

AN ACT

To amend sections 109.32, 1340.01, 1340.02, 1340.03, 1340.09, 1340.12, 1716.02, 1716.05, 1716.07, 1716.16, 1716.99, 2103.041, 2107.26, 2107.33, 2109.07, 2109.09, 2109.10, 2109.67, and 5103.16, to enact new section 2131.01 and section 1340.031, and to repeal section 2131.01 of the Revised Code to revise the Probate Laws, to change the name of the Charitable Foundations Section of the Attorney General's office to the Charitable Law Section, to exempt grandparents from specified adoption requirements, and to eliminate the generally required bond for an administrator or executor of an estate who is the sole beneficiary of the estate.

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

SECTION 1. That sections 109.32, 1340.01, 1340.02, 1340.03, 1340.09, 1340.12, 1716.02, 1716.05, 1716.07, 1716.16, 1716.99, 2103.041, 2107.26, 2107.33, 2109.07, 2109.09, 2109.10, 2109.67, and 5103.16 be amended and new section 2131.01 and section 1340.031 of the Revised Code be enacted to read as follows:

Sec. 109.32. All annual filing fees obtained by the attorney general pursuant to section 109.31 of the Revised Code, all receipts obtained from the sale of the charitable ~~foundations~~ law directory, and all registration fees received by the attorney general, bond forfeitures, awards of costs and attorney's fees, and civil penalties assessed under Chapter 1716. of the Revised Code shall be paid into the state treasury to the credit of the charitable ~~foundations~~ law fund. The charitable ~~foundations~~ law fund shall be used insofar as its moneys are available for the expenses of the charitable ~~foundations~~ law section of the office of the attorney general. The expenses of the charitable ~~foundations~~ law section in excess of moneys available in the charitable ~~foundations~~ law fund shall be paid out of regular appropriations to the office of the attorney general.

Sec. 1340.01. As used in sections 1340.01 to 1340.13 of the Revised Code:

(A) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(B) "Inventory value" means the cost of property purchased by the trustee and the market value of other property at the time it became subject to the trust, but, in the case of property ~~which~~ that passes or has passed to the trust as the result of a decedent's death, the trustee may use any value finally determined for the purposes of an estate or inheritance tax.

(C) "~~Remainderman~~ Remainderperson" means the person entitled to principal, including income ~~which~~ that has been accumulated and added to principal.

(D) "Trustee" means an inter vivos or testamentary trustee and includes an original trustee and any successor or added trustee.

(E) "Qualified beneficiary" means a beneficiary who is entitled or eligible to receive a distribution of income or principal whether presently or at some future time that is predicated upon the happening of an event that is certain. An event that is certain includes, but is not limited to, the termination of an intervening life estate. If a trust is subject to amendment, appointment, or revocation by the grantor, then only the grantor shall be deemed to be a qualified beneficiary.

(F) "Legal representative" includes, but is not limited to, a parent as a natural guardian of a minor child under section 2111.08 of the Revised Code, an attorney-at-law, a guardian appointed pursuant to court order, including a guardian of the person or a guardian of the estate, or a guardian ad litem.

Sec. 1340.02. (A) A trust shall be administered with due regard to the respective interests of income beneficiaries and ~~remaindermen~~ remainderpersons. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each in one of the following manners:

(1) In accordance with the terms of the trust instrument, notwithstanding contrary provisions of sections 1340.01 to 1340.13 of the Revised Code;

(2) In the absence of any contrary terms of the trust instrument, in accordance with sections 1340.01 to 1340.13 of the Revised Code;

~~(3) If neither of the preceding rules of administration is applicable,~~

(B) In exercising a discretionary power of administration regarding a matter within the scope of sections 1340.01 to 1340.13 of the Revised Code, whether granted by the terms of the trust instrument or by those sections, a trustee shall administer the trust in accordance with what is reasonable and

equitable in view of the interests of those entitled to income as well as those entitled to principal; and in view of the manner in which ~~men~~ persons of ordinary prudence, discretion, and judgment would act in the management of their own affairs.

~~(B)(C)~~ If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, ~~unless the terms of the trust instrument otherwise expressly provide, the trustee shall exercise such discretion in accordance with the principles of sections 1340.01 to 1340.13 of the Revised Code, but in the event of a bona fide doubt as to the applicability of sections 1340.01 to 1340.13 of the Revised Code, any allocation made by the trustee in good faith shall be binding on all persons having any interest in the trust no inference of imprudence or partiality arises from the fact that the trustee has made an allocation contrary to sections 1340.01 to 1340.13 of the Revised Code.~~

(D) A fiduciary may credit a receipt or charge an expenditure to income or principal with respect to a trust, or property passing to a trust, that is eligible for a federal or Ohio estate tax marital deduction or estate tax charitable deduction only to the extent that the credit of the receipt or charge of the expenditure will not cause the reduction or loss of the deduction.

(E) As used in this section:

(1) "Federal estate tax charitable deduction" means the estate tax charitable deduction allowed by subtitle B, Chapter 11 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2055, as amended.

(2) "Federal estate tax marital deduction" means the estate tax marital deduction allowed by subtitle B, Chapter 11 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2056, as amended.

(3) "Ohio estate tax charitable deduction" means the estate tax charitable deduction allowed by division (A) of section 5731.17 of the Revised Code.

(4) "Ohio estate tax marital deduction" means the estate tax marital deduction allowed by division (A) of section 5731.15 of the Revised Code.

