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Regular Session

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Am. Sub. H. B. No. 432

Representatives Cupp, Rezabek

**Cosponsors: Representatives Bishoff, Craig, Grossman, Hayes, Johnson, G.,
Manning, McClain, Rogers, Sweeney**

**Senators Coley, Bacon, Hackett, Eklund, Hughes, Jordan, Oelslager, Peterson,
Schiavoni**

A BILL

To amend sections 1337.60, 2101.026, 2105.02, 1
2105.14, 2105.31, 2105.32, 2105.33, 2105.34, 2
2105.35, 2105.36, 2105.37, 2105.39, 2106.13, 3
2106.18, 2107.07, 2107.10, 2109.62, 2111.131, 4
2113.86, 4505.10, 5801.10, 5803.02, 5804.02, 5
5808.16, 5812.32, 5812.46, 5812.51, 5814.01, 6
5814.02, 5814.03, 5814.04, 5814.05, 5814.06, 7
5814.07, 5814.08, 5814.09, and 5815.23; to 8
amend, for the purpose of adopting new section 9
numbers as indicated in parentheses, sections 10
2105.39 (2105.38) and 5814.09 (5814.10); to 11
enact new sections 2105.39 and 5814.09 and 12
sections 1337.571, 2105.40, 2127.012, 2137.01, 13
2137.02, 2137.03, 2137.04, 2137.05, 2137.06, 14
2137.07, 2137.08, 2137.09, 2137.10, 2137.11, 15
2137.12, 2137.13, 2137.14, 2137.15, 2137.16, 16
2137.17, 2137.18, and 5802.04; and to repeal 17
section 2105.38 of the Revised Code to revise 18
the law governing decedent's estates by making 19
changes in the Ohio Trust Code, the Probate Law, 20
the Uniform Principal and Income Act, the 21

Transfers to Minors Act, and the Uniform	22
Simultaneous Death Act; to authorize the	23
director or any designee of the Franklin County	24
Guardianship Service Board to act on behalf of	25
the Board on guardianship matters, and to permit	26
the Board to charge a reasonable fee for	27
services to wards; and to adopt the Revised	28
Uniform Fiduciary Access to Digital Assets Act.	29

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

Section 1. That sections 1337.60, 2101.026, 2105.02, 2105.14, 2105.31, 2105.32, 2105.33, 2105.34, 2105.35, 2105.36, 2105.37, 2105.39, 2106.13, 2106.18, 2107.07, 2107.10, 2109.62, 2111.131, 2113.86, 4505.10, 5801.10, 5803.02, 5804.02, 5808.16, 5812.32, 5812.46, 5812.51, 5814.01, 5814.02, 5814.03, 5814.04, 5814.05, 5814.06, 5814.07, 5814.08, 5814.09, and 5815.23 be amended; sections 2105.39 (2105.38) and 5814.09 (5814.10) be amended for the purpose of adopting new section numbers as shown in parentheses; and new sections 2105.39 and 5814.09 and sections 1337.571, 2105.40, 2127.012, 2137.01, 2137.02, 2137.03, 2137.04, 2137.05, 2137.06, 2137.07, 2137.08, 2137.09, 2137.10, 2137.11, 2137.12, 2137.13, 2137.14, 2137.15, 2137.16, 2137.17, 2137.18, and 5802.04 of the Revised Code be enacted to read as follows:

Sec. 1337.571. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to digital assets causes the agent to be an authorized user for the purpose of applicable computer fraud and unauthorized computer access laws and authorizes the agent

<u>to do all of the following:</u>	49
<u>(A) Have access to any catalogue of electronic</u>	50
<u>communications sent or received by the principal;</u>	51
<u>(B) Have access to any other digital asset in which the</u>	52
<u>principal has a right or interest;</u>	53
<u>(C) Have the right to access any of the principal's</u>	54
<u>tangible personal property capable of receiving, storing,</u>	55
<u>processing, or sending a digital asset;</u>	56
<u>(D) Take any action concerning the asset to the extent of</u>	57
<u>the account holder's authority;</u>	58
<u>(E) Have access to the content of electronic</u>	59
<u>communications sent or received by the principal.</u>	60
Sec. 1337.60. A document substantially in the following	61
form may be used to create a statutory form power of attorney	62
that has the meaning and effect prescribed by sections 1337.21	63
to 1337.64 of the Revised Code.	64
[INSERT NAME OF JURISDICTION]	65
STATUTORY FORM POWER OF ATTORNEY	66
IMPORTANT INFORMATION	67
This power of attorney authorizes another person (your	68
agent) to make decisions concerning your property for you (the	69
principal). Your agent will be able to make decisions and act	70
with respect to your property (including your money) whether or	71
not you are able to act for yourself. The meaning of authority	72
over subjects listed on this form is explained in the Uniform	73
Power of Attorney Act (sections 1337.21 to 1337.64 of the	74
Revised Code).	75

This power of attorney does not authorize the agent to 76
make health-care decisions for you. 77

You should select someone you trust to serve as your 78
agent. Unless you specify otherwise, generally the agent's 79
authority will continue until you die or revoke the power of 80
attorney or the agent resigns or is unable to act for you. 81

Your agent is entitled to reasonable compensation unless 82
you state otherwise in the Special Instructions. 83

This form provides for designation of one agent. If you 84
wish to name more than one agent you may name a coagent in the 85
Special Instructions. Coagents are not required to act together 86
unless you include that requirement in the Special Instructions. 87

If your agent is unable or unwilling to act for you, your 88
power of attorney will end unless you have named a successor 89
agent. You may also name a second successor agent. 90

This power of attorney becomes effective immediately 91
unless you state otherwise in the Special Instructions. 92

ACTIONS REQUIRING EXPRESS AUTHORITY 93

Unless expressly authorized and initialed by me in the 94
Special Instructions, this power of attorney does not grant 95
authority to my agent to do any of the following: 96

(1) Create a trust; 97

(2) Amend, revoke, or terminate an inter vivos trust, even 98
if specific authority to do so is granted to the agent in the 99
trust agreement; 100

(3) Make a gift; 101

(4) Create or change rights of survivorship; 102

(5) Create or change a beneficiary designation;	103
(6) Delegate authority granted under the power of attorney;	104 105
(7) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;	106 107 108
(8) Exercise fiduciary powers that the principal has authority to delegate.	109 110
CAUTION: Granting any of the above eight powers will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death.	111 112 113 114
If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.	115 116 117
DESIGNATION OF AGENT	118
I, (Name of Principal) name the following person as my agent:	119 120
Name of Agent:	121
.....	122
Agent's Address:	123
.....	124
Agent's Telephone Number:	125
.....	126
DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)	127

If my agent is unable or unwilling to act for me, I name	128
as my successor agent:	129
Name of Successor Agent:	130
.....	131
Successor Agent's Address:	132
.....	133
Successor Agent's Telephone Number:	134
.....	135
If my successor agent is unable or unwilling to act for	136
me, I name as my second successor agent:	137
Name of Second Successor Agent:	138
.....	139
Second Successor Agent's Address:	140
.....	141
Second Successor Agent's Telephone Number:	142
.....	143
GRANT OF GENERAL AUTHORITY	144
I grant my agent and any successor agent general authority	145
to act for me with respect to the following subjects as defined	146
in the Uniform Power of Attorney Act (sections 1337.21 to	147
1337.64 of the Revised Code):	148
(INITIAL each subject you want to include in the agent's	149
general authority. If you wish to grant general authority over	150
all of the subjects you may initial "All Preceding Subjects"	151
instead of initialing each subject.)	152

(...) Real Property	153
(...) Tangible Personal Property	154
(...) Stocks and Bonds	155
(...) Commodities and Options	156
(...) Banks and Other Financial Institutions	157
(...) Operation of Entity or Business	158
(...) Insurance and Annuities	159
(...) Estates, Trusts, and Other Beneficial Interests	160
(...) Claims and Litigation	161
(...) Personal and Family Maintenance	162
(...) Benefits from Governmental Programs or Civil or Military Service	163 164
(...) Retirement Plans	165
(...) Taxes	166
<u>(...) Digital Assets</u>	167
(...) All Preceding Subjects	168
<u>(...) My agent shall have access to the content of</u> <u>electronic communications sent or received by me.</u>	169 170
LIMITATION ON AGENT'S AUTHORITY	171
An agent that is not my ancestor, spouse, or descendant	172
MAY NOT use my property to benefit the agent or a person to whom	173
the agent owes an obligation of support unless I have included	174
that authority in the Special Instructions.	175
SPECIAL INSTRUCTIONS (OPTIONAL)	176

You may give special instructions on the following lines:	177
.....	178
.....	179
.....	180
.....	181
.....	182
.....	183
.....	184
.....	185
.....	186
EFFECTIVE DATE	187
This power of attorney is effective immediately unless I	188
have stated otherwise in the Special Instructions.	189
NOMINATION OF GUARDIAN (OPTIONAL)	190
If it becomes necessary for a court to appoint a guardian	191
of my estate or my person, I nominate the following person(s)	192
for appointment:	193
Name of Nominee for guardian of my estate:	194
.....	195
Nominee's Address:	196
.....	197
Nominee's Telephone Number:	198
.....	199

.....	224
Signature of Notary	225
My commission expires:	226
.....	227
This document prepared by:	228
.....	229
.....	230
IMPORTANT INFORMATION FOR AGENT	231
Agent's Duties	232
When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:	233 234 235 236 237
(1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;	238 239 240
(2) Act in good faith;	241
(3) Do nothing beyond the authority granted in this power of attorney;	242 243
(4) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest;	244 245 246
(5) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following	247 248 249

manner:	250
(Principal's Name) by (Your Signature) as Agent	251
Unless the Special Instructions in this power of attorney	252
state otherwise, you must also:	253
(1) Act loyally for the principal's benefit;	254
(2) Avoid conflicts that would impair your ability to act	255
in the principal's best interest;	256
(3) Act with care, competence, and diligence;	257
(4) Keep a record of all receipts, disbursements, and	258
transactions made on behalf of the principal;	259
(5) Cooperate with any person that has authority to make	260
health-care decisions for the principal to do what you know the	261
principal reasonably expects or, if you do not know the	262
principal's expectations, to act in the principal's best	263
interest.	264
Termination of Agent's Authority	265
You must stop acting on behalf of the principal if you	266
learn of any event that terminates this power of attorney or	267
your authority under this power of attorney. Events that	268
terminate a power of attorney or your authority to act under a	269
power of attorney include:	270
(1) The death of the principal;	271
(2) The principal's revocation of the power of attorney or	272
your authority;	273
(3) The occurrence of a termination event stated in the	274
power of attorney;	275

(4) The purpose of the power of attorney is fully accomplished;	276 277
(5) If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.	278 279 280 281 282
Liability of Agent	283
The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the Revised Code). If you violate the Uniform Power of Attorney Act or act outside the authority granted, you may be liable for any damages caused by your violation.	284 285 286 287 288
If there is anything about this document or your duties that you do not understand, you should seek legal advice.	289 290
Sec. 2101.026. (A) The probate court of Franklin county may accept funds or other program assistance from, <u>or charge fees for services described in division (B) of this section rendered to,</u> individuals, corporations, agencies, or organizations, including, but not limited to, the board of alcohol, drug addiction, and mental health services of Franklin county or the Franklin county board of developmental disabilities. Any funds <u>or fees</u> received by the probate court of Franklin county under this division shall be paid into the treasury of Franklin county and credited to a fund to be known as the Franklin county probate court mental health fund.	291 292 293 294 295 296 297 298 299 300 301
(B) The moneys in the Franklin county probate court mental health fund shall be used for services to help ensure the treatment of any person who is under the care of the board of	302 303 304

alcohol, drug addiction, and mental health services of Franklin 305
county, the Franklin county board of developmental disabilities, 306
or any other guardianships. These services include, but are not 307
limited to, involuntary commitment proceedings and the 308
establishment and management of adult guardianships, including 309
all associated expenses, for wards who are under the care of the 310
board of alcohol, drug addiction, and mental health services of 311
Franklin county, the Franklin county board of developmental 312
disabilities, or any other guardianships. 313

