deems 1870
necessary or the juvenile court requests, to the juvenile court 1871
for further proceedings; upon the certification, the juvenile 1872
court shall have exclusive jurisdiction. 1873

In cases in which the court of common pleas finds the 1874
parents unsuitable to have the parental rights and 1875
responsibilities for the care of the child or children and 1876
unsuitable to provide the place of residence and to be the legal 1877
custodian of the child or children, consent of the juvenile 1878
court shall not be required to such certification. This section 1879
applies to actions pending on August 28, 1951. 1880

In any case in which a court of common pleas, or other 1881
court having jurisdiction, has issued an order that allocates 1882
parental rights and responsibilities for the care of minor 1883
children and designates their place of residence and legal 1884
custodian of minor children, has made an order for support of 1885
minor children, or has done both, the jurisdiction of the court 1886

shall not abate upon the death of the person awarded custody but 1887
shall continue for all purposes during the minority of the 1888
children. The court, upon its own motion or the motion of either 1889
parent or of any interested person acting on behalf of the 1890
children, may proceed to make further disposition of the case in 1891
the best interests of the children and subject to sections 1892
3109.42 to 3109.48 of the Revised Code. If the children are 1893
under eighteen years of age, it may certify them, pursuant to 1894
this section, to the juvenile court of any county for further 1895
proceedings. After certification to a juvenile court, the 1896
jurisdiction of the court of common pleas, or other court, shall 1897
cease, except as to any payments of spousal support due for the 1898
spouse and support payments due and unpaid for the children at 1899
the time of the certification. 1900

Any disposition made pursuant to this section, whether by 1901
a juvenile court after a case is certified to it, or by any 1902
court upon the death of a person awarded custody of a child, 1903
shall be made in accordance with sections 3109.04 and 3109.42 to 1904
3109.48 of the Revised Code. If an appeal is taken from a 1905
decision made pursuant to this section that allocates parental 1906
rights and responsibilities for the care of a minor child and 1907
designates the child's place of residence and legal custodian, 1908
the court of appeals shall give the case calendar priority and 1909
handle it expeditiously. 1910

Sec. 3109.061. Nothing in sections 2151.233 to 2151.236 1911
and 2301.03 of the Revised Code shall be construed to prevent a 1912
domestic relations court from certifying a case to a juvenile 1913
court under division (D) (2) of section 3109.04 of the Revised 1914
Code or section 3109.06 of the Revised Code. Consent of the 1915
juvenile court shall not be required for the certification. 1916

Sec. 4705.09. (A) (1) ~~(a)~~ Any person admitted to the 1917
practice of law in this state by order of the supreme court in 1918
accordance with its prescribed and published rules, or any law 1919
firm or legal professional association, may establish and 1920
maintain an interest-bearing trust account, for purposes of 1921
depositing client funds held by the attorney, firm, or 1922
association that are nominal in amount or are to be held by the 1923
attorney, firm, or association for a short period of time, with 1924
any bank, savings bank, or savings and loan association that is 1925
authorized to do business in this state and is insured by the 1926
federal deposit insurance corporation or the successor to that 1927
corporation, or any credit union insured by the national credit 1928
union administration operating under the "Federal Credit Union 1929
Act," 84 Stat. 994 (1970), 12 U.S.C.A.—U.S.C. 1751, or insured 1930
by a credit union share guaranty corporation established under 1931
Chapter 1761. of the Revised Code. Each account established 1932
under this division shall be in the name of the attorney, firm, 1933
or association that established and is maintaining it and shall 1934
be identified as an IOLTA or an interest on lawyer's trust 1935
account. The name of the account may contain additional 1936
identifying features to distinguish it from other trust accounts 1937
established and maintained by the attorney, firm, or 1938
association. 1939

~~(b) Any person admitted to the practice of law in this 1940
state by order of the supreme court in accordance with its 1941
prescribed and published rules, or any law firm or legal 1942
professional association, may establish and maintain an 1943
interest bearing trust account, for purposes of depositing funds 1944
received by a client, in the client's name as fiduciary of a 1945
trust or estate, with any bank, savings bank, or savings and 1946
loan association that is authorized to do business in this state 1947~~

~~and is insured by the federal deposit insurance corporation or 1948~~
~~the successor to that corporation, or any credit union insured 1949~~
~~by the national credit union administration operating under the 1950~~
~~"Federal Credit Union Act," 84 Stat. 994 (1970), 12 U.S.C.A. 1951~~
~~1751, or insured by a credit union share guaranty corporation 1952~~
~~established under Chapter 1761. of the Revised Code. Each 1953~~
~~account established under this division shall be in the name of 1954~~
~~the attorney, firm, or association that established and is 1955~~
~~maintaining it and shall be identified as an IOLTA or an 1956~~
~~interest on lawyer's trust account. The name of the account 1957~~
~~shall contain additional identifying features to distinguish it 1958~~
~~from other trust accounts established and maintained by the 1959~~
~~attorney, firm, or association and to distinguish it from an 1960~~
~~IOLTA established and maintained under division (A) (1) (a) of 1961~~
~~this section. 1962~~

~~No funds received by a client, in the client's name as 1963~~
~~fiduciary of a trust or estate, shall be deposited into an IOLTA 1964~~
~~established under division (A) (1) (b) of this section unless the 1965~~
~~deposit has been approved by the probate court under section 1966~~
~~2109.41 of the Revised Code. 1967~~

~~Notwithstanding any contrary provision in Chapter 2109. of 1968~~
~~the Revised Code, a probate court examining a trust or estate 1969~~
~~may only access the account information of an IOLTA created 1970~~
~~under this section for purposes of obtaining information related 1971~~
~~to that particular trust or estate and shall not access records 1972~~
~~of the IOLTA that pertain to assets of any other estate or trust 1973~~
~~held in the IOLTA. 1974~~

(2) Each attorney who receives funds belonging to a client 1975
shall do one of the following: 1976

(a) Establish and maintain one or more interest-bearing 1977

trust accounts in accordance with division (A) (1) of this 1978
section or maintain one or more interest-bearing trust accounts 1979
previously established in accordance with that division, and 1980
deposit all client funds held that are nominal in amount or are 1981
to be held by the attorney for a short period of time in the 1982
account or accounts; 1983

(b) If the attorney is affiliated with a law firm or legal 1984
professional association, comply with division (A) (2) (a) of this 1985
section or deposit all client funds held that are nominal in 1986
amount or are to be held by the attorney for a short period of 1987
time in one or more interest-bearing trust accounts established 1988
and maintained by the firm or association in accordance with 1989
division (A) (1) of this section. 1990

(3) No funds belonging to any attorney, firm, or legal 1991
professional association shall be deposited in any interest- 1992
bearing trust account established under division (A) (1) or (2) 1993
of this section, except that funds sufficient to pay or enable a 1994
waiver of depository institution service charges on the account 1995
shall be deposited in the account and other funds belonging to 1996
the attorney, firm, or association may be deposited as 1997
authorized by the Code of Professional Responsibility adopted by 1998
the supreme court. The determinations of whether funds held are 1999
nominal or more than nominal in amount and of whether funds are 2000
to be held for a short period or longer than a short period of 2001
time rests in the sound judgment of the particular attorney. No 2002
imputation of professional misconduct shall arise from the 2003
attorney's exercise of judgment in these matters. 2004

(B) All interest earned on funds deposited in an interest- 2005
bearing trust account established under division (A) (1) or (2) 2006
of this section shall be transmitted to the treasurer of state 2007

for deposit in the legal aid fund established under section 2008
120.52 of the Revised Code. No part of the interest earned on 2009
funds deposited in an interest-bearing trust account established 2010
under division (A) (1) or (2) of this section shall be paid to, 2011
or inure to the benefit of, the attorney, the attorney's law 2012
firm or legal professional association, the client or other 2013
person who owns or has a beneficial ownership of the funds 2014
deposited, or any other person other than in accordance with 2015
this section, section 4705.10, and sections 120.51 to 120.55 of 2016
the Revised Code. 2017

(C) No liability arising out of any act or omission by any 2018
attorney, law firm, or legal professional association with 2019
respect to any interest-bearing trust account established under 2020
division (A) (1) or (2) of this section shall be imputed to the 2021
depository institution. 2022

