(122nd General Assembly)
(Substitute House Bill Number 701)

AN ACT

To amend sections 1111.13, 1339.60, 2109.37, 2109.371, 2131.08, and 2131.09; to amend, for purposes of adopting a new section number as indicated in parentheses, section 1339.60 (1339.68); and to enact new section 1339.60 and sections 1339.18, 1339.52, 1339.53, 1339.54, 1339.55, 1339.56, 1339.57, 1339.58, 1339.59, and 1339.61 of the Revised Code to adopt the Uniform Prudent Investor Act of the National Conference of Commissioners on Uniform State Laws; to require a disclosure of relationship, at least annually by account statement, when a fiduciary makes an investment of trust funds in securities of an affiliated investment company; to specify that absent an express agreement, attorneys of certain fiduciaries have no duty to persons to whom the fiduciary has a fiduciary obligation; and to provide that the rule against perpetuities does not apply to certain trusts or trust assets.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1111.13, 1339.60, 2109.37, 2109.371, 2131.08, and 2131.09 be amended, section 1339.60 (1339.68) be amended for the purpose of adopting a new section number as indicated in parentheses, and new section 1339.60 and sections 1339.18, 1339.52, 1339.53, 1339.54, 1339.55, 1339.56, 1339.57, 1339.58, 1339.59, and 1339.61 of the Revised Code be enacted to read as follows:

Sec. 1111.13. (A)(1) Except as provided in divisions (A)(2) and (G) of this section or as otherwise provided by the instrument creating the trust, a trust company acting as fiduciary under any instrument and having funds of the trust which are to be invested may, in addition to any other investments authorized to a trust company by law, invest them in any of the following:

(a) Forms of investments enumerated or described in, or made eligible for investment by, sections 1339.44, 1339.52 to 1339.61, 2109.37, 2109.371, and 2109.372 of the Revised Code, including, but not limited to, securities, stocks, bonds, or certificates of deposit issued by the trust company or any bank owned or controlled by the bank holding company that owns or controls the trust company. Investment authority granted under division (A)(1)(a) of this section is subject to the limitations on investments specified in division (B) of section 2109.371 of the Revised Code.

(b) Any collective investment fund established and maintained by the trust company or by an affiliate of the trust company;

(c) The securities of any investment company, including any affiliated investment company, whether or not the trust company has invested other funds held by it in an agency or other nonfiduciary capacity in the securities of the same investment company or affiliated investment company.

(2) A trust company acting as fiduciary may not invest its trust funds in stock issued by the fiduciary itself except under one of the following circumstances:

(a) In the case of a testamentary instrument, when expressly permitted by the instrument creating the relationship and authorized by court order;

(b) In the case of an inter vivos instrument, when expressly permitted by the instrument or authorized by court order and in either case, only when directed to purchase or invest in the stock by a cofiduciary or other person other than the trust company who has the right under the terms of the instrument to direct the investment;

(c) When exercising rights to purchase its own stock or to purchase or convert securities convertible into its own stock if the rights were offered pro rata to the shareholders;

(d) To complement fractional shares acquired when the exercise of rights or receipt of a stock dividend results in fractional shareholdings.

(3) If the law or the instrument creating a trust expressly permits investment in direct obligations of the United States or an agency or instrumentality of the United States, unless expressly prohibited by the instrument, a trust company also may invest in no front end load money market mutual funds consisting exclusively of obligations of the United States or an agency or instrumentality of the United States and in repurchase agreements, including those issued by the trust company itself, secured by obligations of the United States or an agency or instrumentality of the United States, or in securities of other no load money market mutual funds whose portfolios are similarly restricted; and in collective investment funds established in accordance with section 1111.14 of the Revised Code or by an

affiliate of the trust company and consisting exclusively of any direct obligations of the United States or an agency or instrumentality of the United States, notwithstanding division (A)(1)(c) of that section.

(B) A trust company acting in any fiduciary capacity or under any instrument has the right to retain any part of the trust or estate it receives, whether from the creator of the trust or the estate, at its inception or by later addition, or by addition by any other person who is authorized to make additions to the trust or estate, and any investments the trust company makes.

(C) Except as otherwise expressly provided by the instrument creating the fiduciary relationship, any trust company may exercise all voting, consenting, and dissenting rights, including the right to vote for the election of directors, pertaining to stocks, bonds, or other securities held by it in any fiduciary capacity, including rights pertaining to stocks, bonds, or other securities issued by the trust company in its individual corporate capacity and held by it in any fiduciary capacity, provided:

(1) In the case of any fiduciary relationship created prior to January 1, 1968, voting rights pertaining to any shares of a trust company's own stock held by it in a fiduciary relationship, if exercised, shall be exercised with respect to the election of directors, only in accordance with any provisions of law applicable to that election and without regard to the first paragraph of division (C) and divisions (C)(2)(a), (b), and (c) of this section, and those portions of division (C) of this section shall not be construed to be determinative of the voting rights or to be declaratory of a public policy with respect to the voting rights.