(C) If the judge of the probate court of Franklin county 314
determines that some of the moneys in the Franklin county 315
probate court mental health fund are needed for the efficient 316
operation of that court, the moneys may be used for the 317
acquisition of equipment, the hiring and training of staff, 318
community services programs, volunteer guardianship training 319
services, the employment of magistrates, and other related 320
services. 321

(D) The moneys in the Franklin county probate court mental 322
health fund that may be used in part for the establishment and 323
management of adult guardianships under division (B) of this 324
section may be utilized to establish a Franklin county 325
guardianship service. 326

(E) (1) A Franklin county guardianship service under 327
division (D) of this section is established by creating a 328
Franklin county guardianship service board comprised of three 329
members. The judge of the probate court of Franklin county shall 330
appoint one member. The board of directors of the Franklin 331
county board of developmental disabilities shall appoint one 332
member. The board of directors of the board of alcohol, drug 333
addiction, and mental health services of Franklin county shall 334

appoint one member. The term of appointment of each member is 335
four years. 336

(2) The Franklin county guardianship service board may 337
appoint a director of the board. The board shall determine the 338
compensation of the director based on the availability of funds 339
contained in the Franklin county probate court mental health 340
fund. 341

(3) ~~The members and the director, if any, of the Franklin~~ 342
~~county guardianship service board may receive appointments from~~ 343
~~the probate court of Franklin county to serve as guardians of~~ 344
~~both the person and estate of wards. The director or any~~ 345
~~designee of the Franklin county guardianship service board may~~ 346
~~act on behalf of the board in relation to all guardianship~~ 347
~~matters.~~ 348

(4) The director of the Franklin county guardianship 349
service board may hire employees subject to available funds in 350
the Franklin county probate court mental health fund. 351

~~(4) If a new director replaces a previously appointed~~ 352
~~director of the Franklin county guardianship service board, the~~ 353
~~new director shall replace the former director serving as a~~ 354
~~guardian under division (E) (3) of this section without the need~~ 355
~~of a successor guardianship hearing conducted by the probate~~ 356
~~court of Franklin county so long as the wards are the same wards~~ 357
~~for both the former director and the new director.~~ 358

(5) The Franklin county guardianship service board may 359
charge a reasonable fee for services provided to wards. The 360
probate judge shall approve any fees charged by the board under 361
division (E) (5) of this section. 362

(6) The Franklin county guardianship service board that is 363

created under division (E) (1) of this section shall promulgate 364
all rules and regulations necessary for the efficient operation 365
of the board and the Franklin county guardianship service. 366

Sec. 2105.02. When, in ~~Chapter 2105. of the Revised Code~~ 367
this chapter, a person is described as living, it means that the 368
person was living at the time of the death of the intestate from 369
whom the estate came and that the person lived for at least one 370
hundred twenty hours following the death of the intestate, and 371
when a person is described as having died, it means that the 372
person died before such intestate or that the person failed to 373
live for at least one hundred twenty hours following the death 374
of the intestate. 375

Sec. 2105.14. ~~Descendants of an intestate begotten before~~ 376
~~the intestate's death, but born after the intestate's death, in~~ 377
~~all cases will inherit as if born in the lifetime of the~~ 378
~~intestate and surviving the intestate; but in no other case can~~ 379
~~a person~~ No descendant of an intestate shall inherit under this 380
chapter unless living at the time of the death of surviving the 381
intestate for at least one hundred twenty hours, or unless born 382
within three hundred days after the death of the intestate and 383
living for at least one hundred twenty hours after birth. 384

Sec. 2105.31. As used in sections 2105.31 to ~~2105.39~~ 385
2105.40 of the Revised Code: 386

(A) "Co-owners with right of survivorship" includes joint 387
tenants, tenants by the entireties, and other co-owners of ~~real~~ 388
~~or personal property; insurance or other policies; or bank,~~ 389
~~savings bank, credit union, or other accounts,~~ held under 390
circumstances that entitle one or more ~~persons~~ individuals to 391
the whole of the property or account on the death of the other 392
~~person~~ individual or persons individuals. 393

(B) "Governing instrument" means a deed, will, trust, 394
insurance or annuity policy, account with a transfer-on-death 395
designation or the abbreviation TOD, account with a payable-on- 396
death designation or the abbreviation POD, transfer-on-death 397
designation affidavit, pension, profit-sharing, retirement, or 398
similar benefit plan, instrument creating or exercising a power 399
of appointment or a power of attorney, or a dispositive, 400
appointive, or nominative instrument of any similar type. 401

(C) "Payor" means a trustee, insurer, business entity, 402
employer, government, governmental agency, political subdivision 403
or instrumentality, or any other person authorized or obligated 404
by law or a governing instrument to make payments or transfers. 405

~~(D) "Event" includes the death of another person.~~ 406

Sec. 2105.32. (A) Except as provided in section 2105.36 of 407
the Revised Code, a person if title to property, the devolution 408
of property, the right to elect an interest in property, or the 409
right to exempt property, homestead, or allowance for support 410
depends upon an individual's survivorship of the death of 411
another individual, an individual who is not established by 412
clear and convincing evidence to have survived ~~another specified~~ 413
~~person~~ the other individual by one hundred twenty hours is 414
deemed to have predeceased the other ~~person for the following~~ 415
~~purposes:~~ individual. 416

~~(1) When the title to real or personal property or the~~ 417
~~devolution of real or personal property depends upon a person's~~ 418
~~survivorship of the death of another person;~~ 419

~~(2) When the right to elect an interest in or exempt a~~ 420
~~surviving spouse's share of an intestate estate under section~~ 421
~~2105.06 of the Revised Code depends upon a person's survivorship~~ 422

~~of the death of another person;~~ 423

~~(3) When the right to elect an interest in or exempt an interest of the decedent in the mansion house pursuant to section 2106.10 of the Revised Code depends upon a person's survivorship of the death of another person;~~ 424
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~~(4) When the right to elect an interest in or exempt an allowance for support pursuant to section 2106.13 of the Revised Code depends upon a person's survivorship of the death of another person.~~ 428
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(B) This section does not apply if its application would result in a taking of an intestate estate by the state. 432
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Sec. 2105.33. Except as provided in section 2105.36 of the Revised Code, ~~a person~~an individual who is not established by clear and convincing evidence to have survived ~~a specified~~an event by one hundred twenty hours is deemed to have predeceased the event for purposes of a provision of a governing instrument that relates to the ~~person~~individual surviving an event, including the death of another individual. 434
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Sec. 2105.34. Except as provided in section 2105.36 of the Revised Code, the following shall apply: 441
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(A) If it is not established by clear and convincing evidence that one of two co-owners with right of survivorship ~~in specified real or personal property~~ survived the other co-owner by one hundred twenty hours, ~~that one-half of the property shall pass or account passes as if each person~~one co-owner had survived the other ~~person~~co-owner by one hundred twenty hours, and one-half of the property or account passes as if the other co-owner had survived the one co-owner by one hundred twenty hours. 443
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(B) If there are more than two co-owners with right of survivorship ~~in specified real or personal property~~ and it is not established by clear and convincing evidence that at least one of the co-owners survived the others by one hundred twenty hours, ~~that the property shall pass or account passes~~ in the proportion that ~~each person owns~~ one co-owner's ownership bears to the ownership of the whole number of co-owners.

Sec. 2105.35. In addition to any provisions of the Rules of Evidence, the following provisions relating to the determination of death and status apply:

(A) (1) ~~A person is dead if the person has been determined to be dead pursuant to standards established under section 2108.40 of the Revised Code~~ An individual is dead if the individual has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the brain, including the brain stem, as determined in accordance with accepted medical standards. If the respiratory and circulatory functions of an individual are being artificially sustained, under accepted medical standards a determination that death has occurred is made by a physician by observing and conducting a test to determine that the irreversible cessation of all functions of the brain has occurred.

(2) A physician who makes a determination of death in accordance with division (A) of this section ~~2108.40 of the Revised Code~~ and any person who acts in good faith in reliance on a determination of death made by a physician in accordance with that section is entitled to the immunity conveyed by that section and accepted medical standards is not liable for damages in any civil action or subject to prosecution in any criminal

proceeding for the physician's acts or the acts of others based 482
on that determination. 483

(3) Any person who acts in good faith and relies on a 484
determination of death made by a physician in accordance with 485
division (A) of this section and accepted medical standards is 486
not liable for damages in any civil action or subject to 487
prosecution in any criminal proceeding for the person's actions. 488

(B) A certified or authenticated copy of a death 489
certificate purporting to be issued by an official or agency of 490
the place where the death of ~~a person~~an individual purportedly 491
occurred is prima-facie evidence of the fact, place, date, and 492
time of the ~~person's~~individual's death and the identity of the 493
decedent. 494

(C) A certified or authenticated copy of any record or 495
report of a domestic or foreign governmental agency that ~~a~~ 496
~~person~~an individual is missing, detained, dead, or alive is 497
prima-facie evidence of the status and of the dates, 498
circumstances, and places disclosed by the record or report. 499

(D) In the absence of prima-facie evidence of death under 500
division (B) or (C) of this section, the fact of death may be 501
established by clear and convincing evidence, including 502
circumstantial evidence. 503

(E) Except as provided in division (F) of this section, a 504
presumption of the death of ~~a person~~an individual arises when 505
either of the following applies: 506

(1) ~~When the person~~The individual has disappeared and has 507
been continuously absent from the ~~person's~~individual's place of 508
last domicile for a five-year period without being heard from 509
during the period; 510

(2) ~~When the person~~The individual has disappeared and has 511
been continuously absent from the ~~person's~~individual's place of 512
last domicile without being heard from and was at the beginning 513
of the ~~person's~~individual's absence exposed to a specific peril 514
of death, even though the absence has continued for less than a 515
five-year period. 516

(F) ~~When a person~~an individual who is on active duty in 517
the armed services of the United States has been officially 518
determined to be absent in a status of "missing" or "missing in 519
action," a presumption of death arises when the head of the 520
federal department concerned has made a finding of death 521
pursuant to the "Federal Missing Persons Act," 80 Stat. 625 522
(1966), 37 U.S.C.A. 551, as amended. 523

(G) In the absence of evidence disputing the time of death 524
stipulated on a document described in division (B) or (C) of 525
this section, a document described in either of those divisions 526
that stipulates a time of death of an individual one hundred 527
twenty hours or more after the time of death of another ~~person~~individual, 528
however the time of death of the other person~~individual~~, 529
is determined, establishes by clear and convincing 530
evidence that the ~~person~~individual survived the other ~~person~~individual 531
by one hundred twenty hours. 532

~~(H) The provisions of divisions (A) to (G) of this section 533
are in addition to any other provisions of the Revised Code, the 534
Rules of Criminal Procedure, or the Rules of Evidence that 535
pertain to the determination of death and status of a person. 536~~