(D) The supreme court may adopt and enforce rules of 2023
professional conduct that pertain to the use, by attorneys, law 2024
firms, or legal professional associations, of interest-bearing 2025
trust accounts established under division (A) (1) or (2) of this 2026
section, and that pertain to the enforcement of division (A) (2) 2027
of this section. Any rules adopted by the supreme court under 2028
this authority shall conform to the provisions of this section, 2029
section 4705.10, and sections 120.51 to 120.55 of the Revised 2030
Code. 2031

Sec. 5163.21. (A) (1) This section applies only to either 2032
of the following: 2033

(a) Initial eligibility determinations for the medicaid 2034
program; 2035

(b) An appeal from an initial eligibility determination 2036

pursuant to section 5160.31 of the Revised Code. 2037

(2) (a) Except as provided in division (A) (2) (b) of this 2038
section, this section shall not be used by a court to determine 2039
the effect of a trust on an individual's initial eligibility for 2040
the medicaid program. 2041

(b) The prohibition in division (A) (2) (a) of this section 2042
does not apply to an appeal described in division (A) (1) (b) of 2043
this section. 2044

(B) As used in this section: 2045

(1) "Trust" means any arrangement in which a grantor 2046
transfers real or personal property to a trust with the 2047
intention that it be held, managed, or administered by at least 2048
one trustee for the benefit of the grantor or beneficiaries. 2049
"Trust" includes any legal instrument or device similar to a 2050
trust. 2051

(2) "Legal instrument or device similar to a trust" 2052
includes, but is not limited to, escrow accounts, investment 2053
accounts, partnerships, contracts, and other similar 2054
arrangements that are not called trusts under state law but are 2055
similar to a trust and to which all of the following apply: 2056

(a) The property in the trust is held, managed, retained, 2057
or administered by a trustee. 2058

(b) The trustee has an equitable, legal, or fiduciary duty 2059
to hold, manage, retain, or administer the property for the 2060
benefit of the beneficiary. 2061

(c) The trustee holds identifiable property for the 2062
beneficiary. 2063

(3) "Grantor" is a person who creates a trust, including 2064

all of the following:	2065
(a) An individual;	2066
(b) An individual's spouse;	2067
(c) A person, including a court or administrative body,	2068
with legal authority to act in place of or on behalf of an	2069
individual or an individual's spouse;	2070
(d) A person, including a court or administrative body,	2071
that acts at the direction or on request of an individual or the	2072
individual's spouse.	2073
(4) "Beneficiary" is a person or persons, including a	2074
grantor, who benefits in some way from a trust.	2075
(5) "Trustee" is a person who manages a trust's principal	2076
and income for the benefit of the beneficiaries.	2077
(6) "Person" has the same meaning as in section 1.59 of	2078
the Revised Code and includes an individual, corporation,	2079
business trust, estate, trust, partnership, and association.	2080
(7) "Applicant" is an individual who applies for medicaid	2081
or the individual's spouse.	2082
(8) "Recipient" is an individual who receives medicaid or	2083
the individual's spouse.	2084
(9) "Revocable trust" is a trust that can be revoked by	2085
the grantor or the beneficiary, including all of the following,	2086
even if the terms of the trust state that it is irrevocable:	2087
(a) A trust that provides that the trust can be terminated	2088
only by a court;	2089
(b) A trust that terminates on the happening of an event,	2090
but only if the event occurs at the direction or control of the	2091

grantor, beneficiary, or trustee.	2092
(10) "Irrevocable trust" is a trust that cannot be revoked	2093
by the grantor or terminated by a court and that terminates only	2094
on the occurrence of an event outside of the control or	2095
direction of the beneficiary or grantor.	2096
(11) "Payment" is any disbursement from the principal or	2097
income of the trust, including actual cash, noncash or property	2098
disbursements, or the right to use and occupy real property.	2099
(12) "Payments to or for the benefit of the applicant or	2100
recipient" is a payment to any person resulting in a direct or	2101
indirect benefit to the applicant or recipient.	2102
(13) "Testamentary trust" is a trust that is established	2103
by a will and does not take effect until after the death of the	2104
person who created the trust.	2105
(C) (1) If an applicant or recipient is a beneficiary of a	2106
trust, the applicant or recipient shall submit a complete copy	2107
of the trust instrument to the county department of job and	2108
family services and the department of medicaid. A copy shall be	2109
considered complete if it contains all pages of the trust	2110
instrument and all schedules, attachments, and accounting	2111
statements referenced in or associated with the trust. The copy	2112
is confidential and is not subject to disclosure under section	2113
149.43 of the Revised Code.	2114
(2) On receipt of a copy of a trust instrument or	2115
otherwise determining that an applicant or recipient is a	2116
beneficiary of a trust, the county department of job and family	2117
services shall determine what type of trust it is and shall	2118
treat the trust in accordance with the appropriate provisions of	2119
this section and rules adopted under section 5163.02 of the	2120

Revised Code governing trusts. The county department of job and 2121
family services may determine that any of the following is the 2122
case regarding the trust or portion of the trust: 2123

(a) It is a resource available to the applicant or 2124
recipient; 2125

(b) It contains income available to the applicant or 2126
recipient; 2127

(c) Divisions (C) (2) (a) and (b) of this section are both 2128
applicable; 2129

(d) Neither division (C) (2) (a) nor (b) of this section is 2130
applicable. 2131

(3) Except as provided in division (F) of this section, a 2132
trust or portion of a trust that is a resource available to the 2133
applicant or recipient or contains income available to the 2134
applicant or recipient shall be counted for purposes of 2135
determining medicaid eligibility. 2136

(D) (1) A trust or legal instrument or device similar to a 2137
trust shall be considered a medicaid qualifying trust if all of 2138
the following apply: 2139

(a) The trust was established on or prior to August 10, 2140
1993. 2141

(b) The trust was not established by a will. 2142

(c) The trust was established by an applicant or 2143
recipient. 2144

(d) The applicant or recipient is or may become the 2145
beneficiary of all or part of the trust. 2146

(e) Payment from the trust is determined by one or more 2147

trustees who are permitted to exercise any discretion with 2148
respect to the distribution to the applicant or recipient. 2149

(2) If a trust meets the requirement of division (D)(1) of 2150
this section, the amount of the trust that is considered by the 2151
county department of job and family services to be a resource 2152
available to the applicant or recipient shall be the maximum 2153
amount of payments permitted under the terms of the trust to be 2154
distributed to the applicant or recipient, assuming the full 2155
exercise of discretion by the trustee or trustees. The maximum 2156
amount shall include only amounts that are permitted to be 2157
distributed but are not distributed from either the income or 2158
principal of the trust. 2159

(3) Amounts that are actually distributed from a medicaid 2160
qualifying trust to a beneficiary for any purpose shall be 2161
treated in accordance with rules adopted under section 5163.02 2162
of the Revised Code governing income. 2163

(4) Availability of a medicaid qualifying trust shall be 2164
considered without regard to any of the following: 2165

(a) Whether or not the trust is irrevocable or was 2166
established for purposes other than to enable a grantor to 2167
qualify for medicaid; 2168

(b) Whether or not the trustee actually exercises 2169
discretion. 2170

(5) If any real or personal property is transferred to a 2171
medicaid qualifying trust that is not distributable to the 2172
applicant or recipient, the transfer shall be considered an 2173
improper disposition of assets and shall be subject to section 2174
5163.30 of the Revised Code and rules to implement that section 2175
adopted under section 5163.02 of the Revised Code. 2176

(6) The baseline date for the look-back period for 2177
disposition of assets involving a medicaid qualifying trust 2178
shall be the date on which the applicant or recipient is both 2179
institutionalized and first applies for medicaid. 2180

(E) (1) A trust or legal instrument or device similar to a 2181
trust shall be considered a self-settled trust if all of the 2182
following apply: 2183

(a) The trust was established on or after August 11, 1993. 2184

(b) The trust was not established by a will. 2185

(c) The trust was established by an applicant or 2186
recipient, spouse of an applicant or recipient, or a person, 2187
including a court or administrative body, with legal authority 2188
to act in place of or on behalf of an applicant, recipient, or 2189
spouse, or acting at the direction or on request of an 2190
applicant, recipient, or spouse. 2191

(2) A trust that meets the requirements of division (E) (1) 2192
of this section and is a revocable trust shall be treated by the 2193
county department of job and family services as follows: 2194

(a) The corpus of the trust shall be considered a resource 2195
available to the applicant or recipient. 2196