(2) In the case of any fiduciary relationship created on or after January 1, 1968, voting rights pertaining to any shares of a trust company's own stock held by it in a fiduciary relationship shall be exercised by it with respect to the election of directors, only if and as directed in writing by any person described in division (C)(2)(a), (b), or (c) of this section, provided that the person may not be the trust company, or a director, officer, or employee of the trust company except as to fiduciary relationships in which the director, officer, or employee is a settlor or beneficiary, or a nominee, agent, attorney, or subsidiary of the trust company:

(a) Any person, including a settlor or beneficiary, who has the right under the terms of the instrument under which shares are held to determine the manner in which shares shall be voted, or if there is no such person;

(b) Any person acting as cofiduciary under the instrument under which such shares are held, or if there is no such person;

(c) Any person, having the right of revocation or amendment of the

instrument under which the shares are held.

(D) If there is more than one person having power to direct voting under division (C)(2)(a), (b), or (c) of this section and they fail to agree, each person shall have the right to direct voting with respect to the election of directors as to an equal number of shares.

(E) As used in this section:

(1) "Affiliated investment company" means any investment company that is any of the following:

(a) Sponsored by the trust company that is acting as fiduciary or by a trust company, bank, bank subsidiary corporation, or other corporation owned or controlled by the bank holding company that owns or controls the trust company that is acting as fiduciary;

(b) The result of any agreement with a trust company, bank, bank subsidiary corporation, or other corporation owned or controlled by the bank holding company that owns or controls the trust company that is acting as fiduciary;

(c) Established exclusively for the customers or accounts of the trust company that is acting as fiduciary or of a trust company, bank, bank subsidiary corporation, or other corporation owned or controlled by the bank holding company that owns or controls the trust company that is acting as fiduciary;

(d) Provided with investment advisory, brokerage, transfer agency, registrar, management, shareholder servicing, custodian, or any related services by the trust company that is acting as fiduciary or by a trust company, bank, bank subsidiary corporation, or other corporation owned or controlled by the bank holding company that owns or controls the trust company that is acting as fiduciary.

(2) "Cofiduciary" includes, but is not limited to, a cotrustee, coexecutor, coadministrator, coguardian, co-agent, and any person who, under the terms of the instrument creating the fiduciary relationship, has the right or power to direct, approve or consent to, or be consulted with respect to, the making, retention, or sale of investments under the instrument.

(3) "Instrument" includes, but is not limited to, any will, declaration of trust, agreement of trust, agency, or custodianship, or court order creating a fiduciary relationship.

(4) "Reasonable fee" means compensation or payment, the receipt of which would not constitute a breach of fiduciary duty under section 36 of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-35.

(F) Shares as to which the voting rights with respect to the election of directors may not be exercised under this section shall not be considered as

outstanding for the purpose of computing the voting power of the corporation or of its shares of any class with respect to the election of directors.

(G) This section does not authorize a trust company acting as a probate fiduciary to perform any act prohibited by section 2109.44 of the Revised Code, unless the act is authorized by the instrument creating the trust.

(H) A trust company making an investment of trust funds in an affiliated investment company, or a bank or other corporation owned or controlled by the bank holding company that owns or controls the trust company, may charge a reasonable fee for investment advisory, brokerage, transfer agency, registrar, management, shareholder servicing, custodian, or any related services provided to an affiliated investment company. The fee may be in addition to the compensation that the trust company is otherwise entitled to receive from the trust, provided that the fee is charged as a percentage of either asset value or income earned or actual amount charged and is disclosed at least annually by prospectus, account statement, or any other written means to all persons entitled to receive statements of account activity.

(I) A trust company making an investment of trust funds in the securities of an affiliated investment company pursuant to division (A)(1)(c) of this section shall, when providing any periodic account statements to the trust fund, report the net asset value of the shares comprising the investment of the trust fund in the affiliated investment company.

(J) If a trust company making an investment of trust funds in the securities of an affiliated investment company pursuant to division (A)(1)(c) of this section invests the funds in any mutual fund, the trust company shall disclose, in at least ten-point boldface type, by prospectus, account statement, or any other written means to all persons entitled to receive statements of account activity, that the mutual fund is not insured or guaranteed by the federal deposit insurance corporation or by any other government agency or government-sponsored agency of the federal government or of this state.

Sec. 1339.18. (A) Absent an express agreement to the contrary, an attorney who performs legal services for a fiduciary, by reason of the attorney performing those legal services for the fiduciary, has no duty or obligation in contract, tort, or otherwise to any third party to whom the fiduciary owes fiduciary obligations.

(B) As used in this section, "fiduciary" means a trustee under an express trust or an executor or administrator of a decedent's estate.

Sec. 1339.52. (A) As used in sections 1339.52 to 1339.61 of the Revised

Code, "trustee" means a trustee under any testamentary, inter vivos, or other trust.

(B) Except as provided in division (C) or (D) of this section, a trustee who invests and manages trust assets under sections 1339.52 to 1339.61 of the Revised Code owes a duty to the beneficiaries of the trust to comply with sections 1339.52 to 1339.61 of the Revised Code.

(C) Sections 1339.52 to 1339.61 of the Revised Code may be expanded, restricted, eliminated, or otherwise altered, without express reference to these sections by the instrument creating a trust.

(D) A trustee is not liable to a beneficiary of a trust to the extent the trustee acted in reasonable reliance on the provisions of the trust.