Sec. 2105.36. ~~A person who is not established by clear and 537
convincing evidence to have survived another specified person by 538
one hundred twenty hours shall not be deemed to have predeceased 539
the other person~~Survival by one hundred twenty hours is not 540

required if any of the following ~~apply~~ applies: 541

(A) The governing instrument contains language dealing 542
explicitly with simultaneous deaths or deaths in a common 543
disaster, and that language is ~~operative~~ operable under the 544
~~situation in question~~ facts of the case. 545

(B) The governing instrument expressly indicates that a 546
~~person~~ an individual is not required to survive an event, 547
including the death of another individual, by any specified 548
~~period in order for any right or interest governed by the~~ 549
~~instrument to properly vest or transfer, or expressly requires~~ 550
the individual to survive the event for a specified period, but 551
the survival of the event for the specified period shall be 552
established by clear and convincing evidence. 553

~~(C) The governing instrument expressly requires the person~~ 554
~~to survive the event for a specified period in order for any~~ 555
~~right or interest governed by the instrument to properly vest or~~ 556
~~transfer, and the survival of the event by the person or~~ 557
~~survival of the event by the person for the specified period is~~ 558
~~established by clear and convincing evidence.~~ 559

~~(D)~~ The imposition of a one-hundred-twenty-hour 560
requirement of ~~the person's survival of the other specified~~ 561
~~person~~ causes ~~would cause~~ a nonvested property interest or a 562
power of appointment to be invalid under section 2131.08 of the 563
Revised Code, ~~and~~ but ~~the person's survival of the other~~ 564
~~specified person is~~ shall be established by clear and convincing 565
evidence. 566

~~(E)~~ (D) The application of a one-hundred-twenty-hour 567
requirement of survival to multiple governing instruments would 568
result in an unintended failure or duplication of a disposition, 569

~~and but~~ the person's survival of the other specified person is 570
shall be established by clear and convincing evidence. 571

Sec. 2105.37. (A) A payor or other third party is not 572
liable for any of the following: 573

(1) ~~Making~~ Having made a payment, ~~transferring or~~ 574
transferred an item of ~~real or personal~~ property, or ~~otherwise~~ 575
~~transferring~~ any other benefit to a person designated in a 576
governing instrument who, under sections 2105.31 to ~~2105.39~~ 577
2105.40 of the Revised Code, is not entitled to the payment or 578
item of property or other benefit, if the payment or transfer 579
was made before the payor or other third party received written 580
notice of a claimed lack of entitlement ~~pursuant to under those~~ 581
~~sections 2105.31 to 2105.39 of the Revised Code;~~ 582

(2) ~~Taking~~ Having taken any other action ~~not specified in~~ 583
~~division (A) (1) of this section~~ in good faith reliance on the 584
person's apparent entitlement under the terms of the governing 585
instrument before the payor or other third party received 586
written notice of a claimed lack of entitlement ~~pursuant to~~ 587
under sections 2105.31 to ~~2105.39~~ 2105.40 of the Revised Code. 588

(B) A payor or other third party is liable for a payment, 589
transfer, or other action taken after the payor or other third 590
party receives written notice of a claimed lack of entitlement 591
~~pursuant to under~~ sections 2105.31 to ~~2105.39~~ 2105.40 of the 592
Revised Code. 593

(C) Written notice of a claimed lack of entitlement under 594
~~divisions~~ division (A) or (B) of this section ~~must~~ shall be 595
mailed to the payor's or other third party's main office or home 596
by registered or certified mail, return receipt requested, or 597
served upon the payor or other third party in the same manner as 598

a summons in a civil action. Upon receipt of written notice of a
claimed lack of entitlement ~~pursuant to~~ under sections 2105.31
to ~~2105.39~~ 2105.40 of the Revised Code, a payor or other third
party may pay any amount owed or transfer or deposit any item of
~~real or personal~~ property held by it to or with the probate
court that has jurisdiction over the decedent's estate. If no
probate proceedings have been commenced, upon receipt of written
notice of a claimed lack of entitlement ~~pursuant to~~ under
sections 2105.31 to ~~2105.39~~ 2105.40 of the Revised Code, a payor
or other third party may pay any amount owed or transfer or
deposit any item of ~~real or personal~~ property held by it to or
with the probate court located in the county of the decedent's
residence. The court shall hold the funds or ~~real or personal~~
items of property until it is determined pursuant to, and upon
its determination under sections 2105.31 to ~~2105.39~~ 2105.40 of
the Revised Code to whom the funds or ~~real or personal~~ items of
property should be disbursed, shall order disbursement in
accordance with its determination. ~~The court then shall order~~
~~disbursement of the funds or real or personal property in~~
~~accordance with that determination.~~ Payments, transfers, or
deposits made to or with the court discharge the payor or other
third party from all claims for the value of amounts paid to or
items of property transferred to or deposited with the court.

(D) A person who purchases property for value or receives
a payment or other item of property or benefit in partial or
full satisfaction of a legally enforceable obligation, and
without notice that the person selling or transferring the
property or benefit or making a payment is not entitled to the
property or benefit under sections 2105.31 to 2105.40 of the
Revised Code, is neither obligated under those sections to
return the payment or item of property or benefit nor liable

under those sections for the amount of the payment or the value 630
of the item of property or benefit. 631

(E) A person who, not for value, receives a payment, item 632
of property, or any other benefit to which the person is not 633
entitled under sections 2105.31 to 2105.40 of the Revised Code 634
is obligated to return the payment, item of property, or 635
benefit, or is personally liable for the amount of the payment 636
or the value of the item of property or benefit, to the person 637
who is entitled to it under sections 2105.31 to 2105.40 of the 638
Revised Code. 639

(F) If sections 2105.31 to 2105.40 of the Revised Code or 640
any provision of those sections are preempted by federal law 641
with respect to a payment, an item of property, or any other 642
benefit covered by those sections, a person who, not for value, 643
receives the payment, item of property, or other benefit to 644
which the person is not entitled under sections 2105.31 to 645
2105.40 of the Revised Code is obligated to return the payment, 646
item of property, or benefit, or is personally liable for the 647
amount of the payment or the value of the item of property or 648
benefit, to the person who would have been entitled to it were 649
sections 2105.31 to 2105.40 of the Revised Code or any provision 650
of those sections not preempted. 651

Sec. ~~2105.39~~ 2105.38. (A) Sections 2105.31 to ~~2105.39~~ 652
~~2105.40~~ of the Revised Code do not impair any act done in any 653
proceeding, or any right that accrued, before ~~May 16, 2002~~ the 654
effective date of the amendment of this section. If a right is 655
acquired, extinguished, or barred upon the expiration of a 656
prescribed period of time that has commenced to run, prior to 657
~~May 16, 2002~~ the effective date of the amendment of this 658
section, under any provision of the Revised Code, the provision 659

of the applicable section of the Revised Code applies with 660
respect to that right. 661

(B) Any rule of construction ~~or presumption~~ regarding any 662
provision of a governing instrument that is provided in sections 663
2105.31 to ~~2105.39~~ 2105.40 of the Revised Code applies to any 664
governing instrument that is executed, ~~or any multiple party~~ 665
~~account that is opened~~, prior to ~~May 16, 2002~~ the effective date 666
of the amendment of this section, unless there is a clear 667
indication of a contrary intent in the governing instrument ~~or~~ 668
~~multiple party account~~. 669

~~(C) If any provision of sections 2105.31 to 2105.39 of the~~ 670
~~Revised Code or the application of those sections to any persons~~ 671
~~or circumstance is held invalid, the invalidity does not affect~~ 672
~~other provisions or applications of sections 2105.31 to 2105.39~~ 673
~~of the Revised Code that can be given effect without the invalid~~ 674
~~provision or application.~~ 675

Sec. 2105.39. Sections 2105.31 to 2105.40 of the Revised 676
Code shall be applied and construed to effectuate their general 677
purpose to make uniform the law with respect to the subject of 678
those sections among the states enacting the law. 679

Sec. 2105.40. Sections 2105.31 to 2105.40 of the Revised 680
Code may be cited as the uniform simultaneous death act. 681

Sec. 2106.13. (A) If a person dies leaving a surviving 682
spouse and no minor children, leaving a surviving spouse and 683
minor children, or leaving minor children and no surviving 684
spouse, the surviving spouse, minor children, or both shall be 685
entitled to receive, subject to division (B) of this section, in 686
money or property the sum of forty thousand dollars as an 687
allowance for support. If the surviving spouse selected ~~two~~ one 688

or more automobiles under section 2106.18 of the Revised Code, 689
the allowance for support prescribed by this section shall be 690
reduced by the value of the automobile having the ~~lower~~ lowest 691
value ~~of the two automobiles~~ if more than one automobile is so 692
selected. The money or property set off as an allowance for 693
support shall be considered estate assets. 694

(B) The probate court shall order the distribution of the 695
allowance for support described in division (A) of this section 696
as follows: 697

(1) If the person died leaving a surviving spouse and no 698
minor children, one hundred per cent to the surviving spouse; 699

(2) If the person died leaving a surviving spouse and 700
minor children, and if all of the minor children are the 701
children of the surviving spouse, one hundred per cent to the 702
surviving spouse; 703

(3) If the person died leaving a surviving spouse and 704
minor children, and if not all of the minor children are 705
children of the surviving spouse, in equitable shares, as fixed 706
by the probate court in accordance with this division, to the 707
surviving spouse and the minor children who are not the children 708
of the surviving spouse. In determining equitable shares under 709
this division, the probate court shall do all of the following: 710

(a) Consider the respective needs of the surviving spouse, 711
the minor children who are children of the surviving spouse, and 712
the minor children who are not children of the surviving spouse; 713

(b) Allocate to the surviving spouse, the share that is 714
equitable in light of the needs of the surviving spouse and the 715
minor children who are children of the surviving spouse; 716

(c) Allocate to the minor children who are not children of 717

the surviving spouse, the share that is equitable in light of 718
the needs of those minor children. 719

(4) If the person died leaving minor children and no 720
surviving spouse, in equitable shares, as fixed by the probate 721
court in accordance with this division, to the minor children. 722
In determining equitable shares under this division, the probate 723
court shall consider the respective needs of the minor children 724
and allocate to each minor child the share that is equitable in 725
light of the child's needs. 726

(C) If the surviving spouse selected ~~two~~ one or more 727
automobiles under section 2106.18 of the Revised Code, the 728
probate court, in considering the respective needs of the 729
surviving spouse and the minor children when allocating an 730
allowance for support under division (B) (3) of this section, 731
shall consider the benefit derived by the surviving spouse from 732
the transfer of the automobile having the ~~lower~~ lowest value ~~of~~ 733
~~the two automobiles~~ if more than one automobile is so selected. 734

(D) If, pursuant to this section, the probate court must 735
allocate the allowance for support, the administrator or 736
executor, within five months of the initial appointment of an 737
administrator or executor, shall file with the probate court an 738
application to allocate the allowance for support. 739

(E) The administrator or executor shall pay the allowance 740
for support unless a competent adult or a guardian with the 741
consent of the court having jurisdiction over the guardianship 742
waives the allowance for support to which the adult or the ward 743
represented by the guardian is entitled. 744

(F) For the purposes of this section, the value of an 745
automobile that a surviving spouse selects pursuant to section 746

2106.18 of the Revised Code is the value that the surviving 747
spouse specifies for the automobile in the affidavit executed 748
pursuant to division (B) of section 4505.10 of the Revised Code. 749