(b) Payments from the trust to or for the benefit of the 2197
applicant or recipient shall be considered unearned income of 2198
the applicant or recipient. 2199

(c) Any other payments from the trust shall be considered 2200
an improper disposition of assets and shall be subject to 2201
section 5163.30 of the Revised Code and rules to implement that 2202
section adopted under section 5163.02 of the Revised Code. 2203

(3) A trust that meets the requirements of division (E) (1) 2204

of this section and is an irrevocable trust shall be treated by 2205
the county department of job and family services as follows: 2206

(a) If there are any circumstances under which payment 2207
from the trust could be made to or for the benefit of the 2208
applicant or recipient, including a payment that can be made 2209
only in the future, the portion from which payments could be 2210
made shall be considered a resource available to the applicant 2211
or recipient. The county department of job and family services 2212
shall not take into account when payments can be made. 2213

(b) Any payment that is actually made to or for the 2214
benefit of the applicant or recipient from either the corpus or 2215
income shall be considered unearned income. 2216

(c) If a payment is made to someone other than to the 2217
applicant or recipient and the payment is not for the benefit of 2218
the applicant or recipient, the payment shall be considered an 2219
improper disposition of assets and shall be subject to section 2220
5163.30 of the Revised Code and rules to implement that section 2221
adopted under section 5163.02 of the Revised Code. 2222

(d) The date of the disposition shall be the later of the 2223
date of establishment of the trust or the date of the occurrence 2224
of the event. 2225

(e) When determining the value of the disposed asset under 2226
this provision, the value of the trust shall be its value on the 2227
date payment to the applicant or recipient was foreclosed. 2228

(f) Any income earned or other resources added subsequent 2229
to the foreclosure date shall be added to the total value of the 2230
trust. 2231

(g) Any payments to or for the benefit of the applicant or 2232
recipient after the foreclosure date but prior to the 2233

application date shall be subtracted from the total value. Any 2234
other payments shall not be subtracted from the value. 2235

(h) Any addition of assets after the foreclosure date 2236
shall be considered a separate disposition. 2237

(4) If a trust is funded with assets of another person or 2238
persons in addition to assets of the applicant or recipient, the 2239
applicable provisions of this section and rules adopted under 2240
section 5163.02 of the Revised Code governing trusts shall apply 2241
only to the portion of the trust attributable to the applicant 2242
or recipient. 2243

(5) The availability of a self-settled trust shall be 2244
considered without regard to any of the following: 2245

(a) The purpose for which the trust is established; 2246

(b) Whether the trustees have exercised or may exercise 2247
discretion under the trust; 2248

(c) Any restrictions on when or whether distributions may 2249
be made from the trust; 2250

(d) Any restrictions on the use of distributions from the 2251
trust. 2252

(6) The baseline date for the look-back period for 2253
dispositions of assets involving a self-settled trust shall be 2254
the date on which the applicant or recipient is both 2255
institutionalized and first applies for medicaid. 2256

(F) The principal or income from any of the following 2257
shall not be a resource available to the applicant or recipient: 2258

(1) (a) A special needs trust that meets all of the 2259
following requirements: 2260

(i) The trust contains assets of an applicant or recipient	2261
under sixty-five years of age and may contain the assets of	2262
other individuals.	2263
(ii) The applicant or recipient is disabled as defined in	2264
rules adopted under section 5163.02 of the Revised Code.	2265
(iii) The trust is established for the benefit of the	2266
applicant or recipient by <u>any of the following: the applicant or</u>	2267
<u>recipient, if established on or after December 13, 2016; a</u>	2268
<u>parent, grandparent, or legal guardian, of the applicant or</u>	2269
<u>recipient; or a court.</u>	2270
(iv) The trust requires that on the death of the applicant	2271
or recipient the state will receive all amounts remaining in the	2272
trust up to an amount equal to the total amount of medicaid	2273
payments made on behalf of the applicant or recipient.	2274
(b) If a special needs trust meets the requirements of	2275
division (F)(1)(a) of this section and has been established for	2276
a disabled applicant or recipient under sixty-five years of age,	2277
the exemption for the trust granted pursuant to division (F) of	2278
this section shall continue after the disabled applicant or	2279
recipient becomes sixty-five years of age if the applicant or	2280
recipient continues to be disabled as defined in rules adopted	2281
under section 5163.02 of the Revised Code. Except for income	2282
earned by the trust, the grantor shall not add to or otherwise	2283
augment the trust after the applicant or recipient attains	2284
sixty-five years of age. An addition or augmentation of the	2285
trust by the applicant or recipient with the applicant's own	2286
assets after the applicant or recipient attains sixty-five years	2287
of age shall be treated as an improper disposition of assets.	2288
(c) Cash distributions to the applicant or recipient shall	2289

be counted as unearned income. All other distributions from the 2290
trust shall be treated as provided in rules adopted under 2291
section 5163.02 of the Revised Code governing in-kind income. 2292

(d) Transfers of assets to a special needs trust shall not 2293
be treated as an improper transfer of resources. An asset held 2294
prior to the transfer to the trust shall be considered as a 2295
resource available to the applicant or recipient, income 2296
available to the applicant or recipient, or both a resource and 2297
income available to the individual. 2298

(2) (a) A qualifying income trust that meets all of the 2299
following requirements: 2300

(i) The trust is composed only of pension, social 2301
security, and other income to the applicant or recipient, 2302
including accumulated interest in the trust. 2303

(ii) The income is received by the individual and the 2304
right to receive the income is not assigned or transferred to 2305
the trust. 2306

(iii) The trust requires that on the death of the 2307
applicant or recipient the state will receive all amounts 2308
remaining in the trust up to an amount equal to the total amount 2309
of medicaid payments made on behalf of the applicant or 2310
recipient. 2311

(b) No resources shall be used to establish or augment the 2312
trust. 2313

(c) If an applicant or recipient has irrevocably 2314
transferred or assigned the applicant's or recipient's right to 2315
receive income to the trust, the trust shall not be considered a 2316
qualifying income trust by the county department of job and 2317
family services. 2318

(d) Income placed in a qualifying income trust shall not 2319
be counted in determining an applicant's or recipient's 2320
eligibility for medicaid. The recipient of the funds may place 2321
any income directly into a qualifying income trust without those 2322
funds adversely affecting the applicant's or recipient's 2323
eligibility for medicaid. Income generated by the trust that 2324
remains in the trust shall not be considered as income to the 2325
applicant or recipient. 2326

(e) All income placed in a qualifying income trust shall 2327
be combined with any income available to the individual that is 2328
not placed in the trust to arrive at a base income figure to be 2329
used for spend down calculations. 2330

(f) The base income figure shall be used for post- 2331
eligibility deductions, including personal needs allowance, 2332
monthly income allowance, family allowance, and medical expenses 2333
not subject to third party payment. Any income remaining shall 2334
be used toward payment of patient liability. Payments made from 2335
a qualifying income trust shall not be combined with the base 2336
income figure for post-eligibility calculations. 2337

(g) The base income figure shall be used when determining 2338
the spend down budget for the applicant or recipient. Any income 2339
remaining after allowable deductions are permitted as provided 2340
under rules adopted under section 5163.02 of the Revised Code 2341
shall be considered the applicant's or recipient's spend down 2342
liability. 2343