Sec. 1339.53. (A) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this requirement, the trustee shall exercise reasonable care, skill, and caution.

(B) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(C) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

(D) A trustee's investment and management decisions respecting individual trust assets shall not be evaluated in isolation but in the context of the trust portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(E) Among circumstances that a trustee shall consider in investing and managing trust assets are the following as are relevant to the trust or its beneficiaries:

(1) The general economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

Sec. 1339.54. (A) A trustee May invest in any kind of property or type of investment provided that the investment is consistent with the requirements and standards of sections 1339.52 to 1339.61 of the Revised Code.

(B) A trustee shall diversify the investments of a trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Sec. 1339.55. (A) A TRUSTEE shall invest and manage the trust assets solely in the interest of the beneficiaries.

(B) If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets taking into account any differing interests of the beneficiaries.

Sec. 1339.56. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of trust assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and in order to comply with the requirements and standards of sections 1339.52 to 1339.61 of the Revised Code.

Sec. 1339.57. Except as otherwise permitted by law, in investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

Sec. 1339.58. Compliance with sections 1339.52 to 1339.61 of the Revised Code shall be determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Sec. 1339.59. (A) A trustee may delegate investment and management functions of a trust that a prudent trustee having comparable skills could properly delegate under the circumstances. In accordance with this division, a trustee shall exercise reasonable care, skill, and caution in doing all of the following:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation consistent with the purposes and terms of the trust;

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance with the terms of the delegation.

(B) In performing investment or management functions of a trust that are delegated to an agent, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(C) A trustee who complies with division (A) of this section is not liable

to the beneficiaries of the trust or to the trust for the decisions or actions of the agent to whom the function was delegated.

(D) by accepting the delegation of investment or management functions of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of this state.

Sec. 1339.60. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted by sections 1339.52 to 1339.61 Of the Revised Code: "investments permissible by law for investment of trust funds"; "legal investments"; "authorized investments"; "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds considering the probable income as well as the probable safety of their capital"; "prudent man rule"; "prudent trustee rule"; "prudent person rule"; and "prudent investor rule."

Sec. 1339.61. (A) Sections 1339.52 to 1339.61 of the Revised Code shall be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of these sections among the states enacting it. These sections may be cited as the "Ohio Uniform Prudent Investor Act."

(B) Sections 1339.52 to 1339.61 of the Revised Code apply to trusts existing on or created after the effective date of these sections. As applied to trusts existing on the effective date of these sections, sections 1339.52 to 1339.61 of the Revised Code govern only decisions or actions occurring after the effective date of these sections.

(C) The temporary investment of cash or funds pursuant to section 1339.44 or 2109.372 of the Revised Code shall be considered a prudent investment in compliance with sections 1339.52 to 1339.61 of the Revised Code.

Sec. ~~1339.60~~ 1339.68. (A) As used in this section:

(1) "Disclaimant" means any person, any guardian or personal representative of a person or estate of a person, or any attorney-in-fact or agent of a person having a general or specific authority to act granted in a written instrument, who is any of the following:

(a) With respect to testamentary instruments and intestate succession, an heir, next of kin, devisee, legatee, donee, person succeeding to a disclaimed interest, surviving joint tenant, surviving tenant by the entireties, surviving tenant of a tenancy with a right of survivorship, beneficiary under a testamentary instrument, or person designated to take pursuant to a power of

appointment exercised by a testamentary instrument;

(b) With respect to nontestamentary instruments, a grantee, donee, person succeeding to a disclaimed interest, surviving joint tenant, surviving tenant by the entireties, surviving tenant of a tenancy with a right of survivorship, beneficiary under a nontestamentary instrument, or person designated to take pursuant to a power of appointment exercised by a nontestamentary instrument;

(c) With respect to fiduciary rights, privileges, powers, and immunities, a fiduciary under a testamentary or nontestamentary instrument. This section does not authorize a fiduciary to disclaim the rights of beneficiaries unless the instrument creating the fiduciary relationship authorizes such a disclaimer.

(d) Any person entitled to take an interest in property upon the death of a person or upon the occurrence of any other event.

(2) "Property" means all forms of property, real and personal, tangible and intangible.

(B)(1) A disclaimant, other than a fiduciary under an instrument who is not authorized by the instrument to disclaim the interest of a beneficiary, may disclaim, in whole or in part, the succession to any property by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided in this section.

(2) A disclaimant who is a fiduciary under an instrument may disclaim, in whole or in part, any right, power, privilege, or immunity, by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided in this section.

(3) The written instrument of disclaimer shall be signed and acknowledged by the disclaimant and shall contain all of the following:

(a) A reference to the donative instrument;

(b) A description of the property, part of property, or interest disclaimed, and of any fiduciary right, power, privilege, or immunity disclaimed;

(c) A declaration of the disclaimer and its extent.