Sec. 1340.03. (A) Income is the return in money or property derived from the use of principal, including return as follows:

(1) Rent of real or personal property, including sums received for cancellation or renewal of a lease;

(2) Interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in section 1340.06 of the Revised Code on bond premium and bond discount;

(3) Income earned during administration of a decedent's estate as provided in section 2109.67 of the Revised Code;

(4) Corporate distributions as provided in section 1340.05 of the

Revised Code;

(5) Accrued increment on bonds or other obligations issued at a discount as provided in section 1340.06 of the Revised Code;

(6) Receipts from business and farming operations as provided in section 1340.07 of the Revised Code;

(7) Receipts from disposition of natural resources as provided in sections 1340.08 and 1340.09 of the Revised Code;

(8) Receipts from other principal subject to depletion as provided in section 1340.10 of the Revised Code;

(9) Receipts from disposition of underproductive property as provided in section 1340.11 of the Revised Code.

(B) Principal is the property that has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a ~~remainderman~~ remainderperson while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes any of the following:

(1) Consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal;

(2) Proceeds of property taken on eminent domain proceedings;

(3) Proceeds of insurance upon property forming part of the principal, except proceeds of insurance upon a separate interest of an income beneficiary;

(4) Stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in section 1340.05 of the Revised Code;

(5) Receipts from the disposition of corporate securities as provided in section 1340.06 of the Revised Code;

(6) Royalties and other receipts from disposition of natural resources as provided in sections 1340.08 and 1340.09 of the Revised Code;

(7) Receipts from other principal subject to depletion as provided in section 1340.10 of the Revised Code;

(8) Any profit resulting from any change in the form of principal except as provided in section 1340.11 of the Revised Code on underproductive property;

(9) Receipts from disposition of underproductive property as provided in section 1340.11 of the Revised Code;

(10) Any allowances for depreciation established under section 1340.07 and division (A)(2) of section 1340.12 of the Revised Code.

(C) After determining income and principal in accordance with the terms of the trust instrument or of sections 1340.01 to 1340.13 of the

Revised Code, the trustee shall charge to income or principal expenses and other charges as provided in section 1340.12 of the Revised Code.

Sec. 1340.031. (A) Not more than once every six months, a qualified beneficiary or, if a qualified beneficiary is under a legal disability, a legal representative of the qualified beneficiary may request in writing that an inter vivos trustee furnish the qualified beneficiary or legal representative a report of the management of the inter vivos trust as provided in this section. Within thirty days after receiving the written request for a report of the management of the inter vivos trust, the inter vivos trustee shall furnish the qualified beneficiary or legal representative that made the request a report that is current to within five months prior to the date of the request and that shows an inventory of the trust property and the receipts credited and expenditures charged to income or principal with respect to the inter vivos trust for the two years prior to the preparation of the report. If the inter vivos trustee does not comply with the request for a report under this section, the qualified beneficiary or legal representative that made the request may file an appropriate action in a court of competent jurisdiction to compel the inter vivos trustee to furnish the report.

(B) A current report furnished by an inter vivos trustee under this section or during the usual course of business has binding legal effect regarding matters described or disclosed in the report on the qualified beneficiary who received the report, on the legal representative who received the report on behalf of the qualified beneficiary who is under legal disability, and on the heirs and assigns of the qualified beneficiary who received the report unless, notwithstanding section 2305.22 of the Revised Code, the qualified beneficiary, the legal representative of the qualified beneficiary, or any of the heirs or assigns of the qualified beneficiary institutes an action regarding matters described or disclosed in the report against the inter vivos trustee within two years from the date the report is furnished to the qualified beneficiary or legal representative of the qualified beneficiary.

(C) No provision in this section eliminates any other rights or causes of action that a qualified beneficiary of an inter vivos trust, a legal representative of a qualified beneficiary of an inter vivos trust, or any of the heirs or assigns of a qualified beneficiary of an inter vivos trust may have against the inter vivos trustee under any other section of the Revised Code.

Sec. 1340.09. If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with division ~~(A)(3)~~(B) of section 1340.02 of the Revised Code.

Sec. 1340.12. (A) The following charges shall be made against income:

(1) Ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the interests of the income beneficiary, ~~remainderman~~ remainderperson, or trustee, interest paid by the trustee, and ordinary repairs;

(2) A reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance shall be made for depreciation of that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on ~~the effective date of this section~~ October 20, 1987, for which the trustee is not then making an allowance for depreciation;

(3) Not less than half of court costs, attorney's fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(4) Court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(5) Not less than half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income, unless a court otherwise directs;

(6) Any tax levied upon receipts defined as income under sections 1340.01 to 1340.13 of the Revised Code or the trust instrument and payable by the trustee.

(B) If charges against income are of unusual amount, the trustee ~~may~~, by means of reserves or other reasonable means, may charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(C) The following charges shall be made against principal:

(1) Trustee's compensation not chargeable to income under divisions (A)(4) and (5) of this section, special compensation of trustees, expenses reasonably incurred in connection with principal, court costs and attorney's fees primarily concerning matters of principal, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(2) Charges not provided for in division (A) of this section, including the cost of investing and reinvesting principal; the payment on principal of an indebtedness, including a mortgage amortized by periodic payments of principal; expenses for preparation of property for rental or sale; and, unless the court directs otherwise, expenses incurred in maintaining or defending

any action to construe the trust ~~or, to~~ protect ~~it~~ the trust or the trust property, or to assure the title of any trust property;

(3) Extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for depreciation out of income to the extent permitted by division (A)(2) of this section and by section 1340.07 of the Revised Code;

(4) Any tax levied upon profit, gain, or other receipts allocated to principal, notwithstanding denomination of the tax as an income tax by the taxing authority;

(5) If an estate or inheritance tax is levied ~~in with~~ respect ~~of to~~ a trust in which both an income beneficiary and a ~~remainderman~~ remainderperson have an interest, any amount apportioned to the trust, including penalties, even though the income beneficiary also has rights in the principal.