(3) (a) A pooled trust that meets all of the following 2344
requirements: 2345

(i) The trust contains the assets of the applicant or 2346
recipient of any age who is disabled as defined in rules adopted 2347

under section 5163.02 of the Revised Code.	2348
(ii) The trust is established and managed by a nonprofit organization.	2349 2350
(iii) A separate account is maintained for each beneficiary of the trust but, for purposes of investment and management of funds, the trust pools the funds in these accounts.	2351 2352 2353 2354
(iv) Accounts in the trust are established by the applicant or recipient, the applicant's or recipient's parent, grandparent, or legal guardian, or a court solely for the benefit of individuals who are disabled.	2355 2356 2357 2358
(v) The trust requires that, to the extent that any amounts remaining in the beneficiary's account on the death of the beneficiary are not retained by the trust, the trust pay to the state the amounts remaining in the trust up to an amount equal to the total amount of medicaid payments made on behalf of the beneficiary.	2359 2360 2361 2362 2363 2364
(b) Cash distributions to the applicant or recipient shall be counted as unearned income. All other distributions from the trust shall be treated as provided in rules adopted under section 5163.02 of the Revised Code governing in-kind income.	2365 2366 2367 2368
(c) Transfers of assets to a pooled trust shall not be treated as an improper disposition of assets. An asset held prior to the transfer to the trust shall be considered as a resource available to the applicant or recipient, income available to the applicant or recipient, or both a resource and income available to the applicant or recipient.	2369 2370 2371 2372 2373 2374
(4) A supplemental services trust that meets the requirements of section 5815.28 of the Revised Code and to which	2375 2376

all of the following apply:	2377
(a) A person may establish a supplemental services trust	2378
pursuant to section 5815.28 of the Revised Code only for another	2379
person who is eligible to receive services through one of the	2380
following agencies:	2381
(i) The department of developmental disabilities;	2382
(ii) A county board of developmental disabilities;	2383
(iii) The department of mental health and addiction	2384
services;	2385
(iv) A board of alcohol, drug addiction, and mental health	2386
services.	2387
(b) A county department of job and family services shall	2388
not determine eligibility for another agency's program. An	2389
applicant or recipient shall do one of the following:	2390
(i) Provide documentation from one of the agencies listed	2391
in division (F)(4)(a) of this section that establishes that the	2392
applicant or recipient was determined to be eligible for	2393
services from the agency at the time of the creation of the	2394
trust;	2395
(ii) Provide an order from a court of competent	2396
jurisdiction that states that the applicant or recipient was	2397
eligible for services from one of the agencies listed in	2398
division (F)(4)(a) of this section at the time of the creation	2399
of the trust.	2400
(c) At the time the trust is created, the trust principal	2401
does not exceed the maximum amount permitted. The maximum amount	2402
permitted in calendar year 2006 is two hundred twenty-two	2403
thousand dollars. Each year thereafter, the maximum amount	2404

permitted is the prior year's amount plus two thousand dollars. 2405

(d) A county department of job and family services shall 2406
review the trust to determine whether it complies with the 2407
provisions of section 5815.28 of the Revised Code. 2408

(e) Payments from supplemental services trusts shall be 2409
exempt as long as the payments are for supplemental services as 2410
defined in rules adopted under section 5163.02 of the Revised 2411
Code. All supplemental services shall be purchased by the 2412
trustee and shall not be purchased through direct cash payments 2413
to the beneficiary. 2414

(f) If a trust is represented as a supplemental services 2415
trust and a county department of job and family services 2416
determines that the trust does not meet the requirements 2417
provided in division (F) (4) of this section and section 5815.28 2418
of the Revised Code, the county department of job and family 2419
services shall not consider it an exempt trust. 2420

(G) (1) A trust or legal instrument or device similar to a 2421
trust shall be considered a trust established by an individual 2422
for the benefit of the applicant or recipient if all of the 2423
following apply: 2424

(a) The trust is created by a person other than the 2425
applicant or recipient. 2426

(b) The trust names the applicant or recipient as a 2427
beneficiary. 2428

(c) The trust is funded with assets or property in which 2429
the applicant or recipient has never held an ownership interest 2430
prior to the establishment of the trust. 2431

(2) Any portion of a trust that meets the requirements of 2432

division (G) (1) of this section shall be a resource available to 2433
the applicant or recipient only if the trust permits the trustee 2434
to expend principal, corpus, or assets of the trust for the 2435
applicant's or recipient's medical care, care, comfort, 2436
maintenance, health, welfare, general well being, or any 2437
combination of these purposes. 2438

(3) A trust that meets the requirements of division (G) (1) 2439
of this section shall be considered a resource available to the 2440
applicant or recipient even if the trust contains any of the 2441
following types of provisions: 2442

(a) A provision that prohibits the trustee from making 2443
payments that would supplant or replace medicaid or other public 2444
assistance; 2445

(b) A provision that prohibits the trustee from making 2446
payments that would impact or have an effect on the applicant's 2447
or recipient's right, ability, or opportunity to receive 2448
medicaid or other public assistance; 2449

(c) A provision that attempts to prevent the trust or its 2450
corpus or principal from being a resource available to the 2451
applicant or recipient. 2452

(4) A trust that meets the requirements of division (G) (1) 2453
of this section shall not be counted as a resource available to 2454
the applicant or recipient if at least one of the following 2455
circumstances applies: 2456

(a) If a trust contains a clear statement requiring the 2457
trustee to preserve a portion of the trust for another 2458
beneficiary or remainderman, that portion of the trust shall not 2459
be counted as a resource available to the applicant or 2460
recipient. Terms of a trust that grant discretion to preserve a 2461

portion of the trust shall not qualify as a clear statement 2462
requiring the trustee to preserve a portion of the trust. 2463

(b) If a trust contains a clear statement requiring the 2464
trustee to use a portion of the trust for a purpose other than 2465
medical care, care, comfort, maintenance, welfare, or general 2466
well being of the applicant or recipient, that portion of the 2467
trust shall not be counted as a resource available to the 2468
applicant or recipient. Terms of a trust that grant discretion 2469
to limit the use of a portion of the trust shall not qualify as 2470
a clear statement requiring the trustee to use a portion of the 2471
trust for a particular purpose. 2472

(c) If a trust contains a clear statement limiting the 2473
trustee to making fixed periodic payments, the trust shall not 2474
be counted as a resource available to the applicant or recipient 2475
and payments shall be treated in accordance with rules adopted 2476
under section 5163.02 of the Revised Code governing income. 2477
Terms of a trust that grant discretion to limit payments shall 2478
not qualify as a clear statement requiring the trustee to make 2479
fixed periodic payments. 2480

(d) If a trust contains a clear statement that requires 2481
the trustee to terminate the trust if it is counted as a 2482
resource available to the applicant or recipient, the trust 2483
shall not be counted as such. Terms of a trust that grant 2484
discretion to terminate the trust do not qualify as a clear 2485
statement requiring the trustee to terminate the trust. 2486

(e) If a person obtains a judgment from a court of 2487
competent jurisdiction that expressly prevents the trustee from 2488
using part or all of the trust for the medical care, care, 2489
comfort, maintenance, welfare, or general well being of the 2490
applicant or recipient, the trust or that portion of the trust 2491

subject to the court order shall not be counted as a resource 2492
available to the applicant or recipient. 2493

(f) If a trust is specifically exempt from being counted 2494
as a resource available to the applicant or recipient by a 2495
provision of the Revised Code, rules, or federal law, the trust 2496
shall not be counted as such. 2497

(g) If an applicant or recipient presents a final judgment 2498
from a court demonstrating that the applicant or recipient was 2499
unsuccessful in a civil action against the trustee to compel 2500
payments from the trust, the trust shall not be counted as a 2501
resource available to the applicant or recipient. 2502

(h) If an applicant or recipient presents a final judgment 2503
from a court demonstrating that in a civil action against the 2504
trustee the applicant or recipient was only able to compel 2505
limited or periodic payments, the trust shall not be counted as 2506
a resource available to the applicant or recipient and payments 2507
shall be treated in accordance with rules adopted under section 2508
5163.02 of the Revised Code governing income. 2509

(i) If an applicant or recipient provides written 2510
documentation showing that the cost of a civil action brought to 2511
compel payments from the trust would be cost prohibitive, the 2512
trust shall not be counted as a resource available to the 2513
applicant or recipient. 2514

(5) Any actual payments to the applicant or recipient from 2515
a trust that meet the requirements of division (G) (1) of this 2516
section, including trusts that are not counted as a resource 2517
available to the applicant or recipient, shall be treated as 2518
provided in rules adopted under section 5163.02 of the Revised 2519
Code governing income. Payments to any person other than the 2520

applicant or recipient shall not be considered income to the 2521
applicant or recipient. Payments from the trust to a person 2522
other than the applicant or recipient shall not be considered an 2523
improper disposition of assets. 2524

Sec. 5802.03. ~~The~~ (A) Except as otherwise provided in 2525
division (B) of this section, the probate division of the court 2526
of common pleas has concurrent jurisdiction with, and the same 2527
powers at law and in equity as, the general division of the 2528
court of common pleas to issue writs and orders and to hear and 2529
determine any action that involves an inter vivos trust. 2530

(B) The probate division of the court of common pleas has 2531
exclusive jurisdiction to render declaratory judgments under 2532
Chapter 5817. of the Revised Code. However, the probate division 2533
of the court of common pleas may transfer a declaratory judgment 2534
proceeding under that chapter to the general division of the 2535
court of common pleas pursuant to division (A) of section 2536
5817.04 of the Revised Code. 2537