(4) The guardian of the estate of a minor or an incompetent, or the personal representative of a deceased person, with the consent of the probate division of the court of common pleas, may disclaim, in whole or in part, the succession to any property, or interest in property, that the ward, if an adult and competent, or the deceased, if living, might have disclaimed. The guardian or personal representative, or any interested person may file an application with the probate division of the court of common pleas that has jurisdiction of the estate, asking that the court order the guardian or personal

representative to execute and deliver, file, or record the disclaimer on behalf of the ward or estate. The court shall order the guardian or personal representative to execute and deliver, file, or record the disclaimer if the court finds, upon hearing after notice to interested parties and such other persons as the court shall direct, that:

(a) It is in the best interests of those interested in the estate of the person and of those who will take the disclaimed interest;

(b) It would not materially, adversely affect the minor or incompetent, or the beneficiaries of the estate of the decedent, taking into consideration other available resources and the age, probable life expectancy, physical and mental condition, and present and reasonably anticipated future needs of the minor or incompetent or the beneficiaries of the estate of the decedent.

A written instrument of disclaimer ordered by the court under this division shall be executed and be delivered, filed, or recorded within the time and in the manner in which the person could have disclaimed if ~~he~~ the person were living, an adult, and competent.

(C) A partial disclaimer of property that is subject to a burdensome interest created by the donative instrument is not effective unless the disclaimed property constitutes a gift that is separate and distinct from undisclaimed gifts.

(D) The disclaimant shall deliver, file, or record the disclaimer, or cause the same to be done, not later than nine months after the latest of the following dates:

(1) The effective date of the donative instrument if both the taker and ~~his~~ the taker's interest in the property are finally ascertained on that date;

(2) The date of the occurrence of the event upon which both the taker and ~~his~~ the taker's interest in the property become finally ascertainable;

(3) The date on which the disclaimant attains twenty-one years of age or is no longer an incompetent, without tendering or repaying any benefit received while the disclaimant was under twenty-one years of age or an incompetent, and even if a guardian of a minor or incompetent had filed an application pursuant to division (B)(4) of this section and the probate division of the court of common pleas involved did not consent to the guardian executing a disclaimer.

(E) No disclaimer instrument is effective under this section if either of the following applies under the terms of the disclaimer instrument:

(1) The disclaimant has power to revoke the disclaimer;

(2) The disclaimant may transfer, or direct to be transferred, to ~~himself~~ self the entire legal and equitable ownership of the property subject to the disclaimer instrument.

(F)(1) If the interest disclaimed is created by a nontestamentary instrument, the disclaimer instrument shall be delivered personally or by certified mail to the trustee or other person who has legal title to, or possession of, the property disclaimed.

(2) If the interest disclaimed is created by a testamentary instrument or by intestate succession, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate have been commenced, and an executed copy of the disclaimer instrument shall be delivered personally or by certified mail to the personal representative of the decedent's estate.

(3) If no proceedings for the administration of the decedent's estate have been commenced, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate might be commenced according to law. The disclaimer instrument shall be filed and indexed, and fees charged, in the same manner as provided by law for an application to be appointed as personal representative to administer the decedent's estate. The disclaimer is effective whether or not proceedings thereafter are commenced to administer the decedent's estate. If proceedings thereafter are commenced for the administration of the decedent's estate, they shall be filed under, or consolidated with, the case number assigned to the disclaimer instrument.

(4) If an interest in real estate is disclaimed, an executed copy of the disclaimer instrument also shall be recorded in the office of the recorder of the county in which the real estate is located. The disclaimer instrument shall include a description of the real estate with sufficient certainty to identify it, and shall contain a reference to the record of the instrument that created the interest disclaimed. If title to the real estate is registered under Chapters 5309. and 5310. of the Revised Code, the disclaimer interest shall be entered as a memorial on the last certificate of title. A spouse of a disclaimant has no dower or other interest in the real estate disclaimed.

(G) Unless the donative instrument expressly provides that, if there is a disclaimer, there shall not be any acceleration of remainders or other interests, the property, part of property, or interest in property disclaimed, and any future interest that is to take effect in possession or enjoyment at or after the termination of the interest disclaimed, shall descend, be distributed, or otherwise be disposed of, and shall be accelerated, in the following manner:

(1) If intestate or testate succession is disclaimed, as if the disclaimant had predeceased the decedent;

(2) If the disclaimant is one designated to take pursuant to a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power;

(3) If the donative instrument is a nontestamentary instrument, as if the disclaimant had died before the effective date of the nontestamentary instrument;

(4) If the disclaimer is of a fiduciary right, power, privilege, or immunity, as if the right, power, privilege, or immunity was never in the donative instrument.

(H) A disclaimer pursuant to this section is effective as of, and relates back for all purposes to, the date upon which the taker and ~~his~~ the taker's interest have been finally ascertained.

(I) A disclaimant who has a present and future interest in property, and disclaims ~~his~~ the disclaimant's present interest in whole or in part, is considered to have disclaimed ~~his~~ the disclaimant's future interest to the same extent, unless a contrary intention appears in the disclaimer instrument or the donative instrument. A disclaimant is not precluded from receiving, as an alternative taker, a beneficial interest in the property disclaimed, unless a contrary intention appears in the disclaimer instrument or in the donative instrument.

(J) The disclaimant's right to disclaim under this section is barred if, before the expiration of the period within which ~~he~~ the disclaimant may disclaim the interest, ~~he~~ the disclaimant does any of the following:

(1) Assigns, conveys, encumbers, pledges, or transfers, or contracts to assign, convey, encumber, pledge, or transfer, the property or any interest in it;

(2) Waives in writing ~~his~~ the disclaimant's right to disclaim and executes and delivers, files, or records the waiver in the manner provided in this section for a disclaimer instrument;

(3) Accepts the property or an interest in it;

(4) Permits or suffers a sale or other disposition of the property pursuant to judicial action against ~~him~~ the disclaimant.