(D) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under section 1340.04 of the Revised Code.

Sec. 1716.02. (A) Every charitable organization, except those exempted under section 1716.03 of the Revised Code, that intends to solicit contributions in this state by any means or have contributions solicited in this state on its behalf by any other person, charitable organization, commercial co-venturer, or professional solicitor, or that participates in a charitable sales promotion, prior to engaging in any of these activities and annually thereafter, shall file a registration statement with the attorney general upon a form prescribed by ~~him~~ the attorney general. Each chapter, branch, or affiliate of a charitable organization that is required to file a registration statement under this section either shall file a separate registration statement or report the necessary information to its parent charitable organization that then shall file a consolidated registration statement. The annual registration statement shall be refiled on or before the fifteenth day of the fifth calendar month after the close of each fiscal year in which the charitable organization solicited in this state, or by the date of any applicable extension of the federal filing date, whichever is later. No charitable organization that is required to register under this chapter prior to registration, shall solicit contributions in this state by any means, have contributions solicited in this state on its behalf by any other person, charitable organization, commercial co-venturer, or professional solicitor, or participate in a charitable sales promotion.

(B) The registration statement shall be signed and sworn to under penalties of perjury by the treasurer or chief fiscal officer of the charitable

organization and shall contain the following information:

(1) The name of the charitable organization, the purpose for which it is organized, and the name or names under which it intends to solicit contributions;

(2) The address and telephone number of the principal place of business of the charitable organization and the address and telephone number of every office, chapter, branch, or affiliate of the charitable organization located in this state or, if the charitable organization does not maintain an office in this state, the name, address, and telephone number of the person that has custody of its financial records;

(3) The names and addresses of the officers, directors, trustees, and executive personnel of the charitable organization;

(4) The annual financial report of the charitable organization for the immediately preceding fiscal year as required under section 1716.04 of the Revised Code;

(5) The last day of the fiscal year for the charitable organization;

(6) A statement of whether the charitable organization is registered with or otherwise authorized by any other governmental authority in this state or another state to solicit contributions;

(7) A statement of whether the charitable organization has had its registration or authority denied, suspended, revoked, or enjoined by any court or other governmental authority in this state or another state;

(8) A statement of whether the charitable organization intends to solicit contributions from the public directly by using its own resources or to have solicitations made on its behalf through the use of another charitable organization, fund-raising counsel, professional solicitors, or commercial co-venturers;

(9) The names, addresses, and the telephone numbers of any other charitable organization, fund-raising counsel, professional solicitors, and commercial co-venturers who act or will act on behalf of the charitable organization, together with a statement setting forth the specific terms of the arrangements for salaries, bonuses, commissions, expenses, or other remunerations to be paid the other charitable organization, fund-raising counsel, professional solicitors, and commercial co-venturers. If any of the information required by division (B)(9) of this section is not available at the time of registration, that information shall be submitted to the attorney general at a later date but before any solicitation occurs.

(10) The charitable purpose or purposes for which the contributions to be solicited will be used;

(11) The names, addresses, and telephone numbers of the persons within

the charitable organization that will have final responsibility for the custody of the contributions;

(12) The names of the persons within the charitable organization that will be responsible for the final distribution of the contributions;

(13) The period of time during which, and the counties in which, the solicitation is planned to be conducted;

(14) A schedule of the activities carried on by the charitable organization in the performance of its purposes;

(15) Any other information that the attorney general may, by rule, require.

(C)(1) With the initial registration only, every charitable organization that is required to register under this chapter also shall file with the attorney general the following:

(a) A copy of the current charter, articles of incorporation, agreement of association, instrument of trust, constitution, or other organizational instrument, and a copy of the bylaws of the charitable organization;

(b) A statement setting forth the place where and the date when the charitable organization was legally established, the form of its organization, and its tax exempt status, with a copy of its federal tax exemption determination letter.

(2)(a) With the next annual registration statement filed after its adoption, the charitable organization shall file with the attorney general a copy of any amendment to its organizational instrument as specified in division (C)(1)(a) of this section and a copy of any amendment to its bylaws.

(b) Within thirty days after its receipt, the charitable organization shall file with the attorney general a copy of any federal tax exemption determination letter or any correspondence rescinding its tax exempt status that is received after the initial registration. Not later than thirty days after being notified by the internal revenue service of any challenge to or investigation of its continued entitlement to federal tax exemption, the charitable organization shall notify the attorney general of this fact.

(D)(1) Except as otherwise provided in division (D)(2) of this section, every charitable organization that is required to register under this chapter shall pay the following fees with each registration:

(a) Fifty dollars, if the contributions received for the last calendar or fiscal year were five thousand dollars or more but less than twenty-five thousand dollars;

(b) One hundred dollars, if the contributions received for the last calendar or fiscal year were twenty-five thousand dollars or more but less

than fifty thousand dollars;

(c) Two hundred dollars, if the contributions received for the last calendar or fiscal year were fifty thousand dollars or more.

(2) A charitable organization that is required to register under this chapter and whose contributions received for the last calendar or fiscal year were less than five thousand dollars shall not pay any registration fee.

(3) The amount of registration fees that a charitable organization is required to pay under division (D)(1) of this section shall be based on the amount of contributions that it receives from persons in this state. If, for any reporting year, a charitable organization cannot determine from its records the exact amount of contributions it received from persons in this state, it shall compute the amount of the registration fee upon the estimated amount of contributions it received from persons in this state, with the estimated amount to be explained in writing at the time the registration fee is paid. At the request of the attorney general, the charitable organization shall substantiate the estimated amount of contributions it received from persons in this state.

(4) All registration fees shall be paid into the state treasury to the credit of the charitable ~~foundations~~ law fund established under section 109.32 of the Revised Code.