Sec. 5802.05. (A) A provision in the terms of a trust, 2538
excluding a testamentary trust, that requires the arbitration of 2539
disputes, other than disputes of the validity of all or a part 2540
of a trust instrument, between or among the beneficiaries and a 2541
fiduciary under the trust, or a combination of those persons or 2542
entities, is enforceable. 2543

(B) Unless otherwise specified in the terms of the trust, 2544
a trust provision requiring arbitration as described in division 2545
(A) of this section shall be presumed to require binding 2546
arbitration under Chapter 2711. of the Revised Code. 2547

Sec. 5806.04. (A) Any ~~Subject to division (E) of this~~ 2548
section, any of the following actions pertaining to a revocable 2549

trust that is made irrevocable by the death of the settlor of 2550
the trust shall be commenced by the earlier of the date that is 2551
two years after the date of the death of the settlor of the 2552
trust or that is six months from the date on which the trustee 2553
sends the person bringing the action a copy of the trust 2554
instrument and a notice informing the person of the trust's 2555
existence, of the trustee's name and address, and of the time 2556
allowed under this division for commencing an action: 2557

(1) An action to contest the validity of the trust; 2558

(2) An action to contest the validity of any amendment to 2559
the trust that was made during the lifetime of the settlor of 2560
the trust; 2561

(3) An action to contest the revocation of the trust 2562
during the lifetime of the settlor of the trust; 2563

(4) An action to contest the validity of any transfer made 2564
to the trust during the lifetime of the settlor of the trust. 2565

(B) Upon the death of the settlor of a revocable trust 2566
that was made irrevocable by the death of the settlor, the 2567
trustee, without liability, may proceed to distribute the trust 2568
property in accordance with the terms of the trust unless either 2569
of the following applies: 2570

(1) The trustee has actual knowledge of a pending action 2571
to contest the validity of the trust, any amendment to the 2572
trust, the revocation of the trust, or any transfer made to the 2573
trust during the lifetime of the settlor of the trust. 2574

(2) The trustee receives written notification from a 2575
potential contestant of a potential action to contest the 2576
validity of the trust, any amendment to the trust, the 2577
revocation of the trust, or any transfer made to the trust 2578

during the lifetime of the settlor of the trust, and the action 2579
is actually filed within ninety days after the written 2580
notification was given to the trustee. 2581

(C) If a distribution of trust property is made pursuant 2582
to division (B) of this section, a beneficiary of the trust 2583
shall return any distribution to the extent that it exceeds the 2584
distribution to which the beneficiary is entitled if the trust, 2585
an amendment to the trust, or a transfer made to the trust later 2586
is determined to be invalid. 2587

(D) This section applies only to revocable trusts that are 2588
made irrevocable by the death of the settlor of the trust if the 2589
grantor dies on or after July 23, 2002. 2590

(E) Except as otherwise provided in this division, no 2591
person may contest the validity of any trust as to facts decided 2592
if the trust was submitted to a probate court by the settlor 2593
during the settlor's lifetime and declared valid by the judgment 2594
of a court pursuant to division (B)(1) of section 5817.10 of the 2595
Revised Code. A person may contest the validity of that trust as 2596
to those facts if the person is one who should have been named a 2597
party defendant in the action in which the trust was declared 2598
valid, pursuant to division (A) of section 5817.06 of the 2599
Revised Code, and if the person was not named a defendant and 2600
properly served in that action. 2601

Sec. 5808.19. (A) As used in this section, unless 2602
otherwise provided in any other provision in this section: 2603

(1) "Beneficiary" means the beneficiary of a future 2604
interest and includes a class member if the future interest is 2605
in the form of a class gift. 2606

(2) "Class member" means an individual who fails to 2607

survive the distribution date by at least one hundred twenty 2608
hours but who would have taken under a future interest in the 2609
form of a class gift had the individual survived the 2610
distribution date by at least one hundred twenty hours. 2611

(3) "Descendant of a grandparent of the transferor" means 2612
an individual who would qualify as a descendant of a grandparent 2613
of the transferor under the rules of construction that would 2614
apply to a class gift under the transferor's will to the 2615
descendants of the transferor's grandparent. 2616

(4) "Distribution date," with respect to a future 2617
interest, means the time when the future interest is to take 2618
effect in possession or enjoyment. The distribution date need 2619
not occur at the beginning or end of a calendar day but may 2620
occur at a time during the course of a day. 2621

(5) "Future interest" means an alternative future interest 2622
or a future interest in the form of a class gift. 2623

(6) "Future interest under the terms of a trust" means a 2624
future interest that was created by a transfer creating a trust 2625
or a transfer to an existing trust, or by an exercise of a power 2626
of appointment to an existing trust, that directs the 2627
continuance of an existing trust, designates a beneficiary of an 2628
existing trust, or creates a trust. 2629

(7) "Per stirpes" means that the shares of the descendants 2630
of a beneficiary who does not survive the distribution date by 2631
at least one hundred twenty hours are determined in the same way 2632
they would have been determined under division (A) of section 2633
2105.06 of the Revised Code if the beneficiary had died 2634
intestate and unmarried on the distribution date. 2635

(8) "Revocable trust" means a trust that was revocable 2636

immediately before the settlor's death by the settlor alone or 2637
by the settlor with the consent of any person other than a 2638
person holding an adverse interest. A trust's characterization 2639
as revocable is not affected by the settlor's lack of capacity 2640
to exercise the power of revocation, regardless of whether an 2641
agent of the settlor under a power of attorney, or a guardian of 2642
the person or estate of the settlor, was serving. 2643

(9) "Stepchild" means a child of the surviving, deceased, 2644
or former spouse of the transferor and not of the transferor. 2645

(10) "Transferor" means any of the following: 2646

(a) The donor and donee of a power of appointment, if the 2647
future interest was in property as a result of the exercise of a 2648
power of appointment; 2649

(b) The testator, if the future interest was devised by 2650
will; 2651

(c) The settlor, if the future interest was conveyed by 2652
inter vivos trust. 2653

(B) (1) (a) As used in "surviving descendants" in divisions 2654
(B) (2) (b) (i) and (ii) of this section, "descendants" means the 2655
descendants of a deceased beneficiary or class member who would 2656
take under a class gift created in the trust. 2657

(b) As used in divisions (B) (2) (b) (i) and (ii) of this 2658
section, "surviving beneficiaries" or "surviving descendants" 2659
means beneficiaries or descendants, whichever is applicable, who 2660
survive the distribution date by at least one hundred twenty 2661
hours. 2662

(2) Unless a contrary intent appears in the instrument 2663
creating a future interest under the terms of a trust, each of 2664

the following applies: 2665

(a) A future interest under the terms of a trust is 2666
contingent on the beneficiary's surviving the distribution date 2667
by at least one hundred twenty hours. 2668

(b) If a beneficiary of a future interest under the terms 2669
of a trust does not survive the distribution date by at least 2670
one hundred twenty hours and if the beneficiary is a grandparent 2671
of the transferor, a descendant of a grandparent of the 2672
transferor, or a stepchild of the transferor, either of the 2673
following applies: 2674

(i) If the future interest is not in the form of a class 2675
gift and the deceased beneficiary leaves surviving descendants, 2676
a substitute gift is created in the beneficiary's surviving 2677
descendants. The surviving descendants take, per stirpes, the 2678
property to which the beneficiary would have been entitled had 2679
the beneficiary survived the distribution date by at least one 2680
hundred twenty hours. 2681

(ii) If the future interest is in the form of a class 2682
gift, other than a future interest to "issue," "descendants," 2683
"heirs of the body," "heirs," "next of kin," "relatives," or 2684
"family," or a class described by language of similar import 2685
that includes more than one generation, a substitute gift is 2686
created in the surviving descendants of the deceased beneficiary 2687
or beneficiaries. The property to which the beneficiaries would 2688
have been entitled had all of them survived the distribution 2689
date by at least one hundred twenty hours passes to the 2690
surviving beneficiaries and the surviving descendants of the 2691
deceased beneficiaries. Each surviving beneficiary takes the 2692
share to which the surviving beneficiary would have been 2693
entitled had the deceased beneficiaries survived the 2694

distribution date by at least one hundred twenty hours. Each 2695
deceased beneficiary's surviving descendants who are substituted 2696
for the deceased beneficiary take, per stirpes, the share to 2697
which the deceased beneficiary would have been entitled had the 2698
deceased beneficiary survived the distribution date by at least 2699
one hundred twenty hours. For purposes of division (B) (2) (b) (ii) 2700
of this section, "deceased beneficiary" means a class member who 2701
failed to survive the distribution date by at least one hundred 2702
twenty hours and left one or more surviving descendants. 2703