Sec. 2106.18. (A) Upon the death of a married resident who 750
owned at least one automobile at the time of death, the interest 751
of the deceased spouse in ~~up to two~~ one or more automobiles that 752
are not transferred to the surviving spouse due to joint 753
ownership with right of survivorship established under section 754
2131.12 of the Revised Code, that are not transferred to a 755
transfer-on-death beneficiary or beneficiaries designated under 756
section 2131.13 of the Revised Code, and that are not otherwise 757
specifically disposed of by testamentary disposition may be 758
selected by the surviving spouse. This interest shall 759
immediately pass to the surviving spouse upon transfer of the 760
title or titles in accordance with section 4505.10 of the 761
Revised Code. The sum total of the values of the automobiles 762
selected by a surviving spouse under this division, as specified 763
in the affidavit that the surviving spouse executes pursuant to 764
division (B) of section 4505.10 of the Revised Code, shall not 765
exceed ~~forty-sixty-five~~ thirty-five thousand dollars. Each automobile that 766
passes to a surviving spouse under this division shall not be 767
considered an estate asset and shall not be included in the 768
estate inventory. 769

(B) The executor or administrator, with the approval of 770
the probate court, may transfer title to an automobile owned by 771
the decedent to any of the following: 772

(1) The surviving spouse, when the automobile is purchased 773
by the surviving spouse pursuant to section 2106.16 of the 774
Revised Code; 775

(2) A distributee; 776

(3) A purchaser.	777
(C) The executor or administrator may transfer title to an automobile owned by the decedent without the approval of the probate court to any of the following:	778 779 780
(1) A legatee entitled to the automobile under the terms of the will;	781 782
(2) A distributee if the distribution of the automobile is made without court order pursuant to section 2113.55 of the Revised Code;	783 784 785
(3) A purchaser if the sale of the automobile is made pursuant to section 2113.39 of the Revised Code.	786 787
(D) As used in division (A) of this section, "automobile" includes a motorcycle and includes a truck if the truck was used as a method of conveyance by the deceased spouse or the deceased spouse's family when the deceased spouse was alive.	788 789 790 791
Sec. 2107.07. A will may be deposited by the testator, or by some person for the testator, in the office of the judge of the probate court in the county in which the testator lives, <u>before or after the death of the testator, and if deposited after the death of the testator, with or without applying for its probate. Upon the payment of the fee of twenty-five dollars to the court, the judge shall receive, keep, and give a certificate of deposit for the will.</u> That will shall be safely kept until delivered or disposed of as provided by section 2107.08 of the Revised Code. <u>If the will is not delivered or disposed of as provided in that section within one hundred years after the date the will was deposited, the judge may dispose of the will in any manner the judge considers feasible.</u> The judge, on being paid the fee of five dollars, shall receive, keep, and	792 793 794 795 796 797 798 799 800 801 802 803 804 805

~~give a certificate of deposit for~~ shall retain an electronic 806
copy of the will prior to its disposal after one hundred years 807
under this section. 808

Every will that is so deposited shall be enclosed in a 809
sealed envelope that shall be indorsed with the name of the 810
testator. The judge shall indorse on the envelope the date of 811
delivery and the person by whom the will was delivered. The 812
envelope may be indorsed with the name of a person to whom it is 813
to be delivered after the death of the testator. The will shall 814
not be opened or read until delivered to a person entitled to 815
receive it, until the testator files a complaint in the probate 816
court for a declaratory judgment of the validity of the will 817
pursuant to section 2107.081 of the Revised Code, or until 818
otherwise disposed of as provided in section 2107.08 of the 819
Revised Code. Subject to section 2107.08 of the Revised Code, 820
the deposited will shall not be a public record until the time 821
that an application is filed to probate it. 822

Sec. 2107.10. (A) No property or right, testate or 823
intestate, shall pass to a beneficiary named in a will who knows 824
of the existence of the will for one year after the death of the 825
testator and has the power to control it and, without reasonable 826
cause, intentionally conceals or withholds it or neglects or 827
refuses within that one year to cause it to be offered for or 828
admitted to probate. The property devised or bequeathed to that 829
beneficiary shall ~~descend to the heirs of the testator, not~~ 830
~~including any heir who has concealed or withheld the will~~ pass 831
as if the beneficiary had predeceased the testator. 832

(B) No property or right, testate or intestate, passes to 833
a beneficiary named in a will when the will was declared valid 834
and filed with a probate judge pursuant to section 2107.084 of 835

the Revised Code, the declaration and filing took place in a 836
county different from the county in which the will of the 837
testator would be probated under section 2107.11 of the Revised 838
Code, and the named beneficiary knew of the declaration and 839
filing and of the death of the testator and did not notify the 840
probate judge with whom the will was filed. This division does 841
not preclude a named beneficiary from acquiring property or 842
rights from the estate of the testator for failing to notify a 843
probate judge if the named beneficiary reasonably believes that 844
the judge has previously been notified of the testator's death. 845

Sec. 2109.62. (A) (1) Upon the filing of a motion by a 846
trustee with the court that has jurisdiction over the trust, 847
upon the provision of reasonable notice to all beneficiaries who 848
are known and in being and who have vested or contingent 849
interests in the trust, and after holding a hearing, the court 850
may terminate the trust, in whole or in part, if it determines 851
that all of the following apply: 852

(a) It is no longer economically feasible to continue the 853
trust. 854

(b) The termination of the trust is for the benefit of the 855
beneficiaries. 856

(c) The termination of the trust is equitable and 857
practical. 858

(d) The current value of the trust is less than one 859
hundred thousand dollars. 860

(2) The existence of a spendthrift or similar provision in 861
a trust instrument or will does not preclude the termination of 862
a trust pursuant to this section. 863

(B) If property is to be distributed from an estate being 864

probated to a trust and the termination of the trust pursuant to 865
this section does not clearly defeat the intent of the testator, 866
the probate court has jurisdiction to order the outright 867
distribution of the property or to make the property custodial 868
property under sections 5814.01 to ~~5814.09~~ 5814.10 of the 869
Revised Code. A probate court may so order whether the motion 870
for the order is made by an inter vivos trustee named in the 871
will of the decedent or by a testamentary trustee. 872

(C) Upon the termination of a trust pursuant to this 873
section, the probate court shall order the distribution of the 874
trust estate in accordance with any provision specified in the 875
trust instrument for the premature termination of the trust. If 876
there is no provision of that nature in the trust instrument, 877
the probate court shall order the distribution of the trust 878
estate among the beneficiaries of the trust in accordance with 879
their respective beneficial interests and in a manner that the 880
court determines to be equitable. For purposes of ordering the 881
distribution of the trust estate among the beneficiaries of the 882
trust under this division, the court shall consider all of the 883
following: 884

(1) The existence of any agreement among the beneficiaries 885
with respect to their beneficial interests; 886

(2) The actuarial values of the separate beneficial 887
interests of the beneficiaries; 888

(3) Any expression of preference of the beneficiaries that 889
is contained in the trust instrument. 890

Sec. 2111.131. (A) The probate court may enter an order 891
that authorizes a person under a duty to pay or deliver money or 892
personal property to a minor who does not have a guardian of the 893

person and estate or a guardian of the estate, to perform that 894
duty in amounts not exceeding five thousand dollars annually, by 895
paying or delivering the money or property to any of the 896
following: 897

(1) The guardian of the person only of the minor; 898

(2) The minor's natural guardians, if any, as determined 899
pursuant to section 2111.08 of the Revised Code; 900

(3) The minor; 901

(4) Any person who has the care and custody of the minor 902
and with whom the minor resides, other than a guardian of the 903
person only or a natural guardian; 904

(5) A financial institution incident to a deposit in a 905
federally insured savings account in the sole name of the minor; 906

(6) A custodian designated by the court in its order, for 907
the minor under sections 5814.01 to ~~5814.09~~ 5814.10 of the 908
Revised Code. 909

(B) An order entered pursuant to division (A) of this 910
section authorizes the person or entity specified in it, to 911
receive the money or personal property on behalf of the minor 912
from the person under the duty to pay or deliver it, in amounts 913
not exceeding five thousand dollars annually. Money or personal 914
property so received by guardians of the person only, natural 915
guardians, and custodians as described in division (A) (4) of 916
this section may be used by them only for the support, 917
maintenance, or education of the minor involved. The order of 918
the court is prima-facie evidence that a guardian of the person 919
only, a natural guardian, or a custodian as described in 920
division (A) (4) of this section has the authority to use the 921
money or personal property received. 922

(C) A person who pays or delivers moneys or personal 923
property in accordance with a court order entered pursuant to 924
division (A) of this section is not responsible for the proper 925
application of the moneys or property by the recipient. 926

Sec. 2113.86. (A) Unless a will or another governing 927
instrument otherwise provides, and except as otherwise provided 928
in this section, a tax shall be apportioned equitably in 929
accordance with the provisions of this section among all persons 930
interested in an estate in proportion to the value of the 931
interest of each person as determined for estate tax purposes. 932

(B) Except as otherwise provided in this division, any tax 933
that is apportioned against a gift made in a clause of a will 934
other than a residuary clause or in a provision of an inter 935
vivos trust other than a residuary provision, shall be 936
reapportioned to the residue of the estate or trust. It shall be 937
charged in the same manner as a general administration expense. 938
However, when a portion of the residue of the estate or trust is 939
allowable as a deduction for estate tax purposes, the tax shall 940
be reapportioned to the extent possible to the portion of the 941
residue that is not so allowable. 942

(C) (1) A tax shall not be apportioned against an interest 943
that is allowable as an estate tax marital or charitable 944
deduction, except to the extent that the interest is a part of 945
the residue of an estate or trust against which tax is 946
reapportioned pursuant to division (B) of this section. 947

(2) Estate tax of this state or another jurisdiction shall 948
not be reapportioned against an interest that is allowable as a 949
deduction for federal estate tax purposes, to the extent that 950
there is other property in the estate or trust that is not 951
allowable as a deduction for federal estate tax purposes and 952

against which estate tax of this state or another jurisdiction 953
can be apportioned. 954

(3) A provision in a will or other governing instrument 955
that apportions tax to an interest that is otherwise allowable 956
as an estate tax marital or charitable deduction is ineffective 957
unless it refers to the marital or charitable deduction and 958
expressly and unambiguously acknowledges and accepts any 959
resultant partial loss of the deduction. 960

(D) A tax shall not be apportioned against property that 961
passes to a surviving spouse as an elective share under section 962
2106.01 of the Revised Code or as an intestate share under 963
section 2105.06 of the Revised Code, to the extent that there is 964
other property in the estate that is not allowable as a 965
deduction for estate tax purposes against which the tax can be 966
apportioned. 967

(E) (1) Any federal estate tax credit for state or foreign 968
death taxes on property that is includible in an estate for 969
federal estate tax purposes, shall inure to the benefit of the 970
persons chargeable with the payment of the state or foreign 971
death taxes in proportion to the amount of the taxes paid by 972
each person, but any federal estate tax credit for state or 973
foreign death taxes inuring to the benefit of a person cannot 974
exceed the federal estate tax apportioned to that person. 975

(2) Any federal estate tax credit for gift taxes paid by a 976
donee of a gift shall inure to the benefit of that donee for 977
purposes of this section. 978

(3) Credits against tax not covered by division (E) (1) or 979
(2) of this section shall be apportioned equitably among persons 980
in the manner in which the tax is apportioned among them. 981

(F) Any additional estate tax that is due because a 982
qualified heir has disposed of qualified farm property in a 983
manner not authorized by law or ceased to use any part of the 984
qualified farm property for a qualified use, shall be 985
apportioned against the interest of the qualified heir. 986