Sec. 1716.05. (A) No person shall act as a fund-raising counsel unless ~~he~~ the person first has complied with the requirements of this chapter and any rules adopted under this chapter.

(B) Any fund-raising counsel that at any time has custody of contributions from a solicitation shall do all of the following:

(1) Register with the attorney general. Applications for registration or renewal of registration shall be in writing, under oath, and in the form prescribed by the attorney general, and shall be accompanied by a fee in the amount of two hundred dollars. Any corporation, partnership, association, or other entity that intends to act as a fund-raising counsel may register for and pay a single fee of two hundred dollars on behalf of all its members, officers, employees, and agents. In that case, the names and addresses of all the officers, employees, and agents of the fund-raising counsel and all other persons with whom the fund-raising counsel has contracted to work under its direction shall be listed in the application. The application shall contain any other information that the attorney general may require. The registration or renewal of registration shall be for a period of one year or part of one year and shall expire on the thirty-first day of March of each year. All fees prescribed in this division shall be paid into the state treasury to the credit of the charitable ~~foundations~~ law fund established under section 109.32 of the

Revised Code.

(2) At the time of making an application for registration or renewal of registration, file with and have approved by the attorney general a bond in which the fund-raising counsel shall be the principal obligor, in the sum of twenty-five thousand dollars, with one or more sureties authorized to do business in this state. The fund-raising counsel shall maintain the bond in effect as long as the registration is in effect; however, the liability of the surety under the bond shall not exceed an all-time aggregate liability of twenty-five thousand dollars. The bond, which may be in the form of a rider to a larger blanket liability bond, shall run to the state and to any person who may have a cause of action against the principal obligor of the bond for any liability arising out of a violation by the obligor of any provision of this chapter or any rule adopted pursuant to this chapter.

(3) Not later than ninety days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, furnish an accounting of all contributions collected and expenses paid, to the charitable organization with which the fund-raising counsel has contracted. The accounting shall be in writing and shall be retained by the charitable organization for three years. The fund-raising counsel shall file a copy of the accounting with the attorney general not later than seven days after it is furnished to the charitable organization.

(4) Not later than two days after receipt of each contribution, deposit the entire amount of the contribution in an account at a bank or other federally insured financial institution which shall be in the name of the charitable organization with which the fund-raising counsel has contracted. Each contribution collected by the fund-raising counsel shall be solely in the name of that charitable organization. The charitable organization shall have sole control of all withdrawals from the account and the fund-raising counsel shall not be given the authority to withdraw any deposited funds from the account.

(5) During each solicitation campaign and for not less than three years after its completion, maintain the following records that shall be made available to the attorney general upon ~~his~~ the attorney general's request:

(a) A record of each contribution that at any time is in the custody of the fund-raising counsel, including the name and address of each contributor and the date and amount of the contribution, provided that the attorney general shall not disclose that information except to the extent necessary for investigative or law enforcement purposes;

(b) The location of each bank or financial institution in which the

fund-raising counsel has deposited revenue from the solicitation campaign and the account number of each account in which the deposits were made.

(C) Unless otherwise provided in this section, any change in any information filed with the attorney general pursuant to this section shall be reported in writing to the attorney general within seven days after the change occurs.

(D) No person shall serve as a fund-raising counsel, or be a member, officer, employee, or agent of any fund-raising counsel, who has been convicted in the last five years of either of the following:

(1) Any violation of this chapter or any rule adopted under this chapter, or of any charitable solicitation legislation or regulation of a political subdivision of this state or charitable solicitation law of any other jurisdiction that is similar to this chapter;

(2) A felony in this or another state.

(E) The information provided under this section to the attorney general by a fund-raising counsel shall be included in the reports and files required to be compiled and maintained by the attorney general pursuant to divisions (E) and (F) of section 1716.08 of the Revised Code.

Sec. 1716.07. (A) No professional solicitor shall engage in any solicitation unless it has complied with the requirements of this chapter and any rules adopted under this chapter.

(B) Every professional solicitor, before engaging in any solicitation, shall register with the attorney general. Applications for registration or renewal of registration shall be in writing, under oath, and in the form prescribed by the attorney general, and shall be accompanied by a fee in the amount of two hundred dollars. Any corporation, partnership, association, or other entity that intends to act as a professional solicitor may register for and pay a single fee of two hundred dollars on behalf of all its members, officers, employees, agents, and solicitors. In that case, the names and addresses of all the officers, employees, and agents of the professional solicitor and all other persons with whom the professional solicitor has contracted to work under its direction, including solicitors, shall be listed in the application or furnished to the attorney general within five days of the date of employment or contractual arrangement. The application shall contain any other information that the attorney general may require. The registration shall be for a period of one year or part of one year and shall expire on the thirty-first day of March of each year. Upon application and payment of the fee specified in this division and filing of the bond prescribed in division (C) of this section, the registration may be renewed for additional one-year periods. All fees prescribed in this division shall be

paid into the state treasury to the credit of the charitable ~~foundations~~ law fund established under section 109.32 of the Revised Code.

(C) At the time of making an application for registration or renewal of registration, the professional solicitor shall file with and have approved by the attorney general a bond in which the professional solicitor shall be the principal obligor, in the sum of twenty-five thousand dollars, with one or more sureties authorized to do business in this state. The professional solicitor shall maintain the bond in effect as long as the registration is in effect; however, the liability of the surety under the bond shall not exceed an all-time aggregate liability of twenty-five thousand dollars. The bond, which may be in the form of a rider to a larger blanket liability bond, shall run to the state and to any person who may have a cause of action against the principal obligor of the bond for any liability arising out of a violation by the obligor of any provision of this chapter or any rule adopted pursuant to this chapter.