(C) For purposes of this section, each of the following 2704
applies: 2705

(1) Describing a class of beneficiaries as "surviving" or 2706
"living," without specifying when the beneficiaries must be 2707
surviving or living, such as a gift "for my spouse for life, 2708
then to my surviving (or living) children," is not, in the 2709
absence of other language in the trust instrument or other 2710
evidence to the contrary, a sufficient indication of an intent 2711
to negate the application of division (B) (2) (b) of this section. 2712

(2) Subject to division (C) (1) of this section, attaching 2713
words of survivorship to a future interest under the terms of a 2714
trust, such as "for my spouse for life, then to my children who 2715
survive my spouse" or "for my spouse for life, then to my then- 2716
living children" is, in the absence of other language in the 2717
trust instrument or other evidence to the contrary, a sufficient 2718
indication of an intent to negate the application of division 2719
(B) (2) (b) of this section. Words of survivorship under division 2720
(C) (2) of this section include words of survivorship that relate 2721
to the distribution date or to an earlier or an unspecified 2722
time, whether those words of survivorship are expressed as 2723
condition-precedent, condition-subsequent, or in any other form. 2724

(3) A residuary clause in a will is not a sufficient 2725
indication of an intent that is contrary to the application of 2726
this section, whether or not the will specifically provides that 2727
lapsed or failed devises are to pass under the residuary clause. 2728
A residuary clause in a revocable trust instrument is not a 2729
sufficient indication of an intent that is contrary to the 2730
application of this section unless the distribution date is the 2731
date of the settlor's death and the revocable trust instrument 2732
specifically provides that upon lapse or failure the 2733
nonresiduary devise, or nonresiduary devises in general, pass 2734
under the residuary clause. 2735

(D) If, after the application of divisions (B) and (C) of 2736
this section there is no surviving taker of the property, and a 2737
contrary intent does not appear in the instrument creating the 2738
future interest, the property passes in the following order: 2739

(1) If the future interest was created by the exercise of 2740
a power of appointment, the property passes under the donor's 2741
gift-in-default clause, if any, which clause is treated as 2742
creating a future interest under the terms of a trust. 2743

(2) If no taker is produced under division (D) (1) of this 2744
section and the trust was created in a nonresiduary devise in 2745
the transferor's will or in a codicil to the transferor's will, 2746
the property passes under the residuary clause in the 2747
transferor's will. For purposes of division (D) (2) of this 2748
section, the residuary clause is treated as creating a future 2749
interest under the terms of a trust. 2750

(3) If no taker is produced under divisions (D) (1) and (2) 2751
of this section, the transferor is deceased, and the trust was 2752
created in a nonresiduary gift under the terms of a revocable 2753
trust of the transferor, the property passes under the residuary 2754

clause in the transferor's revocable trust instrument. For 2755
purposes of division (D) (3) of this section, the residuary 2756
clause in the transferor's revocable trust instrument is treated 2757
as creating a future interest under the terms of a trust. 2758

(4) If no taker is produced under divisions (D) (1), (2), 2759
and (3) of this section, the property passes to those persons 2760
who would succeed to the transferor's intestate estate and in 2761
the shares as provided in the intestate succession law of the 2762
transferor's domicile if the transferor died on the distribution 2763
date. Notwithstanding division (A) (10) of this section, for 2764
purposes of division (D) (4) of this section, if the future 2765
interest was created by the exercise of a power of appointment, 2766
"transferor" means the donor if the power is a nongeneral power, 2767
or the donee if the power is a general power. 2768

(E) This section applies to all trusts that become 2769
irrevocable on or after ~~the effective date of this section~~ March 2770
22, 2012. This section does not apply to any trust that was 2771
irrevocable before ~~the effective date of this section~~ March 22, 2772
2012, even if property was added to the trust on or after ~~that~~ 2773
~~effective date~~ March 22, 2012. 2774

Sec. 5815.16. (A) Absent an express agreement to the 2775
contrary, an attorney who performs legal services for a 2776
fiduciary, by reason of the attorney performing those legal 2777
services for the fiduciary, has no duty or obligation in 2778
contract, tort, or otherwise to any third party to whom the 2779
fiduciary owes fiduciary obligations. 2780

(B) Any communication between an attorney and a client who 2781
is acting as a fiduciary is privileged and protected from 2782
disclosure to third parties to whom the fiduciary owes fiduciary 2783
duties to the same extent as if the client was not acting as a 2784

<u>fiduciary.</u>	2785
(C) As used in this section, "fiduciary" means a trustee under an express trust or an executor or administrator of a decedent's estate.	2786 2787 2788
<u>Sec. 5817.01. As used in this chapter:</u>	2789
(A) (1) <u>"Beneficiary under a trust" means either of the following:</u>	2790 2791
(a) <u>Any person that has a present or future beneficial interest in a trust, whether vested or contingent;</u>	2792 2793
(b) <u>Any person that, in a capacity other than that of trustee, holds a power of appointment over trust property, but does not include the class of permitted appointees among whom the power holder may appoint.</u>	2794 2795 2796 2797
(2) <u>"Beneficiary under a trust" includes a charitable organization that is expressly designated in the terms of the trust to receive distributions, but does not include any charitable organization that is not expressly designated in the terms of the trust to receive distributions, but to whom the trustee may in its discretion make distributions.</u>	2798 2799 2800 2801 2802 2803
(B) (1) <u>"Beneficiary under a will" means either of the following:</u>	2804 2805
(a) <u>Any person designated in a will to receive a testamentary disposition of real or personal property;</u>	2806 2807
(b) <u>Any person that, in a capacity other than that of executor, holds a power of appointment over estate assets, but does not include the class of permitted appointees among whom the power holder may appoint.</u>	2808 2809 2810 2811

(2) "Beneficiary under a will" includes a charitable organization that is expressly designated in the terms of the will to receive testamentary distributions, but does not include any charitable organization that is not expressly designated in the terms of the will to receive distributions, but to whom the executor may in its discretion make distributions. 2812
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(C) "Court" means the probate court of the county in which the complaint under section 5817.02 or 5817.03 of the Revised Code is filed or the general division of the court of common pleas to which the probate court transfers the proceeding under division (A) of section 5817.04 of the Revised Code. 2818
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(D) "Related trust" means a trust for which both of the following apply: 2823
2824

(1) The testator is the settlor of the trust. 2825

(2) The trust is named as a beneficiary in the will in accordance with section 2107.63 of the Revised Code. 2826
2827

(E) "Related will" means a will for which both of the following apply: 2828
2829

(1) The testator is the settlor of a trust. 2830

(2) The will names the trust as a beneficiary in accordance with section 2107.63 of the Revised Code. 2831
2832

(F) "Trust" means an inter vivos revocable or irrevocable trust instrument to which, at the time the complaint for declaration of validity is filed under section 5817.03 of the Revised Code, either of the following applies: 2833
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(1) The settlor resides in, or is domiciled in, this state. 2837
2838

(2) The trust's principal place of administration is in 2839
this state. 2840

Sec. 5817.02. (A) A testator may file a complaint with the 2841
probate court to determine before the testator's death that the 2842
testator's will is a valid will subject only to subsequent 2843
revocation or modification of the will. The right to file a 2844
complaint for a determination of the validity of a testator's 2845
will under this chapter, or to voluntarily dismiss a complaint 2846
once filed, is personal to the testator and may not be exercised 2847
by the testator's guardian or an agent under the testator's 2848
power of attorney. 2849

(B) A testator who desires to obtain a validity 2850
determination as to the testator's will shall file a complaint 2851
to determine the validity of both the will and any related 2852
trust. 2853

(C) The failure of a testator to file a complaint for a 2854
judgment declaring the validity of a will shall not be construed 2855
as evidence or an admission that the will is not valid. 2856

(D) A complaint for a determination of the validity of a 2857
testator's will shall be accompanied by an express written 2858
waiver of the testator's physician-patient privilege provided in 2859
division (B) of section 2317.02 of the Revised Code. 2860