(G) If both a present interest and a future interest in 987
property are involved, a tax shall be apportioned entirely to 988
the principal. This shall be the case even if the future 989
interest qualifies for an estate tax charitable deduction, even 990
if the holder of the present interest also has rights in the 991
principal, and even if the principal is otherwise exempt from 992
apportionment. 993

(H) Penalties shall be apportioned in the same manner as a 994
tax, and interest on tax shall be apportioned to the income of 995
the estate or trust, unless a court directs a different 996
apportionment of penalties or interest based on a finding that 997
special circumstances make an apportionment as provided in this 998
division inequitable. 999

(I) If any part of an estate consists of property, the 1000
value of which is included in the gross estate of the decedent 1001
by reason of section 2044 of the "Internal Revenue Code of 1002
1986," 100 Stat. 2085, 26 N 2044, as amended, or of section 1003
5731.131 of the Revised Code, the estate is entitled to recover 1004
from the persons holding or receiving the property any amount by 1005
which the estate tax payable exceeds the estate tax that would 1006
have been payable if the value of the property had not been 1007
included in the gross estate of the decedent. This division does 1008
not apply if the decedent's will or another governing instrument 1009
provides otherwise and the will or instrument refers to either 1010
section mentioned in this division or to qualified terminable 1011

interest marital deduction property. 1012

Sec. 2127.012. (A) In addition to the other methods 1013
provided by law, a guardian of the estate may sell at public or 1014
private sale, grant options to sell, exchange, re-exchange, or 1015
otherwise dispose of any parcel of real estate belonging to the 1016
estate at any time, at prices, and upon terms that are 1017
consistent with this section, and may execute and deliver deeds 1018
and other instruments of conveyance if all of the following 1019
conditions are met: 1020

(1) The ward's spouse and all persons entitled to the next 1021
estate of inheritance from the ward in the real property give 1022
written consent to a power of sale for a particular parcel of 1023
real estate or to a power of sale for all the real estate 1024
belonging to the estate. Each consent to a power of sale 1025
provided for in this section shall be filed in the probate 1026
court. 1027

(2) Any sale under a power of sale authorized under this 1028
section shall be made at a price of at least eighty per cent of 1029
the appraised value, as set forth in an approved inventory, if 1030
the real estate was appraised within two years prior to the 1031
filing of the consents. If the value of the real estate in an 1032
approved inventory was not determined by an appraisement, or the 1033
appraisement was completed more than two years prior to the 1034
filing of the consents, the real estate shall be appraised and a 1035
sale shall be made at a price of at least eighty per cent of the 1036
appraised value. 1037

(3) No power of sale provided for in this section is 1038
effective if the ward's spouse or any next of kin is a minor. No 1039
person may give the consent of the minor that is required by 1040
this section. 1041

(4) Upon filing the consents under this section, the guardian shall execute such bond or additional bond payable to the state in an amount that the court considers sufficient, having regard to the amount of real property to be sold, its appraised value, the amount of the original bond given by the guardian, and the distribution to be made of the proceeds arising from the sale. 1042
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(B) A ward's spouse who is the guardian of the estate may sell real estate to self pursuant to this section. 1049
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Sec. 2137.01. As used in this chapter: 1051

(A) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user. 1052
1053
1054
1055

(B) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated as agent, attorney in fact, or otherwise. 1056
1057
1058

(C) "Carries" means engages in the transmission of an electronic communication. 1059
1060

(D) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person. 1061
1062
1063
1064

(E) "Content of an electronic communication" means information concerning the substance or meaning of the communication that meets all of the following conditions: 1065
1066
1067

(1) It has been sent or received by a user. 1068

(2) It is in electronic storage by a custodian providing 1069

an electronic-communication service to the public or is carried 1070
or maintained by a custodian providing a remote-computing 1071
service to the public. 1072

(3) It is not readily accessible to the public. 1073

(F) "Court" means the probate court for all matters in 1074
which the court has exclusive jurisdiction under section 2101.24 1075
of the Revised Code. "Court" also includes the probate court or 1076
the general division of the court of common pleas for matters in 1077
which such courts have concurrent jurisdiction under section 1078
2101.24 of the Revised Code. 1079

(G) "Custodian" means a person that carries, maintains, 1080
processes, receives, or stores a digital asset of a user. 1081

(H) "Designated recipient" means a person chosen by a user 1082
using an online tool to administer digital assets of the user. 1083

(I) "Digital asset" means an electronic record in which an 1084
individual has a right or interest. "Digital asset" does not 1085
include an underlying asset or liability unless the asset or 1086
liability is itself an electronic record. 1087

(J) "Electronic" means relating to technology having 1088
electrical, digital, magnetic, wireless, optical, 1089
electromagnetic, or similar capabilities. 1090

(K) "Electronic communication" has the same meaning as in 1091
18 U.S.C. 2510(12), as amended. 1092

(L) "Electronic-communication service" means a custodian 1093
that provides to a user the ability to send or receive an 1094
electronic communication. 1095

(M) "Fiduciary" means an original, additional, or 1096
successor agent, guardian, personal representative, or trustee. 1097

(N) (1) "Guardian" means any person, association, or 1098
corporation appointed by the probate court to have the care and 1099
management of the person, the estate, or the person and the 1100
estate of an incompetent or minor. When applicable, "guardian" 1101
includes, but is not limited to, a limited guardian, an interim 1102
guardian, a standby guardian, and an emergency guardian 1103
appointed pursuant to division (B) of section 2111.02 of the 1104
Revised Code. "Guardian" also includes both of the following: 1105

(a) An agency under contract with the department of 1106
developmental disabilities for the provision of protective 1107
service under sections 5123.55 to 5123.59 of the Revised Code 1108
when appointed by the probate court to have the care and 1109
management of the person of an incompetent; 1110

(b) A conservator appointed by the probate court in an 1111
order of conservatorship issued pursuant to section 2111.021 of 1112
the Revised Code. 1113

(2) "Guardian" does not include a guardian under sections 1114
5905.01 to 5905.19 of the Revised Code. 1115

(O) "Information" means data, text, images, videos, 1116
sounds, codes, computer programs, software, databases, or the 1117
like. 1118

(P) "Online tool" means an electronic service provided by 1119
a custodian that allows the user, in an agreement distinct from 1120
the terms-of-service agreement between the custodian and user, 1121
to provide directions for disclosure or nondisclosure of digital 1122
assets to a third person. 1123

(Q) "Person" means an individual, corporation, business 1124
trust, estate, trust, partnership, limited liability company, 1125
association, joint venture, government, governmental agency or 1126

instrumentality, public corporation, or any other legal or 1127
commercial entity. 1128

(R) "Personal representative" means an executor, 1129
administrator, special administrator, or other person acting 1130
under the authority of the probate court to perform 1131
substantially the same function under the law of this state. 1132
"Personal representative" also includes a commissioner in a 1133
release of assets from administration under section 2113.03 of 1134
the Revised Code and an applicant for summary release from 1135
administration under section 2113.031 of the Revised Code. 1136

(S) "Power of attorney" means a writing or other record 1137
that grants authority to an agent to act in the place of the 1138
principal. 1139

(T) "Principal" means an individual who grants authority 1140
to an agent in a power of attorney. 1141

(U) "Record" means information that is inscribed on a 1142
tangible medium or that is stored in an electronic or other 1143
medium and is retrievable in perceivable form. 1144

(V) "Remote-computing service" means a custodian that 1145
provides to a user computer-processing services or the storage 1146
of digital assets by means of an electronic communications 1147
system, as defined in 18 U.S.C. 2510(14), as amended. 1148

(W) "Terms-of-service agreement" means an agreement that 1149
controls the relationship between a user and a custodian. 1150

(X) "Trustee" means a fiduciary with legal title to 1151
property pursuant to an agreement or declaration that creates a 1152
beneficial interest in another. "Trustee" includes an original, 1153
additional, and successor trustee and a cotrustee. 1154

(Y) "User" means a person that has an account with a 1155
custodian. 1156

(Z) "Ward" means any person for whom a guardian is acting 1157
or for whom the probate court is acting pursuant to section 1158
2111.50 of the Revised Code. "Ward" includes a person for whom a 1159
conservator has been appointed by the probate court in an order 1160
of conservatorship issued pursuant to section 2111.021 of the 1161
Revised Code. 1162

(AA) "Will" includes codicils to wills admitted to 1163
probate, lost, spoliated, or destroyed wills, and instruments 1164
admitted to probate under section 2107.081 of the Revised Code. 1165
"Will" does not include inter vivos trusts or other instruments 1166
that have not been admitted to probate. 1167

Sec. 2137.02. (A) This chapter applies to all of the 1168
following: 1169

(1) An agent acting under a power of attorney executed 1170
before, on, or after the effective date of this section; 1171

(2) A personal representative acting for a decedent who 1172
died before, on, or after the effective date of this section; 1173

(3) A guardianship proceeding commenced before, on, or 1174
after the effective date of this section; 1175

(4) A trustee acting under a trust created before, on, or 1176
after the effective date of this section; 1177

(5) A custodian, if the user resides in this state or 1178
resided in this state at the time of the user's death. 1179

(B) This chapter does not apply to a digital asset of an 1180
employer used by an employee in the ordinary course of the 1181
employer's business. 1182

Sec. 2137.03. (A) A user may use an online tool to direct 1183
the custodian to disclose or not to disclose to a designated 1184
recipient some or all of the user's digital assets, including 1185
the content of electronic communications. If the online tool 1186
allows the user to modify or delete a direction at all times, a 1187
direction regarding disclosure using an online tool overrides a 1188
contrary direction by the user in a will, trust, power of 1189
attorney, or other record. 1190

(B) If a user has not used an online tool to give 1191
direction under division (A) of this section, or if the 1192
custodian has not provided an online tool, the user may allow or 1193
prohibit in a will, trust, power of attorney, or other record, 1194
disclosure to a fiduciary of some or all of the user's digital 1195
assets, including the content of electronic communications sent 1196
or received by the user. 1197

(C) A user's direction under division (A) or (B) of this 1198
section overrides a contrary provision in a terms-of-service 1199
agreement that does not require the user to act affirmatively 1200
and distinctly from the user's assent to the terms of service. 1201

Sec. 2137.04. (A) This chapter does not change or impair a 1202
right of a custodian or a user under a terms-of-service 1203
agreement to access and use digital assets of the user. 1204

(B) This chapter does not give a fiduciary or designated 1205
recipient any new or expanded rights other than those held by 1206
the user for whom, or for whose estate, the fiduciary or 1207
designated recipient acts or represents. 1208

(C) A fiduciary's access to digital assets may be modified 1209
or eliminated by a user, by federal law, or by a terms-of- 1210
service agreement if the user has not provided direction under 1211

section 2137.03 of the Revised Code. 1212

Sec. 2137.05. (A) When disclosing digital assets of a user 1213
under this chapter, the custodian may, at its sole discretion, 1214
do any of the following: 1215

(1) Grant a fiduciary or designated recipient full access 1216
to the user's account; 1217

(2) Grant a fiduciary or designated recipient partial 1218
access to the user's account sufficient to perform the tasks 1219
with which the fiduciary or designated recipient is charged; 1220

(3) Provide a fiduciary or designated recipient a copy in 1221
a record of any digital asset that, on the date the custodian 1222
received the request for disclosure, the user could have 1223
accessed if the user were alive and had full capacity and access 1224
to the account. 1225

(B) A custodian may assess a reasonable administrative 1226
charge for the cost of disclosing digital assets under this 1227
chapter. 1228