(K) A fiduciary's application for appointment or assumption of duties as a fiduciary does not waive or bar ~~his~~ the disclaimant's right to disclaim a right, power, privilege, or immunity.

(L) The right to disclaim under this section exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(M) A disclaimer instrument or written waiver of the right to disclaim that has been executed and delivered, filed, or recorded as required by this

section is final and binding upon all persons.

(N) The right to disclaim and the procedures for disclaimer established by this section are in addition to, and do not exclude or abridge, any other rights or procedures existing under any other section of the Revised Code or at common law to assign, convey, release, refuse to accept, renounce, waive, or disclaim property.

(O)(1) No person is liable for distributing or disposing of property in a manner inconsistent with the terms of a valid disclaimer if the distribution or disposition is otherwise proper and the person has no actual knowledge of the disclaimer.

(2) No person is liable for distributing or disposing of property in reliance upon the terms of a disclaimer that is invalid because the right of disclaimer has been waived or barred if the distribution or disposition is otherwise proper and the person has no actual knowledge of the facts that constitute a waiver or bar to the right to disclaim.

(P)(1) A disclaimant may disclaim pursuant to this section any interest in property that is in existence on September 27, 1976, if either the interest in the property or the taker of the interest in the property is not finally ascertained on that date.

(2) No disclaimer executed pursuant to this section destroys or diminishes an interest in property that exists on September 27, 1976, in any person other than the disclaimant.

Sec. 2109.37. (A) Except as otherwise provided by law, including division (D) of this section, or by the instrument creating the trust, a fiduciary having funds belonging to a trust which are to be invested may invest them in the following:

(1) Bonds or other obligations of the United States or of this state;

(2) Bonds or other interest-bearing obligations of any county, municipal corporation, school district, or other legally constituted political taxing subdivision within the state, provided that such county, municipal corporation, school district, or other subdivision has not defaulted in the payment of the interest on any of its bonds or interest-bearing obligations, for more than one hundred twenty days during the ten years immediately preceding the investment by ~~such~~ the fiduciary in ~~such~~ the bonds or other obligations, and provided that such county, municipal corporation, school district, or other subdivision, is not, at the time of ~~such~~ the investment, in default in the payment of principal or interest on any of its bonds or other interest-bearing obligations;

(3) Bonds or other interest-bearing obligations of any other state of the United States which, within twenty years prior to the making of such

investment, has not defaulted for more than ninety days in the payment of principal or interest on any of its bonds or other interest-bearing obligations;

(4) Any bonds issued by or for federal land banks and any debentures issued by or for federal intermediate credit banks under the "Federal Farm Loan Act of 1916," 39 Stat. 360, 12 U.S.C.A. 641, as amended; or any debentures issued by or for banks for cooperatives under the "Farm Credit Act of 1933," 48 Stat. 257, 12 U.S.C.A. 131, as amended;

(5) Notes which are: (a) secured by a first mortgage on real estate held in fee and located in the state, improved by a unit designed principally for residential use for not more than four families or by a combination of such dwelling unit and business property, the area designed or used for nonresidential purposes not to exceed fifty per cent of the total floor area; (b) secured by a first mortgage on real estate held in fee and located in the state, improved with a building designed for residential use for more than four families or with a building used primarily for business purposes, if the unpaid principal of the notes secured by such mortgage does not exceed ten per cent of the value of the estate or trust or does not exceed five thousand dollars, whichever is greater; or (c) secured by a first mortgage on an improved farm held in fee and located in the state, provided that such mortgage requires that the buildings on the mortgaged property shall be well insured against loss by fire, and so kept, for the benefit of the mortgagee, until the debt is paid, and provided that the unpaid principal of the notes secured by the mortgage shall not exceed fifty per cent of the fair value of the mortgaged real estate at the time ~~such~~ the investment is made, and ~~such~~ the notes shall be payable not more than five years after the date on which the investment in them is made; except that the unpaid principal of ~~such~~ the notes may equal sixty per cent of the fair value of the mortgaged real estate at the time ~~such~~ the investment is made, and may be payable over a period of fifteen years following the date of the investment by the fiduciary if regular installment payments are required sufficient to amortize four per cent or more of the principal of the outstanding notes per annum and if the unpaid principal and interest become due and payable at the option of the holder upon any default in the payment of any installment of interest or principal upon the notes, or of taxes, assessments, or insurance premiums upon the mortgaged premises or upon the failure to cure any such default within any grace period provided therein not exceeding ninety days in duration;

(6) Life, endowment, or annuity contracts of legal reserve life insurance companies regulated by sections 3907.01 to 3907.21, 3909.01 to 3909.17, 3911.01 to 3911.24, 3913.01 to 3913.10, 3915.01 to 3915.15, and 3917.01

to 3917.05 of the Revised Code, and licensed by the superintendent of insurance to transact business within the state, provided that the purchase of contracts authorized by this division shall be limited to executors or the successors to their powers when specifically authorized by will and to guardians and trustees, which contracts may be issued on the life of a ward, a beneficiary of a trust fund, or according to a will, or upon the life of a person in whom such ward or beneficiary has an insurable interest and ~~such~~ the contracts shall be drawn by the insuring company so that the proceeds shall be the sole property of the person whose funds are so invested;