Sec. 5817.03. (A) A settlor may file a complaint with the 2861
probate court to determine before the settlor's death that the 2862
settlor's trust is valid and enforceable under its terms, 2863
subject only to a subsequent revocation or modification of the 2864
trust. The right to file a complaint for a determination of the 2865
validity of a settlor's trust under this chapter, or to 2866
voluntarily dismiss a complaint once filed, is personal to the 2867

settlor and may not be exercised by the settlor's guardian or an agent under the settlor's power of attorney. 2868
2869

(B) A settlor who desires to obtain a validity determination as to the settlor's trust shall file a complaint to determine the validity of both the trust and the related will. 2870
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(C) The failure of a settlor to file a complaint for a judgment declaring the validity of a trust shall not be construed as evidence or an admission that the trust is not valid. 2874
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(D) A complaint for a determination of the validity of a settlor's trust shall be accompanied by an express written waiver of the settlor's physician-patient privilege provided in division (B) of section 2317.02 of the Revised Code. 2878
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Sec. 5817.04. (A) A complaint to determine the validity of a will or a trust shall be filed with the probate court. The probate judge, upon the motion of a party or the judge's own motion, may transfer the proceeding to the general division of the court of common pleas. 2882
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(B) The venue for a complaint under section 5817.02 of the Revised Code is either of the following: 2887
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(1) The probate court of the county in this state where the testator is domiciled; 2889
2890

(2) If the testator is not domiciled in this state, the probate court of any county in this state where any real property or personal property of the testator is located or, if there is no such property, the probate court of any county in this state. 2891
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2895

<u>(C) The venue for a complaint under section 5817.03 of the</u>	2896
<u>Revised Code is either of the following:</u>	2897
<u>(1) The probate court of the county in this state where</u>	2898
<u>the settlor resides or is domiciled;</u>	2899
<u>(2) If the settlor does not reside or is not domiciled in</u>	2900
<u>this state, the probate court of the county in this state in</u>	2901
<u>which the trust's principal place of administration is located.</u>	2902
<u>Sec. 5817.05.</u> <u>(A) A complaint under section 5817.02 of the</u>	2903
<u>Revised Code shall name as party defendants all of the</u>	2904
<u>following, as applicable:</u>	2905
<u>(1) The testator's spouse;</u>	2906
<u>(2) The testator's children;</u>	2907
<u>(3) The testator's heirs who would take property pursuant</u>	2908
<u>to section 2105.06 of the Revised Code had the testator died</u>	2909
<u>intestate at the time the complaint is filed;</u>	2910
<u>(4) The testator's beneficiaries under the will;</u>	2911
<u>(5) Any beneficiary under the testator's most recent prior</u>	2912
<u>will.</u>	2913
<u>(B) A complaint under section 5817.02 of the Revised Code</u>	2914
<u>may name as a party defendant any other person that the testator</u>	2915
<u>believes may have a pecuniary interest in the determination of</u>	2916
<u>the validity of the testator's will.</u>	2917
<u>(C) A complaint under section 5817.02 of the Revised Code</u>	2918
<u>may contain all or any of the following:</u>	2919
<u>(1) A statement that a copy of the will has been filed</u>	2920
<u>with the court;</u>	2921
<u>(2) A statement that the will is in writing;</u>	2922

(3) A statement that the will was signed by the testator, 2923
or was signed in the testator's name by another person in the 2924
testator's conscious presence and at the testator's express 2925
direction; 2926

(4) A statement that the will was signed in the conscious 2927
presence of the testator by two or more competent individuals, 2928
each of whom either witnessed the testator sign the will, or 2929
heard the testator acknowledge signing the will; 2930

(5) A statement that the will was executed with the 2931
testator's testamentary intent; 2932

(6) A statement that the testator had testamentary 2933
capacity; 2934

(7) A statement that the testator executed the will free 2935
from undue influence, not under restraint or duress, and in the 2936
exercise of the testator's free will; 2937

(8) A statement that the execution of the will was not the 2938
result of fraud or mistake; 2939

(9) The names and addresses of the testator and all of the 2940
defendants and, if any of the defendants are minors, their ages; 2941

(10) A statement that the will has not been revoked or 2942
modified; 2943

(11) A statement that the testator is familiar with the 2944
contents of the will. 2945

Sec. 5817.06. (A) A complaint under section 5817.03 of the 2946
Revised Code shall name as party defendants the following, as 2947
applicable: 2948

(1) The settlor's spouse; 2949

<u>(2) The settlor's children;</u>	2950
<u>(3) The settlor's heirs who would take property pursuant to section 2105.06 of the Revised Code had the settlor died intestate at the time the complaint is filed;</u>	2951 2952 2953
<u>(4) The trustee or trustees under the trust;</u>	2954
<u>(5) The beneficiaries under the trust;</u>	2955
<u>(6) If the trust amends, amends and restates, or replaces a prior trust, any beneficiary under the settlor's most recent prior trust.</u>	2956 2957 2958
<u>(B) A complaint under section 5817.03 of the Revised Code may name as a party defendant any other person that the settlor believes may have a pecuniary interest in the determination of the validity of the settlor's trust.</u>	2959 2960 2961 2962
<u>(C) A complaint under section 5817.03 of the Revised Code may contain all or any of the following:</u>	2963 2964
<u>(1) A statement that a copy of the trust has been filed with the court;</u>	2965 2966
<u>(2) A statement that the trust is in writing and was signed by the settlor;</u>	2967 2968
<u>(3) A statement that the trust was executed with the intent to create a trust;</u>	2969 2970
<u>(4) A statement that the settlor had the legal capacity to enter into and establish the trust;</u>	2971 2972
<u>(5) A statement that the trust has a definite beneficiary or is one of the following:</u>	2973 2974
<u>(a) A charitable trust;</u>	2975

<u>(b) A trust for the care of an animal as provided in</u>	2976
<u>section 5804.08 of the Revised Code;</u>	2977
<u>(c) A trust for a noncharitable purpose as provided in</u>	2978
<u>section 5804.09 of the Revised Code.</u>	2979
<u>(6) A statement that the trustee of the trust has duties</u>	2980
<u>to perform;</u>	2981
<u>(7) A statement that the same person is not the sole</u>	2982
<u>trustee and sole beneficiary of the trust;</u>	2983
<u>(8) A statement that the settlor executed the trust free</u>	2984
<u>from undue influence, not under restraint or duress, and in the</u>	2985
<u>exercise of the settlor's free will;</u>	2986
<u>(9) A statement that execution of the trust was not the</u>	2987
<u>result of fraud or mistake;</u>	2988
<u>(10) The names and addresses of the settlor and all of the</u>	2989
<u>defendants and, if any of the defendants are minors, their ages;</u>	2990
<u>(11) A statement that the trust has not been revoked or</u>	2991
<u>modified;</u>	2992
<u>(12) A statement that the settlor is familiar with the</u>	2993
<u>contents of the trust.</u>	2994
<u>Sec. 5817.07. (A) Service of process, with a copy of the</u>	2995
<u>complaint and the will, and a copy of the related trust, if</u>	2996
<u>applicable, shall be made on every party defendant named in the</u>	2997
<u>complaint filed under section 5817.02 of the Revised Code, as</u>	2998
<u>provided in the applicable Rules of Civil Procedure.</u>	2999
<u>(B) Service of process, with a copy of the complaint and</u>	3000
<u>the trust, and a copy of the related will, if applicable, shall</u>	3001
<u>be made on every party defendant named in the complaint filed</u>	3002

under section 5817.03 of the Revised Code, as provided in the 3003
applicable Rules of Civil Procedure. 3004

Sec. 5817.08. (A) After a complaint is filed under section 3005
5817.02 or 5817.03 of the Revised Code, the court shall fix a 3006
time and place for a hearing. 3007

(B) Notice of the hearing shall be given to the testator 3008
or settlor, as applicable, and to all party defendants, as 3009
provided in the applicable Rules of Civil Procedure. 3010

(C) The hearing shall be adversarial in nature and shall 3011
be conducted pursuant to sections 2101.31 and 2721.10 of the 3012
Revised Code, except as otherwise provided in this chapter. 3013

Sec. 5817.09. (A) The testator or settlor has the burden 3014
of establishing prima facie proof of the execution of the will 3015
or trust, as applicable. A person who opposes the complaint has 3016
the burden of establishing one or more of the following: 3017

(1) The lack of testamentary intent or the intent to 3018
create a trust, as the case may be; 3019