(D)(1) Prior to the commencement of any solicitation, the professional solicitor shall file all of the following with the attorney general:

(a) A completed document called "Solicitation Notice" upon a form prescribed by the attorney general and containing all of the information specified in division (D)(2) of this section;

(b) A copy of the contract described in division (A) of section 1716.08 of the Revised Code;

(c) A sworn statement by the charitable organization on whose behalf the professional solicitor is acting certifying that the solicitation notice and any accompanying material are true and correct to the best of its knowledge.

(2) The solicitation notice shall include all of the following:

(a) The fund-raising methods to be used;

(b) The projected dates when the solicitation will commence and terminate;

(c) The location and telephone number from where the solicitation will be conducted if it will be conducted by telephone;

(d) The name and residence address of each person responsible for directing and supervising the conduct of the solicitation campaign;

(e) A statement of whether the professional solicitor will at any time have custody of any contributions;

(f) A full and fair description of the charitable program for which the solicitation campaign is being carried out;

(g) The written and signed consent of every charitable organization on whose behalf the professional solicitor will be soliciting contributions or whose name will be mentioned during the solicitation.

(E) Not later than ninety days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the professional solicitor shall provide to the charitable organization and file with the attorney general a financial report of the campaign, including the gross revenue received and an itemization of all expenses incurred. The report shall be completed on a form prescribed by the attorney general and signed by an authorized official of the professional solicitor who shall certify under oath that the report is true and correct.

(F) Each contribution collected by or in the custody of the professional solicitor shall be solely in the name of the charitable organization on whose behalf the contribution was solicited. Not later than two days after receipt of each contribution, the professional solicitor shall deposit the entire amount of the contribution in an account at a bank or other federally insured financial institution, which shall be in the name of that charitable organization. The charitable organization shall have sole control of all withdrawals from the account and the professional solicitor shall not be given the authority to withdraw any deposited funds from the account.

(G)(1) During each solicitation campaign and for not less than three years after its completion, the professional solicitor shall maintain the following records:

(a) The name and, if known to the professional solicitor, the address and telephone number of each contributor and the date and amount of the contribution, provided that the attorney general shall not disclose that information except to the extent necessary for investigative or law enforcement purposes;

(b) The name and residence address of each employee, agent, and any other person, however designated, who is involved in the solicitation, the amount of compensation paid to each, and the dates on which the payments were made;

(c) A record of all contributions that at any time are in the custody of the professional solicitor;

(d) A record of all expenses incurred by the professional solicitor for the payment of which the professional solicitor is liable;

(e) A record of all expenses incurred by the professional solicitor for the payment of which the charitable organization is liable;

(f) The location of each bank or financial institution in which the professional solicitor has deposited revenue from the solicitation campaign and the account number of each account in which the deposits were made;

(g) A copy of each pitch sheet or solicitation script used during the

solicitation campaign;

(h) If a refund of a contribution has been requested, the name and address of each person requesting the refund, and if a refund was made, its amount and the date it was made.

(i) Any other record of such information as the attorney general may require.

(2) If the professional solicitor sells tickets to any event and represents that the tickets will be donated for use by another person, the professional solicitor also shall maintain for the same period as specified in division (G)(1) of this section the following records:

(a) The name and address of each contributor that purchases or donates tickets and the number of tickets purchased or donated by the contributor;

(b) The name and address of each organization that receives the donated tickets for the use of others, and the number of tickets received by the organization.

(3) Any of the records described in divisions (G)(1) and (2) of this section shall be made available to the attorney general upon ~~his~~ the attorney general's request and shall be furnished to ~~him~~ the attorney general within ten days of the request.

(H) Unless otherwise provided in this section or section 1716.08 of the Revised Code, any change in any information filed with the attorney general pursuant to this section and section 1716.08 of the Revised Code shall be reported in writing to the attorney general within seven days after the change occurs.

(I) No person shall serve as a professional solicitor, or be a member, officer, employee, or agent of any professional solicitor, who has been convicted in the last five years of either of the following:

(1) Any violation of this chapter or any rule adopted under this chapter, or of any charitable solicitation legislation or regulation of a political subdivision of this state or charitable solicitation law of any other jurisdiction that is similar to this chapter;

(2) A felony in this or another state.

Sec. 1716.16. (A) In addition to other remedies authorized by law, the attorney general may bring a civil action to enforce this chapter or any rule adopted under this chapter. The attorney general is not required to use any procedure prescribed in Chapter 119. of the Revised Code prior to exercising any remedy set forth in this section.

(B) Upon a finding that any person has engaged or is engaging in any act or practice in violation of this chapter or any rule adopted under this chapter, a court may make any necessary order or enter a judgment

ng, but not limited to, an injunction, restitution, or an award of reasonable attorney's fees and costs of investigation and litigation, and may award to the state a civil penalty of not more than ten thousand dollars for each violation of this chapter or rule. In seeking injunctive relief, the attorney general shall not be required to establish irreparable harm but only shall establish a violation of a provision of this chapter or a rule adopted under this chapter or that the requested order promotes the public interest.

(C) In any case in which the attorney general has authority to institute an action or proceeding under this chapter, ~~he~~ the attorney general may accept an assurance of discontinuance of any method, act, or practice that is in violation of this chapter or any rule adopted under it, from any person alleged to be engaged in or to have engaged in the unlawful method, act, or practice. The assurance may include a stipulation for the voluntary payment by the person of the costs of investigation, or of an amount to be held in escrow pending the outcome of any action or as restitution to any ~~aggrieved~~ AGGRIEVED person or both. The assurance of discontinuance shall be in writing and shall be filed with the court of common pleas of Franklin county. Any evidence of a violation of the assurance of discontinuance shall be prima-facie evidence of a violation of this chapter or any rule adopted under it in any subsequent action or proceeding brought by the attorney general. Any matter that has been closed by the acceptance of an assurance of discontinuance may at any time be reopened by the attorney general for further proceedings in the public interest.