(C) A custodian is not required to disclose under this 1229
chapter a digital asset deleted by a user. 1230

(D) If a user directs or a fiduciary requests a custodian 1231
to disclose under this chapter some, but not all, of the users 1232
digital assets, the custodian is not required to disclose the 1233
assets if segregation of the assets would impose an undue burden 1234
on the custodian. If the custodian believes the direction or 1235
request imposes an undue burden, the custodian or fiduciary may 1236
seek an order from the court to disclose any of the following: 1237

(1) A subset limited by date of the user's digital assets; 1238

(2) All of the user's digital assets to the fiduciary or 1239

<u>designated recipient;</u>	1240
<u>(3) None of the user's digital assets;</u>	1241
<u>(4) All of the user's digital assets to the court for</u> <u>review in camera.</u>	1242 1243
<u>Sec. 2137.06. If a deceased user consented to or a court</u> <u>directs disclosure of the contents of electronic communications</u> <u>of the user, the custodian shall disclose to the personal</u> <u>representative of the estate of the user the content of an</u> <u>electronic communication sent or received by the user if the</u> <u>personal representative gives the custodian all of the</u> <u>following:</u>	1244 1245 1246 1247 1248 1249 1250
<u>(A) A written request for disclosure in physical or</u> <u>electronic form;</u>	1251 1252
<u>(B) A copy of the death certificate of the user;</u>	1253
<u>(C) A copy of the letter of appointment of the personal</u> <u>representative, the entry appointing a commissioner under</u> <u>division (E) of section 2113.03 of the Revised Code, or the</u> <u>entry granting summary release from administration under</u> <u>division (E) of section 2113.031 of the Revised Code;</u>	1254 1255 1256 1257 1258
<u>(D) Unless the user provided direction using an online</u> <u>tool, a copy of the user's will, trust, power of attorney, or</u> <u>other record evidencing the user's consent to disclosure of the</u> <u>content of electronic communications;</u>	1259 1260 1261 1262
<u>(E) If requested by the custodian, any of the following:</u>	1263
<u>(1) A number, username, address, or other unique</u> <u>subscriber or account identifier assigned by the custodian to</u> <u>identify the user's account;</u>	1264 1265 1266

<u>(2) Evidence linking the account to the user;</u>	1267
<u>(3) A finding by the court that one of the following</u>	1268
<u>applies:</u>	1269
<u>(a) The user had a specific account with the custodian,</u>	1270
<u>identifiable by the information specified in division (E) (1) of</u>	1271
<u>this section.</u>	1272
<u>(b) Disclosure of the content of electronic communications</u>	1273
<u>of the user would not violate 18 U.S.C. 2701 et seq., as</u>	1274
<u>amended, 47 U.S.C. 222, as amended, or other applicable law.</u>	1275
<u>(c) Unless the user provided direction using an online</u>	1276
<u>tool, the user consented to disclosure of the content of</u>	1277
<u>electronic communications.</u>	1278
<u>(d) Disclosure of the content of electronic communications</u>	1279
<u>of the user is reasonably necessary for administration of the</u>	1280
<u>estate.</u>	1281
<u>Sec. 2137.07.</u> <u>Unless the user prohibited disclosure of</u>	1282
<u>digital assets or the court directs otherwise, a custodian shall</u>	1283
<u>disclose to the personal representative of the estate of a</u>	1284
<u>deceased user a catalogue of electronic communications sent or</u>	1285
<u>received by the user and digital assets, other than the content</u>	1286
<u>of electronic communications, of the user, if the personal</u>	1287
<u>representative gives the custodian all of the following:</u>	1288
<u>(A) A written request for disclosure in physical or</u>	1289
<u>electronic form;</u>	1290
<u>(B) A copy of the death certificate of the user;</u>	1291
<u>(C) A copy of the letter of appointment of the personal</u>	1292
<u>representative, the entry appointing a commissioner under</u>	1293
<u>division (E) of section 2113.03 of the Revised Code, or the</u>	1294

<u>entry granting summary release from administration under</u>	1295
<u>division (E) of section 2113.031 of the Revised Code;</u>	1296
<u>(D) If requested by the custodian, any of the following:</u>	1297
<u>(1) A number, username, address, or other unique</u>	1298
<u>subscriber or account identifier assigned by the custodian to</u>	1299
<u>identify the user's account;</u>	1300
<u>(2) Evidence linking the account to the user;</u>	1301
<u>(3) An affidavit stating that disclosure of the user's</u>	1302
<u>digital assets is reasonably necessary for administration of the</u>	1303
<u>estate;</u>	1304
<u>(4) A finding by the court that either of the following</u>	1305
<u>applies:</u>	1306
<u>(a) The user had a specific account with the custodian,</u>	1307
<u>identifiable by the information specified in division (D) (1) of</u>	1308
<u>this section.</u>	1309
<u>(b) Disclosure of the user's digital assets is reasonably</u>	1310
<u>necessary for administration of the estate.</u>	1311
<u>Sec. 2137.08. To the extent a power of attorney expressly</u>	1312
<u>grants an agent authority over the content of electronic</u>	1313
<u>communications sent or received by the principal and unless</u>	1314
<u>directed otherwise by the principal or the court, a custodian</u>	1315
<u>shall disclose to the agent the content if the agent gives the</u>	1316
<u>custodian all of the following:</u>	1317
<u>(A) A written request for disclosure in physical or</u>	1318
<u>electronic form;</u>	1319
<u>(B) A copy of the power of attorney expressly granting the</u>	1320
<u>agent authority over the content of electronic communications of</u>	1321

the principal; 1322

(C) A certification by the agent, under penalty of 1323
perjury, that the power of attorney is in effect; 1324

(D) If requested by the custodian, either of the 1325
following: 1326

(1) A number, username, address, or other unique 1327
subscriber or account identifier assigned by the custodian to 1328
identify the principal's account; 1329

(2) Evidence linking the account to the principal. 1330

Sec. 2137.09. Unless otherwise ordered by the court, 1331
directed by the principal, or provided by a power of attorney, a 1332
custodian shall disclose to an agent with specific authority 1333
over digital assets or general authority to act on behalf of a 1334
principal a catalogue of electronic communications sent or 1335
received by the principal and digital assets, other than the 1336
content of electronic communications, of the principal, if the 1337
agent gives the custodian all of the following: 1338

(A) A written request for disclosure in physical or 1339
electronic form; 1340

(B) A copy of the power of attorney that gives the agent 1341
specific authority over digital assets or general authority to 1342
act on behalf of the principal; 1343

(C) A certification by the agent, under penalty of 1344
perjury, that the power of attorney is in effect; 1345

(D) If requested by the custodian, either of the 1346
following: 1347

(1) A number, username, address, or other unique 1348

subscriber or account identifier assigned by the custodian to 1349
identify the principal's account; 1350

(2) Evidence linking the account to the principal. 1351

Sec. 2137.10. Unless otherwise ordered by the court or 1352
provided in a trust, a custodian shall disclose to a trustee 1353
that is an original user of an account any digital asset of the 1354
account held in trust, including a catalogue of electronic 1355
communications of the trustee and the content of electronic 1356
communications. 1357

Sec. 2137.11. Unless otherwise ordered by the court, 1358
directed by the user, or provided in a trust, a custodian shall 1359
disclose to a trustee that is not an original user of an account 1360
the content of an electronic communication sent or received by 1361
an original or successor user and carried, maintained, 1362
processed, received, or stored by the custodian in the account 1363
of the trust, if the trustee gives the custodian all of the 1364
following: 1365

(A) A written request for disclosure in physical or 1366
electronic form; 1367

(B) Either a copy of the trust instrument that includes 1368
consent to disclosure of the content of electronic 1369
communications to the trustee and a certification by the 1370
trustee, under penalty of perjury, that the trust exists and the 1371
trustee is a currently acting trustee of the trust or a 1372
certification of the trust under section 5810.13 of the Revised 1373
Code that includes a statement that the trust authorizes 1374
disclosure of the content of electronic communications to the 1375
trustee; 1376

(C) If requested by the custodian, either of the 1377

following: 1378

(1) A number, username, address, or other unique 1379
subscriber or account identifier assigned by the custodian to 1380
identify the trust's account; 1381

(2) Evidence linking the account to the trust. 1382

Sec. 2137.12. Unless otherwise ordered by the court, 1383
directed by the user, or provided in a trust, a custodian shall 1384
disclose to a trustee that is not an original user of an account 1385
a catalogue of electronic communications sent or received by an 1386
original or successor user and stored, carried, or maintained by 1387
the custodian in an account of the trust and any digital assets, 1388
other than the content of electronic communications, in which 1389
the trust has a right or interest, if the trustee gives the 1390
custodian all of the following: 1391

(A) A written request for disclosure in physical or 1392
electronic form; 1393

(B) Either a copy of the trust instrument and a 1394
certification by the trustee, under penalty of perjury, that the 1395
trust exists and the trustee is a currently acting trustee of 1396
the trust or a certification of the trust under section 5810.13 1397
of the Revised Code; 1398

(C) If requested by the custodian, either of the 1399
following: 1400

(1) A number, username, address, or other unique 1401
subscriber or account identifier assigned by the custodian to 1402
identify the trust's account; 1403

(2) Evidence linking the account to the trust. 1404

Sec. 2137.13. (A) After an opportunity for a hearing, the 1405

court may grant a guardian access to the digital assets of a 1406
ward. 1407

(B) Unless otherwise ordered by the court or directed by 1408
the user, a custodian shall disclose to a guardian the catalogue 1409
of electronic communications sent or received by a ward and any 1410
digital assets, other than the content of electronic 1411
communications, in which the ward has a right or interest, if 1412
the guardian gives the custodian all of the following: 1413

(1) A written request for disclosure in physical or 1414
electronic form; 1415

(2) A copy of the court order that gives the guardian 1416
authority over the digital assets of the ward; 1417

(3) If requested by the custodian, either of the 1418
following: 1419

(a) A number, username, address, or other unique 1420
subscriber or account identifier assigned by the custodian to 1421
identify the account of the ward; 1422

(b) Evidence linking the account to the ward. 1423

(C) A guardian of the ward may request a custodian of the 1424
digital assets of the ward to suspend or terminate an account of 1425
the ward for good cause. A request made under this section shall 1426
be accompanied by a copy of the court order giving the guardian 1427
authority over the ward. 1428

Sec. 2137.14. (A) The legal duties imposed on a fiduciary 1429
charged with managing tangible property apply to the management 1430
of digital assets, including all of the following: 1431

(1) The duty of care; 1432

<u>(2) The duty of loyalty;</u>	1433
<u>(3) The duty of confidentiality.</u>	1434
<u>(B) All of the following apply to a fiduciary's or</u>	1435
<u>designated recipient's authority with respect to a digital asset</u>	1436
<u>of a user:</u>	1437
<u>(1) Except as otherwise provided in section 2137.03 of the</u>	1438
<u>Revised Code, it is subject to the applicable terms of service.</u>	1439
<u>(2) It is subject to other applicable laws, including</u>	1440
<u>copyright law.</u>	1441
<u>(3) In the case of a fiduciary, it is limited by the scope</u>	1442
<u>of the fiduciary's duties.</u>	1443
<u>(4) It may not be used to impersonate the user.</u>	1444
<u>(C) A fiduciary with authority over the property of a</u>	1445
<u>decedent, ward, principal, or settlor has the right to access</u>	1446
<u>any digital asset in which the decedent, ward, principal, or</u>	1447
<u>settlor had a right or interest and that is not held by a</u>	1448
<u>custodian or subject to a terms-of-service agreement.</u>	1449
<u>(D) A fiduciary acting within the scope of the fiduciary's</u>	1450
<u>duties is an authorized user of the property of the decedent,</u>	1451
<u>ward, principal, or settlor for the purpose of applicable</u>	1452
<u>computer fraud and unauthorized computer access laws, including</u>	1453
<u>section 2913.04 of the Revised Code.</u>	1454
<u>(E) Both of the following apply to a fiduciary with</u>	1455
<u>authority over the tangible, personal property of a decedent,</u>	1456
<u>ward, principal, or settlor:</u>	1457
<u>(1) The fiduciary has the right to access the property and</u>	1458
<u>any digital asset stored in it.</u>	1459