(2) The lack of the testator's testamentary capacity, or 3020
the settlor's legal capacity to enter into and establish the 3021
trust; 3022

(3) Undue influence, restraint, or duress on the testator 3023
or settlor; 3024

(4) Fraud or mistake in the execution of the will or 3025
trust; 3026

(5) Revocation of the will or trust. 3027

(B) A party to the proceeding has the ultimate burden of 3028
persuasion as to the matters for which the party has the initial 3029

burden of proof. 3030

Sec. 5817.10. (A) (1) The court shall declare the will 3031
valid if it finds all of the following: 3032

(a) The will was properly executed pursuant to section 3033
2107.03 of the Revised Code or under any prior law of this state 3034
that was in effect at the time of execution. 3035

(b) The testator had the requisite testamentary capacity, 3036
was free from undue influence, and was not under restraint or 3037
duress. 3038

(c) The execution of the will was not the result of fraud 3039
or mistake. 3040

(2) After the testator's death, unless the will is 3041
modified or revoked after the court's declaration under division 3042
(A) (1) of this section, the will has full legal effect as the 3043
instrument of the disposition of the testator's estate and shall 3044
be admitted to probate upon request. 3045

(B) (1) The court shall declare the trust valid if it finds 3046
all of the following: 3047

(a) The trust meets the requirements of section 5804.02 of 3048
the Revised Code. 3049

(b) The settlor had the legal capacity to enter into and 3050
establish the trust, was free from undue influence, and was not 3051
under restraint or duress. 3052

(c) The execution of the trust was not the result of fraud 3053
or mistake. 3054

(2) Unless the trust is modified or revoked after the 3055
court's declaration, the trust has full legal effect. 3056

(C) The court may, if it finds the will or trust to be 3057
valid, attach a copy of the valid document to the court's 3058
judgment entry, but failure to do so shall not affect the 3059
determination of validity of the will or trust. 3060

Sec. 5817.11. (A) Unless the will or trust is modified or 3061
revoked, and except as otherwise provided in this section, no 3062
person may contest the validity of a will or trust that is 3063
declared valid in a proceeding pursuant to this chapter. 3064

(B) The failure to name a necessary defendant under 3065
division (A) of section 5817.05 of the Revised Code is not 3066
jurisdictional. A declaration of a will's validity under this 3067
chapter shall be binding upon all defendants who were named or 3068
represented, and properly served pursuant to division (A) of 3069
section 5817.07 of the Revised Code, notwithstanding the failure 3070
to name a necessary defendant. However, if a person is one who 3071
should have been named a party defendant in the action in which 3072
the will was declared valid and if the person was not named a 3073
defendant and properly served in that action, that person, after 3074
the testator's death, may contest the validity of a will 3075
declared valid. 3076

(C) The failure to name a necessary defendant under 3077
division (A) of section 5817.06 of the Revised Code is not 3078
jurisdictional. A declaration of a trust's validity under this 3079
chapter shall be binding upon all defendants who were named or 3080
represented, and properly served pursuant to division (B) of 3081
section 5817.07 of the Revised Code, notwithstanding the failure 3082
to name a necessary defendant. However, if a person is one who 3083
should have been named a party defendant in the action in which 3084
the trust was declared valid and if the person was not named a 3085
defendant and properly served in that action, that person may 3086

contest the validity of a trust declared valid. 3087

(D) In determining whether a person was a party defendant 3088
and properly served in an action to declare a will or trust 3089
valid under this chapter, the representation rules of Chapter 3090
5803. of the Revised Code shall be applied, and a person 3091
represented in the action under those rules is bound by the 3092
declaration of validity even if, by the time of the testator's 3093
death, or the challenge to the trust, the representing person 3094
has died or would no longer be able to represent the person to 3095
be represented in the proceeding under this chapter. 3096

Sec. 5817.12. (A) After a declaration of a will's validity 3097
under division (A) (1) of section 5817.10 of the Revised Code, 3098
the will may be modified by a later will or codicil executed 3099
according to the laws of this state or another state, and the 3100
will may be revoked under section 2107.33 of the Revised Code or 3101
other applicable law. 3102

(B) The revocation by a later will, or other document 3103
under section 2107.33 of the Revised Code, of a will that has 3104
been declared valid under division (A) (1) of section 5817.10 of 3105
the Revised Code does not affect the will or the prior 3106
declaration of its validity if the later will or other document 3107
is found by a court of competent jurisdiction to be invalid due 3108
to the testator's lack of testamentary capacity, or undue 3109
influence, restraint, or duress on the testator, or otherwise. 3110

(C) The amendment by a later codicil of a will that has 3111
been declared valid under division (A) (1) of section 5817.10 of 3112
the Revised Code does not affect the will or the prior 3113
declaration of its validity except as provided by the codicil. 3114
However, the codicil is not considered validated under this 3115
chapter unless its validity is also declared as provided in this 3116

chapter. 3117

Sec. 5817.13. (A) After a declaration of a trust's 3118
validity under division (B)(1) of section 5817.10 of the Revised 3119
Code, the trust may be modified, terminated, revoked, or 3120
reformed under sections 5804.10 to 5804.16 of the Revised Code, 3121
or other applicable law. 3122

(B) The modification, termination, revocation, or 3123
reformation by a new trust or other document of a trust that has 3124
been declared valid under division (B)(1) of section 5817.10 of 3125
the Revised Code does not affect the trust or the prior 3126
declaration of its validity if the later trust or other document 3127
is found by a court of competent jurisdiction to be invalid due 3128
to the settlor's lack of capacity, or undue influence, 3129
restraint, or duress on the settlor, or otherwise. 3130

(C) An amendment of a trust that has been declared valid 3131
under division (B)(1) of section 5817.10 of the Revised Code 3132
does not affect the trust or the prior declaration of its 3133
validity except as provided by the amendment. However, the 3134
amendment is not considered validated under this chapter unless 3135
its validity is also declared as provided in this chapter. 3136

Sec. 5817.14. (A) The finding of facts by a court in a 3137
proceeding brought under this chapter is not admissible as 3138
evidence in any proceeding other than a proceeding brought to 3139
determine the validity of a will or trust. 3140

(B) The determination or judgment rendered in a proceeding 3141
under this chapter is not binding upon the parties to that 3142
proceeding in any action that is not brought to determine the 3143
validity of a will or trust. 3144

(C) The failure of a testator to file a complaint for a 3145

judgment declaring the validity of a will that the testator has 3146
executed is not admissible as evidence in any proceeding to 3147
determine the validity of that will or any other will executed 3148
by the testator. 3149

(D) The failure of a settlor to file a complaint for a 3150
judgment declaring the validity of a trust that the settlor has 3151
executed is not admissible as evidence in any proceeding to 3152
determine the validity of that trust or any other trust executed 3153
by the settlor. 3154

Section 2. That existing sections 313.14, 1901.26, 3155
1907.24, 2101.24, 2105.19, 2107.01, 2107.05, 2107.07, 2107.08, 3156
2107.09, 2107.10, 2107.11, 2107.12, 2107.16, 2107.18, 2107.20, 3157
2107.22, 2107.33, 2107.52, 2107.71, 2109.41, 2129.05, 2137.01, 3158
2323.30, 2323.31, 2323.33, 2701.09, 2721.03, 3105.011, 3109.06, 3159
4705.09, 5163.21, 5802.03, 5806.04, 5808.19, and 5815.16 and 3160
sections 2107.081, 2107.082, 2107.083, 2107.084, and 2107.085 of 3161
the Revised Code are hereby repealed. 3162

Section 3. This act's amendment of section 2107.05 of the 3163
Revised Code is intended to abrogate the holdings of the Ohio 3164
Supreme Court in *Hageman v. Cleveland Trust Company*, 45 Ohio 3165
St.2d 178 (1976) and the Ohio Second District Court of Appeals 3166
in *Gehrke v. Senkiw*, 2016 Ohio 2657 (2016). 3167

Section 4. Section 2101.24 of the Revised Code is 3168
presented in this act as a composite of the section as amended 3169
by both Sub. S.B. 23 of the 130th General Assembly and Sub. H.B. 3170
158 of the 131st General Assembly. The General Assembly, 3171
applying the principle stated in division (B) of section 1.52 of 3172
the Revised Code that amendments are to be harmonized if 3173
reasonably capable of simultaneous operation, finds that the 3174
composite is the resulting version of the section in effect 3175

prior to the effective date of the section as presented in this
act.

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