(D) In addition to any other sanction imposed by law, any charitable organization, fund-raising counsel, professional solicitor, commercial co-venturer, or any of their agents, or any other person that violates the terms of an assurance of discontinuance, an injunction, or any other order or judgment entered by a court under this section, shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars for each violation that may be recovered in a civil action brought by the attorney general. Each violation shall be a separate offense, except that in the case of a violation through continuing failure to obey, or neglect in obeying, the order, each day of continuance of the failure or neglect shall be considered a separate offense.

(E) The civil penalties assessed under division (B) or (D) of this section or division (F) or (G) of section 1716.15 of the Revised Code shall be paid into the state treasury to the credit of the charitable ~~foundations~~ law fund established under section 109.32 of the Revised Code.

Sec. 1716.99. (A) Whoever violates sections 1716.02 to 1716.17 of the Revised Code or any rule adopted pursuant to those sections is guilty of

solicitation fraud, a misdemeanor of the first degree.

(B) Each occurrence of a solicitation of a contribution from any person in violation of sections 1716.02 to 1716.17 of the Revised Code or any rule adopted under those sections is considered a separate offense of solicitation fraud.

(C) Any person who is found guilty of solicitation fraud shall forfeit the bond described in section 1716.05 or 1716.07 of the Revised Code to the state treasury to the credit of the charitable ~~foundations~~ law fund established under section 109.32 of the Revised Code and shall be prohibited from registering with the attorney general or from serving as a fund-raising counsel or professional solicitor in this state for a period of five years after ~~his~~ conviction.

Sec. 2103.041. In any action involving the ~~judicial~~ judicial sale of real property for the purpose of satisfying the claims of creditors of an owner of an interest in the property, the spouse of the owner may be made a party to the action, and the dower interest of the spouse, whether inchoate or otherwise, may be subjected to the sale without the consent of the spouse. The court shall determine the present value and priority of the dower interest, ~~using the American experience table of mortality as the basis for determining the value, in accordance with section 2131.01 of the Revised Code~~ and shall award the spouse a sum of money equal to the present value of the dower interest, to be paid out of the proceeds of the sale according to the priority of the interest. To the extent that the owner and ~~his~~ the owner's spouse are both liable for the indebtedness, the dower interest of the spouse is subordinate to the claims of their common creditors.

Sec. 2107.26. When an original will is lost, spoliated, or destroyed ~~subsequent to before or after the death of a testator, or before the death of such testator if the testator's lack of knowledge of such loss, spoliation, or destruction can be proved by clear and convincing testimony, or after he became incapable of making a will by reason of insanity, and such will cannot be produced in the probate court in as complete a manner as the originals of last wills and testaments which are actually produced therein for probate, the probate court may shall admit such the lost, spoliated, or destroyed will to probate; if such court is satisfied the will was executed according to the law in force at the time of its execution and not revoked at the death of the testator both of the following apply:~~

(A) The proponent of the will establishes by clear and convincing evidence both of the following:

(1) The will was executed with the formalities required at the time of execution by the jurisdiction in which it was executed.

(2) The contents of the will.

~~(B) No person opposing the admission of the will to probate establishes by a preponderance of the evidence that the testator had revoked the will.~~

Sec. 2107.33. (A) A will shall be revoked ~~by~~ in the following manners:

(1) By the testator by tearing, canceling, obliterating, or destroying it with the intention of revoking it, ~~or by:~~

(2) By some person, at the request of the testator and in the testator's presence, ~~or by tearing, canceling, obliterating, or destroying it with the intention of revoking it;~~

(3) By some person tearing, canceling, obliterating, or destroying it pursuant to the testator's express written direction, ~~or by:~~

(4) By some other written will or codicil, executed as prescribed by ~~sections 2107.01 to 2107.62 of the Revised Code, or by~~ this chapter;

(5) By some other writing that is signed, attested, and subscribed in the manner provided by ~~those sections~~ this chapter. ~~A~~

~~(B)~~ A will that has been declared valid and is in the possession of a probate judge ~~may~~ also may be revoked according to division (C) of section 2107.084 of the Revised Code.

~~(B)(C)~~ If a testator removes a will that has been declared valid and is in the possession of a probate judge pursuant to section 2107.084 of the Revised Code from the possession of the judge, the declaration of validity that was rendered no longer has any effect.

~~(C)(D)~~ If after executing a will, a testator is divorced, obtains a dissolution of marriage, has ~~his~~ the testator's marriage annulled, or, upon actual separation from ~~his~~ the testator's spouse, enters into a separation agreement pursuant to which the parties intend to fully and finally settle their prospective property rights in the property of the other, whether by expected inheritance or otherwise, any disposition or appointment of property made by the will to the former spouse or to a trust with powers created by or available to the former spouse, any provision in the will conferring a general or special power of appointment on the former spouse, and any nomination in the will of the former spouse as executor, trustee, or guardian, shall be revoked unless the will expressly provides otherwise.

~~(D)(E)~~ Property prevented from passing to a former spouse or to a trust with powers created by or available to the former spouse because of revocation by this section shall pass as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse shall be interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they shall be deemed to be revived by the testator's remarriage with the former spouse or

upon the termination of a separation agreement executed by them.