(7) Notes or bonds secured by mortgages and insured by the federal housing administrator or debentures issued by such administrator;

(8) Obligations issued by a federal home loan bank created under the "Federal Home Loan Bank Act of 1932," 47 Stat. 725, 12 U.S.C.A. 1421, as amended;

(9) Shares and certificates or other evidences of deposits issued by a federal savings and loan association organized and incorporated under the "Home Owners' Loan Act of 1933," 48 Stat. 128, 12 U.S.C.A. 1461, as amended, to the extent and only to the extent that those shares or certificates or other evidences of deposits are insured pursuant to the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as amended;

(10) Bonds issued by the home owners' loan corporation created under the "Home Owners' Act of 1933," 48 Stat. 128, 12 U.S.C.A. 1461, as amended;

(11) Obligations issued by the national mortgage association created under the "National Housing Act," 48 Stat. 1246 (1934), 12 U.S.C.A. 1701, as amended;

(12) Shares and certificates or other evidences of deposits issued by a domestic savings and loan association organized under the laws of the state, which association has obtained insurance of accounts pursuant to the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as amended, or as may be otherwise provided by law, only to the extent that such evidences of deposits are insured under that act, as amended;

(13) Shares and certificates or other evidences of deposits issued by a domestic savings and loan association organized under the laws of the state, provided that no fiduciary may invest such deposits except with the approval of the probate court, and then in an amount not to exceed the amount which the fiduciary is permitted to invest under division (A)(12) of this section;

(14) In savings accounts in, or certificates or other evidences of deposits

issued by, a national bank located in the state or a state bank located in and organized under the laws of the state by depositing ~~such~~ the funds in the bank, and such national or state bank when itself acting in a fiduciary capacity may deposit ~~such~~ the funds in savings accounts in, or certificates or other evidences of deposits issued by, its own savings department or any bank subsidiary corporation owned or controlled by the bank holding company that owns or controls such national or state bank; provided that no deposit shall be made by any fiduciary, individual, or corporate, unless the deposits of the depository bank are insured by the federal deposit insurance corporation created under the "Federal Deposit Insurance Corporation Act of 1933," 48 Stat. 162, 12 U.S.C. 264, as amended, and provided that the deposit of the funds of any one trust in any such savings accounts in, or certificates or other evidences of deposits issued by, any one bank shall not exceed the sum insured under that act, as amended;

(15) Obligations consisting of notes, bonds, debentures, or equipment trust certificates issued under an indenture, which are the direct obligations, or in the case of equipment trust certificates are secured by direct obligations, of a railroad or industrial corporation, or a corporation engaged directly and primarily in the production, transportation, distribution, or sale of electricity or gas, or the operation of telephone or telegraph systems or waterworks, or in some combination of them; provided that the obligor corporation is one which is incorporated under the laws of the United States, any state, or the District of Columbia, and the obligations are rated at the time of purchase in the highest or next highest classification established by at least two standard rating services selected from a list of the standard rating services which shall be prescribed by the superintendent of financial institutions; provided that every such list shall be certified by ~~such~~ the superintendent to the clerk of each probate court in the state, and shall continue in effect until a different list is prescribed and certified as provided in this division;

(16) Obligations issued, assumed, or guaranteed by the international finance corporation or by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the African development bank, or other similar development bank in which the president, as authorized by congress and on behalf of the United States, has accepted membership, provided that the obligations are rated at the time of purchase in the highest or next highest classification established by at least one standard rating service selected from a list of standard rating services which shall be prescribed by the superintendent of financial institutions;

(17) Securities of any investment company, as defined in and registered under sections 3 and 8 of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8, that are invested exclusively in forms of investment or in instruments that are fully collateralized by forms of investment in which the fiduciary is permitted to invest pursuant to divisions (A)(1) to (16) of this section, provided that, in addition to such forms of investment, ~~such~~ the investment company may, for the purpose of reducing risk of loss or of stabilizing investment returns, engage in hedging transactions.

(B) No administrator or executor may invest funds belonging to an estate in any asset other than a direct obligation of the United States that has a maturity date not exceeding one year from the date of ~~such~~ investment, or other than in a short-term investment fund that is invested exclusively in obligations of the United States or of its agencies, or primarily in such obligations and otherwise only in variable demand notes, corporate money market instruments including, but not limited to, commercial paper, or fully collateralized repurchase agreements or other evidences of indebtedness that are payable on demand or generally have a maturity date not exceeding ninety-one days from the date of investment, except with the approval of the probate court or with the permission of the instruments creating the trust.

(C)(1) In addition to the investments allowed by this section, a guardian or trustee, with the approval of the court, may invest funds belonging to the trust in productive real estate located within the state, provided that neither the guardian nor the trustee nor any member of the family of either has any interest in such real estate or in the proceeds of the purchase price. The title to any real estate so purchased by a guardian must be taken in the name of the ward.