(2) The fiduciary is an authorized user for the purpose of 1460
computer fraud and unauthorized computer access laws, including 1461
section 2913.04 of the Revised Code. 1462

(F) A custodian may disclose information in an account to 1463
a fiduciary of the user when the information is required to 1464
terminate an account used to access digital assets licensed to 1465
the user. 1466

(G) A fiduciary of a user may request a custodian to 1467
terminate the user's account. A request for termination shall be 1468
in writing, in either physical or electronic form, and 1469
accompanied by all of the following: 1470

(1) If the user is deceased, a copy of the death 1471
certificate of the user; 1472

(2) A copy of the instrument giving the fiduciary 1473
authority over the account, as follows: 1474

(a) For a personal representative, a copy of the letter of 1475
appointment of the personal representative, the entry appointing 1476
a commissioner under division (E) of section 2113.03 of the 1477
Revised Code, or the entry granting summary release from 1478
administration under division (E) of section 2113.031 of the 1479
Revised Code; 1480

(b) For an agent, a copy of the power of attorney; 1481

(c) For a trustee, either a copy of the trust instrument 1482
and a certification by the trustee, under penalty of perjury, 1483
that the trust exists and the trustee is a currently acting 1484
trustee of the trust or a certification of the trust under 1485
section 5810.13 of the Revised Code; or 1486

(d) For a guardian, a copy of the court order giving the 1487

guardian authority over the ward. 1488

(3) If requested by the custodian, any of the following: 1489

(a) A number, username, address, or other unique 1490
subscriber or account identifier assigned by the custodian to 1491
identify the user's account; 1492

(b) Evidence linking the account to the user; 1493

(c) A finding by the court that the user had a specific 1494
account with the custodian, identifiable by the information 1495
specified in division (G) (3) (a) of this section. 1496

Sec. 2137.15. (A) Not later than sixty days after receipt 1497
of the information required under sections 2137.06 to 2137.13 of 1498
the Revised Code, a custodian shall comply with a request under 1499
this chapter from a fiduciary or designated recipient to 1500
disclose digital assets or terminate an account. If the 1501
custodian fails to comply, the fiduciary or designated recipient 1502
may apply to the court for an order directing compliance. 1503

(B) An order under division (A) of this section directing 1504
compliance shall contain a finding that compliance is not in 1505
violation of 18 U.S.C. 2702, as amended. 1506

(C) A custodian may notify the user that a request for 1507
disclosure or to terminate an account was made under this 1508
chapter. 1509

(D) A custodian may deny a request under this chapter from 1510
a fiduciary or designated recipient for disclosure of digital 1511
assets or to terminate an account if the custodian is aware of 1512
any lawful access to the account following the receipt of the 1513
fiduciary's request. 1514

(E) Nothing in this chapter limits a custodian's ability 1515

to obtain, or to require a guardian, agent, or designated 1516
recipient requesting disclosure or termination under this 1517
chapter to obtain, a court order that does all of the following: 1518

(1) Specifies that an account belongs to the ward or 1519
principal; 1520

(2) Specifies that there is sufficient consent from the 1521
ward or principal to support the requested disclosure; and 1522

(3) Contains a finding required by law other than this 1523
chapter. 1524

(F) A custodian and its officers, employees, and agents 1525
are immune from liability for an act or omission done in good 1526
faith in compliance with this chapter. 1527

Sec. 2137.16. In applying and construing this chapter, 1528
consideration shall be given to the need to promote uniformity 1529
of the law with respect to its subject matter among states that 1530
enact it. 1531

Sec. 2137.17. This chapter modifies, limits, or supersedes 1532
the "Electronic Signatures in Global and National Commerce Act," 1533
15 U.S.C. 7001 et seq., but does not modify, limit, or supersede 1534
15 U.S.C. 7001(c) or authorize electronic delivery of any of the 1535
notices described in 15 U.S.C. 7003(b). 1536

Sec. 2137.18. If any provision of this chapter or its 1537
application to any person or circumstance is held invalid, the 1538
invalidity does not affect other provisions or applications of 1539
this chapter that can be given effect without the invalid 1540
provision or application, and to this end the provisions of this 1541
chapter are severable. 1542

Sec. 4505.10. (A) In the event of the transfer of 1543

ownership of a motor vehicle by operation of law, as upon 1544
inheritance, devise, bequest, order in bankruptcy, insolvency, 1545
replevin, or execution sale, a motor vehicle is sold to satisfy 1546
storage or repair charges, or repossession is had upon default 1547
in performance of the terms of a security agreement as provided 1548
in Chapter 1309. of the Revised Code and the secured party has 1549
notified the debtor as required by division (B) of section 1550
1309.611 of the Revised Code, a clerk of a court of common 1551
pleas, upon the surrender of the prior certificate of title or 1552
the manufacturer's or importer's certificate, or, when that is 1553
not possible, upon presentation of satisfactory proof to the 1554
clerk of ownership and rights of possession to the motor 1555
vehicle, and upon payment of the fee prescribed in section 1556
4505.09 of the Revised Code and presentation of an application 1557
for certificate of title, may issue to the applicant a 1558
certificate of title to the motor vehicle. Only an affidavit by 1559
the person or agent of the person to whom possession of the 1560
motor vehicle has passed, setting forth the facts entitling the 1561
person to the possession and ownership, together with a copy of 1562
the journal entry, court order, or instrument upon which the 1563
claim of possession and ownership is founded, is satisfactory 1564
proof of ownership and right of possession. If the applicant 1565
cannot produce that proof of ownership, the applicant may apply 1566
directly to the registrar of motor vehicles and submit the 1567
evidence the applicant has, and the registrar, if the registrar 1568
finds the evidence sufficient, then may authorize a clerk to 1569
issue a certificate of title. If the registrar finds the 1570
evidence insufficient, the applicant may petition the court of 1571
common pleas for a court order ordering the clerk to issue a 1572
certificate of title. The court shall grant or deny the petition 1573
based on the sufficiency of the evidence presented to the court. 1574
If, from the records in the office of the clerk involved, there 1575

appears to be any lien on the motor vehicle, the certificate of 1576
title shall contain a statement of the lien unless the 1577
application is accompanied by proper evidence of its extinction. 1578

(B) A clerk shall transfer a decedent's interest in one or 1579
~~two more~~ automobiles to the surviving spouse of the decedent, as 1580
provided in section 2106.18 of the Revised Code, upon receipt of 1581
the title or titles. An affidavit executed by the surviving 1582
spouse shall be submitted to the clerk with the title or titles. 1583
The affidavit shall give the date of death of the decedent, 1584
shall state that each automobile for which the decedent's 1585
interest is to be so transferred is not disposed of by 1586
testamentary disposition, and shall provide an approximate value 1587
for each automobile selected to be transferred by the surviving 1588
spouse. The affidavit shall also contain a description for each 1589
automobile for which the decedent's interest is to be so 1590
transferred. The transfer does not affect any liens upon any 1591
automobile for which the decedent's interest is so transferred. 1592

(C) Upon the death of one of the persons who have 1593
established joint ownership with right of survivorship under 1594
section 2131.12 of the Revised Code in a motor vehicle, and upon 1595
presentation to a clerk of the title and the certificate of 1596
death of the decedent, the clerk shall transfer title to the 1597
motor vehicle to the survivor. The transfer does not affect any 1598
liens upon any motor vehicle so transferred. 1599

(D) Upon the death of the owner of a motor vehicle 1600
designated in beneficiary form under section 2131.13 of the 1601
Revised Code, upon application for a certificate of title by the 1602
transfer-on-death beneficiary or beneficiaries designated 1603
pursuant to that section, and upon presentation to the clerk of 1604
the certificate of title and the certificate of death of the 1605

decedent, the clerk shall transfer the motor vehicle and issue a certificate of title to the transfer-on-death beneficiary or beneficiaries. The transfer does not affect any liens upon the motor vehicle so transferred.

Sec. 5801.10. (A) As used in this section, "creditor" means any of the following:

(1) A person holding a debt or security for a debt entered into by a trustee on behalf of the trust;

(2) A person holding a debt secured by one or more assets of the trust;

(3) A person having a claim against the trustee or the assets of the trust under section 5805.06 of the Revised Code;

(4) A person who has attached through legal process a beneficiary's interest in the trust.

(B) (1) Subject to division (B) (2) of this section, the parties to an agreement under this section shall be any two or more of the following, or their representatives under the representation provisions of Chapter 5803. of the Revised Code, except that only the settlor and any trustee are required to be parties to an amendment of any revocable trust:

(a) The settlor if living and if no adverse income or transfer tax results would arise from the settlor's participation;

(b) The beneficiaries;

(c) The currently serving trustees;

(d) Creditors, if their interest is to be affected by the agreement.

(2) In addition to the parties to an agreement under 1633
division (B)(1) of this section, the parties shall include the 1634
attorney general if an agreement described in division (C)(7) of 1635
this section is being made and either of the following applies: 1636

(a) An organization with one or more purposes that are 1637
described in division (A) of section 5804.05 of the Revised Code 1638
is a beneficiary. 1639

(b) The trust is a charitable trust. 1640

(c) The persons specified in division (B) of this section 1641
may by written instrument enter into an agreement with respect 1642
to any matter concerning the construction of, administration of, 1643
or distributions under the terms of the trust, the investment of 1644
income or principal held by the trustee, or other matters. The 1645
agreement may not effect a termination of the trust before the 1646
date specified for the trust's termination in the terms of the 1647
trust, change the interests of the beneficiaries in the trust 1648
except as necessary to effect a modification described in 1649
division (C)(5), (6), or (7) of this section, or include terms 1650
and conditions that could not be properly approved by the court 1651
under Chapters 5801. to 5811. of the Revised Code or other 1652
applicable law. The invalidity of any provision of the agreement 1653
does not affect the validity of other provisions of the 1654
agreement. Matters that may be resolved by a private settlement 1655
agreement include, but are not limited to, all of the following: 1656

(1) Determining classes of creditors, beneficiaries, 1657
heirs, next of kin, or other persons; 1658

(2) Resolving disputes arising out of the administration 1659
or distribution under the terms of the trust, including disputes 1660
over the construction of the language of the trust instrument or 1661

construction of the language of other writings that affect the 1662
terms of the trust; 1663

(3) Granting to the trustee necessary or desirable powers 1664
not granted in the terms of the trust or otherwise provided by 1665
law, to the extent that those powers either are not inconsistent 1666
with the express provisions or purposes of the terms of the 1667
trust or, if inconsistent with the express provisions or 1668
purposes of the terms of the trust, are necessary for the due 1669
administration of the terms of the trust; 1670

(4) Modifying the terms of the trust, if the modification 1671
is not inconsistent with any material purpose of the trust; 1672