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

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

(H) As used in this section:

(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 1339.62 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. 2109.07. (A) The bond required of an administrator by section 2109.04 of the Revised Code shall not be required in either of the following cases:

(1) It shall not be required of a surviving spouse to administer the deceased spouse's estate; if the surviving spouse is entitled to the entire net proceeds of the estate. ~~The~~

(2) It shall not be required of an administrator to administer an estate, if there is no will, if the administrator is the next of kin, and if the administrator is entitled to the entire net proceeds of the estate.

(B) The bond otherwise required by section 2109.04 of the Revised Code of an administrator shall be conditioned as follows:

~~(A)~~(1) To file with the probate court within the time required by section 2115.02 of the Revised Code an inventory of all tangible and intangible personal property of the deceased that is to be administered and that comes to the administrator's possession or knowledge and an inventory of the deceased's interest in real estate located in this state;

~~(B)~~(2) To administer and distribute according to law all tangible and intangible personal property of the deceased, the proceeds of any action for wrongful death or of any settlement, with or without suit, of a wrongful

death claim, and the proceeds of all real estate in which the deceased had an interest, that is located in this state, and that is sold, when the property or proceeds have come to the possession of the administrator or to the possession of a person for the administrator;

~~(C)~~(3) To render a just and true account of the administrator's administration at the times required by section 2109.30 of the Revised Code;

~~(D)~~(4) To deliver the letters of administration into court if a will of the deceased is proved and allowed.

Sec. 2109.09. ~~The~~ (A) Unless the testator has specified otherwise in the bill, the bond required of an executor by section 2109.04 of the Revised Code of an executor shall not be required of the executor to administer an estate in accordance with the will of the testator if the executor is the next of kin and if the executor is entitled to the entire net proceeds of the estate.

(B) The bond otherwise required of an executor by section 2109.04 of the Revised Code shall be conditioned as follows:

~~(A)~~(1) To file with the probate court within the time required by section 2115.02 of the Revised Code an inventory of all the tangible and intangible personal property of the testator that is to be administered and that comes to the executor's possession or knowledge and an inventory of the testator's interest in real estate located in this state;

~~(B)~~(2) To administer and distribute according to law and the will of the testator all the testator's tangible and intangible personal property, the proceeds of any action for wrongful death or of any settlement, with or without suit, of a wrongful death claim, and the proceeds of all real estate in which the testator had an interest, that is located in this state, and that is sold, when the property or proceeds have come to the possession of the executor or to the possession of another person for the executor;

~~(C)~~(3) To render a just and true account of the executor's administration at the times required by section 2109.30 of the Revised Code.

Sec. 2109.10. If an executor or administrator is sole residuary legatee or distributee and if division (A) of section 2109.07 or division (A) of section 2109.09 of the Revised Code does not apply, instead of giving the bond prescribed by section 2109.04 of the Revised Code, ~~he~~ the executor or administrator may give a bond to the satisfaction of the probate court conditioned as follows:

(A) To pay the costs of administration and all the debts and legacies of the decedent to the extent of the assets of the estate;

(B) If ~~executor~~ there is a will, to pay over ~~such the~~ testator's estate to the person entitled ~~thereto in case~~ to the testator's estate if the will is set aside;

(C) If ~~administrator~~ there is no will offered at the opening of the estate,

to pay over ~~such~~ the testator's estate to the person entitled ~~thereto in case to~~ the testator's estate if a will is probated after ~~his~~ the administrator's initial appointment.

The giving of such bond shall not discharge the lien on the decedent's real estate for the payment of ~~his~~ the decedent's debts, except that part which has been lawfully sold by the executor or administrator.

Sec. 2109.67. (A) Unless the will otherwise provides and subject to division (B) of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, penalties concerning taxes, allowances to a surviving spouse, minor children, or both, including, but not limited to, the allowance for support under section 2106.13 of the Revised Code, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate.

(B) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under Chapter 1340. of the Revised Code and distributed as follows:

(1) To specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less property taxes, ordinary repairs, interest, and other expenses of management and operation of the property, and an appropriate portion of taxes imposed on income, excluding taxes on capital gains, income in respect of a decedent, and other items allocable to principal, which accrue during the period of administration;

(2)(a) To all other legatees, except as provided in division (B)(3)(2)(b) of this section, the balance of the income, less the balance of property taxes, ordinary repairs, interest, and other expenses of management and operation of all property from which the estate is entitled to income, and taxes imposed on income, excluding taxes on capital gains, income in respect of a decedent, and other items allocable to principal, which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate, computed at times of distribution on the basis of inventory value;

~~(3)(b)~~ A legatee, other than the testator's surviving spouse, of a pecuniary legacy not in trust shall not be paid interest on the legacy, and the legacy shall not be entitled to receive any part of the income received by the estate during the period of administration as income on the legacy. A legacy to the testator's surviving spouse of a pecuniary amount shall carry with it a proportionate part of the income of the estate from the testator's death to the

date of satisfaction, determined in accordance with division (B)(2)(a) of this section.

(C) If a will or trust instrument gives the fiduciary discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the fiduciary has made an allocation contrary to this section, section 2109.66, or sections 1340.01 to 1340.13 of the Revised Code.

(D) A fiduciary may credit a receipt or charge an expenditure to income or principal with respect to a decedent's estate, a trust under a will, or property passing to a trust under a will, that is eligible for a federal or Ohio estate tax marital deduction or estate tax charitable deduction only to the extent that the credit of the receipt or charge of the expenditure will not cause the reduction or loss of the deduction.

(E) As used in this section, "federal estate tax charitable deduction," "federal estate tax marital deduction," "Ohio estate tax charitable deduction," and "Ohio estate tax marital deduction" have the same meanings as in section 1340.02 of the Revised Code.

Sec. 2131.01. Present values for probate matters shall be the values determined for Ohio estate tax purposes pursuant to division (B) of section 5731.01 of the Revised Code.