(2) Notwithstanding the provisions of division (C)(1) of this section, the court may permit the funds to be used to purchase or acquire a home for the ward or an interest in a home for the ward in which a member of the ward's family may have an interest.

(D) If the fiduciary is a trustee appointed by and accountable to the probate court, the fiduciary shall invest the trust's assets pursuant to the requirements and standards set forth in sections 1339.52 to 1339.61 of the Revised Code.

Sec. 2109.371. (A) In addition to those investments made eligible by section 2109.37 or 2109.372 of the Revised Code, investments may be made by a fiduciary other than a guardian under sections 5905.01 to 5905.19 of the Revised Code, and subject to the restriction placed on an administrator or executor by division (B) of section 2109.37 of the Revised Code, in any

of the following kinds and classes of securities, provided that it may be lawfully sold in Ohio and investment is made only in such securities as would be acquired by prudent persons of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital:

(1) Securities of corporations organized and existing under the laws of the United States, the District of Columbia, or any state of the United States including, but not limited to, bonds, debentures, notes, equipment trust obligations, or other evidences of indebtedness, and shares of common and preferred stocks of such corporations;

(2) Subject to division (C) of this section, collective investment funds established in accordance with section 1111.14 of the Revised Code or securities of any investment company, including any affiliated investment company, whether or not the fiduciary has invested other funds held by it in an agency or other nonfiduciary capacity in the securities of the same investment company or affiliated investment company;

(3) Bonds or other interest-bearing obligations of any state or territory of the United States, or of any county, city, village, school district, or other legally constituted political taxing subdivision of any state or territory of the United States, not otherwise eligible under division (A)(2) or (3) of section 2109.37 of the Revised Code.

(B) No investment shall be made pursuant to this section which, at the time such investment is made, causes the aggregate market value of the investments, not made eligible by section 2109.37 or 2109.372 of the Revised Code, to exceed sixty per cent of the aggregate market value at that time of all the property of the fund held by the fiduciary. No sale or other liquidation of any investment shall be required solely because of any change in the relative market value of those investments made eligible by this section and those made eligible by section 2109.37 or 2109.372 of the Revised Code; provided that, in the event of a sale of investments authorized by this section, the proceeds from the sale may be reinvested in the kinds and classes of securities authorized by this section without regard to the percentage limitation provided in this division. In determining the aggregate market value of the property of a fund and the percentage of a fund to be invested under this section, a fiduciary may rely upon published market quotations as to those investments for which such quotations are available and upon such valuations of other investments as, in the fiduciary's best judgment, seem fair and reasonable according to available information.

(C)(1)(a) A fiduciary making an investment of trust funds in securities of an affiliated investment company, or a bank subsidiary corporation or

other corporation owned or controlled by the bank holding company that owns or controls the fiduciary, may charge a reasonable fee for investment advisory, brokerage, transfer agency, registrar, management, or other similar services provided to an affiliated investment company. The fee may be in addition to the compensation to which the fiduciary is otherwise entitled to receive from the trust, provided that the fee is charged as a percentage of either asset value or income earned or actual amount charged and is disclosed at least annually by prospectus, account statement, or any other written means to all persons entitled to receive statements of account activity. The fiduciary shall disclose the relationship between the fiduciary and the affiliated investment company, at least annually by account statement, whether or not the fee is charged.

(b) A fiduciary making an investment of trust funds in securities of an affiliated investment company pursuant to division (A)(2) of this section shall, when providing any periodic account statements to the trust fund, report the net asset value of the shares comprising the investment of the trust funds in the affiliated investment company.

(c) If a fiduciary making an investment of trust funds in securities of an affiliated investment company pursuant to division (A)(2) of this section invests such funds in any mutual fund, the fiduciary shall disclose, in at least ten-point boldface type, by prospectus, account statement, or any other written means to all persons entitled to receive statements of account activity, that the mutual fund is not insured or guaranteed by the federal deposit insurance corporation or by any other government-sponsored agency of the federal government or of this state.

(2) Unless the investment of trust funds in securities of an affiliated investment company can be made under the terms of the instrument creating the trust, an exception to the investment of trust funds in securities of an affiliated investment company may be filed with the probate court. Any exception filed pursuant to this division must be signed by all persons who would, at the time the exception is filed, be permitted to file an exception to an account pursuant to section 2109.33 of the Revised Code and must state that all such persons request that the current investment of trust funds in securities of an affiliated investment company be terminated within a reasonable time. If the probate court determines that the exception complies with the requirements of this division, the probate court shall establish a schedule for disposing of any current investments in securities of an affiliated investment company, and the fiduciary shall cause the trust to dispose of the investments in accordance with the schedule. The fiduciary shall not be liable for any loss incurred by the trust as a result of complying

with division (C)(2) of this section.

(D) As used in this section, "affiliated investment company~~,~~" ~~"investment company,"~~ and "reasonable fee" have the same meanings as in division (E) of section ~~1109.10~~ 1111.13 of the Revised Code.

Sec. 2131.08. (A) ~~No~~ Subject to sections 1746.14, 1747.09, and 2131.09 of the Revised Code, no interest in real or personal property shall be good unless it must vest, if at all, not later than twenty-one years after a life or lives in being at the creation of the interest. All estates given in tail, by deed or will, in lands or tenements lying within this state~~,~~ shall be and remain an absolute estate in fee simple to the issue of the first donee in tail. It is the intention by the adoption of this section to make effective in ~~Ohio~~ this state what is generally known as the common law rule against perpetuities, except as set forth in divisions (B) and (C) of this section.

(B) For the purposes of this section and subject to sections 1746.14, 1747.09, and 2131.09 of the Revised Code, the time of the creation of an interest in real or personal property subject to a power reserved by the grantor to revoke or terminate the interest shall be the time at which the reserved power expires~~, either~~ by reason of the death of the grantor ~~or~~, by release of the power, or otherwise.

(C) Any interest in real or personal property that would violate the rule against perpetuities, under division (A) of this section, shall be reformed, within the limits of the rule, to approximate most closely the intention of the creator of the interest. In determining whether an interest would violate the rule and in reforming an interest, the period of perpetuities shall be measured by actual rather than possible events.

(D) Divisions (B) and (C) of this section shall be effective with respect to interests in real or personal property created by wills of decedents dying after December 31, 1967, with respect to interests in real or personal property created by inter vivos instruments executed after December 31, 1967, and with respect to interests in real or personal property created by inter vivos instruments executed on or before December 31, 1967, that by reason of division (B) of this section will be treated as interests created after December 31, 1967. Divisions (B) and (C) of this section shall be effective with respect to interests in real or personal property created by the exercise of a power of appointment if divisions (B) and (C) of this section apply to the instrument that exercises the power, whether or not divisions (B) and (C) of this section apply to the instrument that creates the power.

Sec. 2131.09. (A) A trust of real or personal property created by an employer as part of a stock bonus plan, pension plan, disability or death benefit plan, or profit-sharing plan, for the benefit of some or all of the

employees, to which contributions are made by ~~such~~ the employer or employees, or both, for the purpose of distributing to ~~such~~ the employees or their beneficiaries the earnings or the principal, or both earnings and principal, of the fund so held in trust~~,~~ is not invalid as violating the rule against perpetuities, any other existing law against perpetuities, or any law restricting or limiting the duration of trusts; but ~~such~~ the trust may continue for ~~such~~ the time ~~as~~ that is necessary to accomplish the purposes for which it was created.

The income arising from any trust within the classifications mentioned in this ~~section~~ division may be accumulated in accordance with the terms of ~~such~~ the trust for as long a time as is necessary to accomplish the purposes for which the ~~same~~ trust was created, notwithstanding any law limiting the period during which trust income may be accumulated.

No rule of law against perpetuities or the suspension of the power of alienation of the title to property invalidates any ~~such~~ trust within the classifications mentioned in this division unless ~~such~~ the trust is terminated by decree of a court in a suit instituted within two years after June 25, 1951.

(B)(1) No rule of law against perpetuities or suspension of the power of alienation of the title to property, any other existing law against perpetuities, or any law restricting or limiting the duration of trusts shall apply with respect to any interest in real or personal property held in trust if the instrument creating the trust specifically states that the rule against perpetuities or the provisions of division (B) of section 2131.08 of the Revised Code shall not apply to the trust and if either the trustee of the trust has unlimited power to sell all trust assets or if one or more persons, one of whom may be the trustee, has the unlimited power to terminate the entire trust.

(2) Division (B) of this section shall apply to the interpretation of a testamentary or inter vivos trust instrument that creates an interest in real or personal property in relation to which one or more of the following conditions applies:

(a) The testamentary or inter vivos trust is executed in this state.

(b) The sole trustee or one of the trustees is domiciled in this state.

(c) The testamentary or inter vivos trust is administered in this state or the situs of a substantial portion of the assets subject to the testamentary portion of the testamentary or inter vivos trust is in this state, even though some part or all of those assets are physically deposited for safekeeping in a state other than this state.

(d) The instrument creating the testamentary or inter vivos trust states that the law of this state is to apply.

(3) Division (B) of this section shall be effective with respect to all of the following:

(a) an interest in real or personal property in trust created by wills of decedents dying on or after the effective date of this amendment;

(b) An interest in real or personal property created by an inter vivos or testamentary trust instrument executed on or after the effective date of this amendment;

(c) An interest in real or personal property in trust created by the exercise of a general power of appointment on or after the effective date of this amendment.

(4) Division (B) of this section shall not apply to the exercise of a power of appointment other than a general power of appointment.

(C) For purposes of this section, "general power of appointment" means a power that is exercisable in favor of the individual possessing the power, the person's estate, the person's creditors, or the creditors of the person's estate.

SECTION 2. That existing sections 1111.13, 1339.60, 2109.37, 2109.371, 2131.08, and 2131.09 of the Revised Code are hereby repealed.

SECTION 3. If, on the effective date of this act, a trust meets all of the following conditions, it is not subject to this act until January 1, 2000:

(A) The trust assets are invested and managed by a non-corporate trustee.

(B) The trust cannot be terminated by the grantor.

(C) The value of the trust, as of December 31, 1998, is less than $100,000.

SECTION 4. Section 2109.371 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 538 and Sub. S.B. 129 of the 121st General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

_____

Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

_____

Secretary of State.

File No. _____ Effective Date _____