Sec. 5103.16. (A) Except as otherwise provided in this section, no child shall be placed or accepted for placement under any written or oral agreement or understanding that transfers or surrenders the legal rights, powers, or duties of the legal parent, parents, or guardian of the child into the temporary or permanent custody of any association or institution that is not certified by the department of human services under section 5103.03 of the Revised Code, without the written consent of the office in the department that oversees the interstate compact on placement of children established under section 5103.20 of the Revised Code, or by a commitment of a juvenile court, or by a commitment of a probate court as provided in this section. A child may be placed temporarily without written consent or court commitment with persons related by blood or marriage or in a legally licensed boarding home.

(B)(1) Associations and institutions certified under section 5103.03 of the Revised Code for the purpose of placing children in free foster homes or for legal adoption shall keep a record of the temporary and permanent surrenders of children. This record shall be available for separate statistics, which shall include a copy of an official birth record and all information concerning the social, mental, and medical history of the children that will aid in an intelligent disposition of the children in case that becomes

necessary because the parents or guardians fail or are unable to reassume custody.

(2) No child placed on a temporary surrender with an association or institution shall be placed permanently in a foster home or for legal adoption. All surrendered children who are placed permanently in foster homes or for adoption shall have been permanently surrendered, and a copy of the permanent surrender shall be a part of the separate record kept by the association or institution.

(C) Any agreement or understanding to transfer or surrender the legal rights, powers, or duties of the legal parent or parents and place a child with a person seeking to adopt the child under this section shall be construed to contain a promise by the person seeking to adopt the child to pay the expenses listed in divisions (C)(1), (2), and (4) of section 3107.10 of the Revised Code and, if the person seeking to adopt the child refuses to accept placement of the child, to pay the temporary costs of routine maintenance and medical care for the child in a hospital, foster home, or other appropriate place for up to thirty days or until other custody is established for the child, as provided by law, whichever is less.

(D) No child shall be placed or received for adoption or with intent to adopt unless placement is made by a public children services agency, an institution or association that is certified by the department of human services under section 5103.03 of the Revised Code to place children for adoption, or custodians in another state or foreign country, or unless all of the following criteria are met:

(1) Prior to the placement and receiving of the child, the parent or parents of the child personally have applied to, and appeared before, the probate court of the county in which the parent or parents reside, or in which the person seeking to adopt the child resides, for approval of the proposed placement specified in the application and have signed and filed with the court a written statement showing that the parent or parents are aware of their right to contest the decree of adoption subject to the limitations of section 3107.16 of the Revised Code;

(2) The court ordered an independent home study of the proposed placement to be conducted as provided in section 3107.031 of the Revised Code, and after completion of the home study, the court determined that the proposed placement is in the best interest of the child;

(3) The court has approved of record the proposed placement.

In determining whether a custodian has authority to place children for adoption under the laws of a foreign country, the probate court shall determine whether the child has been released for adoption pursuant to the

laws of the country in which the child resides, and if the release is in a form that satisfies the requirements of the immigration and naturalization service of the United States department of justice for purposes of immigration to this country pursuant to section 101(b)(1)(F) of the "Immigration and Nationality Act," 75 Stat. 650 (1961), 8 U.S.C. 1101 (b)(1)(F), as amended or reenacted.

If the parent or parents of the child are deceased or have abandoned the child, as determined under division (A) of section 3107.07 of the Revised Code, the application for approval of the proposed adoptive placement may be brought by the relative seeking to adopt the child, or by the department, board, or organization not otherwise having legal authority to place the orphaned or abandoned child for adoption, but having legal custody of the orphaned or abandoned child, in the probate court of the county in which the child is a resident, or in which the department, board, or organization is located, or where the person or persons with whom the child is to be placed reside. Unless the parent, parents, or guardian of the person of the child personally have appeared before the court and applied for approval of the placement, notice of the hearing on the application shall be served on the parent, parents, or guardian.

The consent to placement, surrender, or adoption executed by a minor parent before a judge of the probate court or an authorized deputy or referee of the court, whether executed within or outside the confines of the court, is as valid as though executed by an adult. A consent given as above before an employee of a children services agency that is licensed as provided by law, is equally effective, if the consent also is accompanied by an affidavit executed by the witnessing employee or employees to the effect that the legal rights of the parents have been fully explained to the parents, prior to the execution of any consent, and that the action was done after the birth of the child.

If the court approves a placement, the prospective adoptive parent with whom the child is placed has care, custody, and control of the child pending further order of the court.

(E) This section does not apply to an adoption by a stepparent, a grandparent, or a guardian.

SECTION 2. That existing sections 109.32, 1340.01, 1340.02, 1340.03, 1340.09, 1340.12, 1716.02, 1716.05, 1716.07, 1716.16, 1716.99, 2103.041, 2107.26, 2107.33, 2109.07, 2109.09, 2109.10, 2109.67, and 5103.16 and section 2131.01 of the Revised Code are hereby repealed.

SECTION 3. It is the intent of the General Assembly in amending section 1340.02 of the Revised Code in this act to limit the application of the holding of the Ohio Supreme Court in

Sherman v. Sherman

(1966), 5 Ohio St.2d 27.

SECTION 4. Except as otherwise provided in this section, section 1340.031 of the Revised Code, as enacted by this act, applies to inter vivos trusts that are in existence or are created on or after the effective date of this act. Division (B) of section 1340.031 of the Revised Code, as enacted by this act, applies to reports furnished by an inter vivos trustee as provided in that section on or after the effective date of this act.

SECTION 5. Sections 2109.07, 2109.09, and 2109.10 of the Revised Code, as amended by this act, shall apply regarding all administrators and executors who are appointed on or after 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 _____