(5) Modifying the terms of the trust in the manner 1673
required to qualify the gift under the terms of the trust for 1674
the charitable estate or gift tax deduction permitted by federal 1675
law, including the addition of mandatory governing instrument 1676
requirements for a charitable remainder trust as required by the 1677
Internal Revenue Code and regulations promulgated under it in 1678
any case in which the parties interested in the trust have 1679
submitted written agreements to the proposed changes or written 1680
disclaimer of interest; 1681

(6) Modifying the terms of the trust in the manner 1682
required to qualify any gift under the terms of the trust for 1683
the estate tax marital deduction available to noncitizen 1684
spouses, including the addition of mandatory governing 1685
instrument requirements for a qualified domestic trust under 1686
section 2056A of the Internal Revenue Code and regulations 1687
promulgated under it in any case in which the parties interested 1688
in the trust have submitted written agreements to the proposed 1689
changes or written disclaimer of interest; 1690

(7) Construing or modifying the terms of a trust that 1691
refer to the federal estate tax, federal generation-skipping 1692
transfer tax, or Ohio estate tax, or that contain a division of 1693
property based on the imposition or amount of one or more of 1694
those taxes, to give effect to the intent of the settlor; 1695

(8) Resolving any other matter that arises under Chapters 1696
5801. to 5811. of the Revised Code. 1697

(D) No agreement shall be entered into under this section 1698
affecting the rights of a creditor without the creditor's 1699
consent or affecting the collection rights of federal, state, or 1700
local taxing authorities. 1701

(E) Any agreement entered into under this section that 1702
complies with the requirements of division (C) of this section 1703
shall be final and binding on the parties to the agreement or 1704
persons represented by the parties to the agreement whether by 1705
reason of Chapter 5803. of the Revised Code or otherwise, and 1706
their heirs, successors, and assigns, but shall have no effect 1707
on any trustee, settlor, beneficiary, or creditor who is not a 1708
party to the agreement or is not represented by a party to the 1709
agreement. 1710

(F) Notwithstanding anything in this section, in division 1711
(D) of section 5803.03 of the Revised Code, or in any other rule 1712
of law to the contrary, a trustee serving under the terms of the 1713
trust shall only represent its own individual or corporate 1714
interests in negotiating or entering into an agreement subject 1715
to this section. No trustee serving under the terms of the trust 1716
shall be considered to represent any settlor, beneficiary, or 1717
the interests of any settlor or beneficiary in negotiating or 1718
entering into an agreement subject to this section. 1719

(G) Any party to a private settlement agreement entered 1720
into under this section may request the court to approve the 1721
agreement, to determine whether the representation as provided 1722
in Chapter 5803. of the Revised Code was adequate, and to 1723
determine whether the agreement contains terms and conditions 1724
the court could have properly approved. 1725

(H) If an agreement entered into under this section 1726
contains a provision requiring binding arbitration of any 1727
disputes arising under the agreement, the provision is 1728
enforceable. 1729

(I) Nothing in this section affects any of the following: 1730

(1) The right of a beneficiary to disclaim under section 1731
5815.36 of the Revised Code; 1732

(2) The termination or modification of a trust under 1733
section 5804.10, 5804.11, 5804.12, 5804.13, 5804.14, 5804.15, or 1734
5804.16 of the Revised Code; 1735

(3) The ability of a trustee to divide or consolidate a 1736
trust under section 5804.17 of the Revised Code; 1737

(4) The power of the trustee to make distributions 1738
pursuant to section 5808.18 of the Revised Code. 1739

(J) Nothing in this section restricts or limits the 1740
jurisdiction of any court to dispose of matters not covered by 1741
agreements under this section or to supervise the acts of 1742
trustees appointed by that court. 1743

(K) This section shall be liberally construed to favor the 1744
validity and enforceability of agreements entered into under it. 1745

(L) A trustee serving under the trust instrument is not 1746
liable to any third person arising from any loss due to that 1747

trustee's actions or inactions taken or omitted in good faith 1748
reliance on the terms of an agreement entered into under this 1749
section. 1750

(M) Subject to divisions (B) (2) and (C) (7) of this 1751
section, this section does not apply to any of the following: 1752

(1) A charitable trust that has one or more charitable 1753
organizations as qualified beneficiaries; 1754

(2) A charitable trust the terms of which authorize or 1755
direct the trustee to distribute trust income or principal to 1756
one or more charitable organizations to be selected by the 1757
trustee, or for one or more charitable purposes described in 1758
division (A) of section 5804.05 of the Revised Code, if any of 1759
the following apply: 1760

(a) The distributions may be made on the date that an 1761
agreement under this section would be entered into. 1762

(b) The distributions could be made on the date that an 1763
agreement under this section would be entered into if the 1764
interests of the current beneficiaries of the trust terminated 1765
on that date, but the termination of those interests would not 1766
cause the trust to terminate. 1767

(c) The distributions could be made on the date that an 1768
agreement under this section would be entered into if the trust 1769
terminated on that date. 1770

(3) An agreement pursuant to section 109.232 of the 1771
Revised Code. 1772

(N) This section does not prohibit some or all of the 1773
persons who could enter into an agreement under this section 1774
from entering into agreements that are not described in this 1775

section and are governed by other law, including the common law. 1776
Nothing in this section limits or negates any consents, 1777
releases, or ratifications, whether under section 5810.09 of the 1778
Revised Code or otherwise, relating to any agreement described 1779
in this section or governed by other law. 1780

Sec. 5802.04. An action brought under Chapters 5801. to 1781
5811. of the Revised Code is a civil action subject to the Rules 1782
of Civil Procedure, and unless it involves a testamentary or 1783
other trust that already is subject to court supervision, is 1784
commenced by filing a complaint. 1785

Sec. 5803.02. To the extent there is no conflict of 1786
interest between the holder of a general testamentary power of 1787
appointment and the persons represented with respect to the 1788
particular question or dispute, the holder may represent and 1789
bind persons whose interests, as permissible appointees, takers 1790
in default, or otherwise, are subject to the power. To the 1791
extent there is no conflict of interest between the holder of a 1792
limited testamentary power of appointment or a presently 1793
exercisable limited power of appointment and the persons 1794
represented with respect to the particular question or dispute, 1795
the holder may also represent and bind persons whose interests 1796
as possible appointees are subject to the power. The rights of 1797
the holder of a presently exercisable general power of 1798
appointment are governed by section 5806.03 of the Revised Code. 1799

Sec. 5804.02. (A) A trust is created only if all of the 1800
following apply: 1801

(1) The Subject to division (F) of this section, the 1802
settlor of the trust, other than the settlor of a trust created 1803
by a court order, has capacity to create a trust. 1804

- (2) ~~The~~ Subject to division (F) of this section, the 1805
settlor of the trust, other than the settlor of a trust created 1806
by a court order, indicates an intention to create the trust. 1807
- (3) The trust has a definite beneficiary or is one of the 1808
following: 1809
- (a) A charitable trust; 1810
- (b) A trust for the care of an animal, as provided in 1811
section 5804.08 of the Revised Code; 1812
- (c) A trust for a noncharitable purpose, as provided in 1813
section 5804.09 of the Revised Code. 1814
- (4) The trustee has duties to perform. 1815
- (5) The same person is not the sole trustee and sole 1816
beneficiary. 1817
- (B) A beneficiary is definite if the beneficiary can be 1818
ascertained now or in the future, subject to any applicable rule 1819
against perpetuities. 1820
- (C) A power in a trustee or other person to select a 1821
beneficiary from an indefinite class is valid. If the power is 1822
not exercised within a reasonable time, the power fails, and the 1823
property subject to the power passes to the persons who would 1824
have taken the property had the power not been conferred. 1825
- (D) A trust is valid regardless of the existence, size, or 1826
character of the corpus of the trust. This division applies to 1827
any trust instrument that was executed prior to, or is executed 1828
on or after, January 1, 2007. 1829
- (E) A trust is not invalid because a person, including, 1830
but not limited to, the creator of the trust, is or may become 1831

the sole trustee and the sole holder of the present beneficial 1832
enjoyment of the corpus of the trust, provided that one or more 1833
other persons hold a vested, contingent, or expectant interest 1834
relative to the enjoyment of the corpus of the trust upon the 1835
cessation of the present beneficial enjoyment. A merger of the 1836
legal and equitable titles to the corpus of a trust described in 1837
this division does not occur in its creator, and, 1838
notwithstanding any contrary provision of Chapter 2107. of the 1839
Revised Code, the trust is not a testamentary trust that is 1840
required to comply with that chapter in order for its corpus to 1841
be legally distributed to other beneficiaries in accordance with 1842
the provisions of the trust upon the cessation of the present 1843
beneficial enjoyment. This division applies to any trust that 1844
satisfies the provisions of this division, whether the trust was 1845
executed prior to, on, or after October 10, 1991. 1846

(F) An agent under a power of attorney may create a trust 1847
for the principal, whether or not the principal has capacity to 1848
create the trust and indicates an intention to create the trust, 1849
but only as provided in sections 1337.21 to 1337.64 of the 1850
Revised Code, including sections 1337.42 and 1337.58 of the 1851
Revised Code and their limitations on creation of trusts and on 1852
gifts of property of the principal and the duty of the agent to 1853
attempt to preserve the principal's estate plan. 1854

Sec. 5808.16. Without limiting the authority conferred by 1855
section 5808.15 of the Revised Code, a trustee may do all of the 1856
following: 1857

(A) Collect trust property and accept or reject additions 1858
to the trust property from a settlor or any other person; 1859

(B) Acquire or sell property, for cash or on credit, at 1860
public or private sale; 1861

(C) Exchange, partition, or otherwise change the character	1862
of trust property;	1863
(D) Deposit trust money in an account in a regulated	1864
financial-service institution;	1865
(E) Borrow money, with or without security, and mortgage	1866
or pledge trust property for a period within or extending beyond	1867
the duration of the trust;	1868
(F) With respect to an interest in a proprietorship,	1869
partnership, limited liability company, business trust,	1870
corporation, or other form of business or enterprise, continue	1871
the business or other enterprise and take any action that may be	1872
taken by shareholders, members, or property owners, including	1873
merging, dissolving, or otherwise changing the form of business	1874
organization or contributing additional capital;	1875
(G) With respect to stocks or other securities, exercise	1876
the rights of an absolute owner, including the right to do any	1877
of the following:	1878
(1) Vote, or give proxies to vote, with or without power	1879
of substitution, or enter into or continue a voting trust	1880
agreement;	1881
(2) Hold a security in the name of a nominee or in other	1882
form without disclosure of the trust so that title may pass by	1883
delivery;	1884
(3) Pay calls, assessments, and other sums chargeable or	1885
accruing against the securities and sell or exercise stock	1886
subscription or conversion rights;	1887
(4) Deposit the securities with a depository or other	1888
regulated financial-service institution.	1889

(H) With respect to an interest in real property, 1890
construct, or make ordinary or extraordinary repairs to, 1891
alterations to, or improvements in, buildings or other 1892
structures, demolish improvements, raze existing or erect new 1893
party walls or buildings, subdivide or develop land, dedicate 1894
land to public use or grant public or private easements, and 1895
make or vacate plats and adjust boundaries; 1896

(I) Enter into a lease for any purpose as lessor or 1897
lessee, including a lease or other arrangement for exploration 1898
and removal of natural resources, with or without the option to 1899
purchase or renew, for a period within or extending beyond the 1900
duration of the trust; 1901

(J) Grant an option involving a sale, lease, or other 1902
disposition of trust property or acquire an option for the 1903
acquisition of property, including an option exercisable beyond 1904
the duration of the trust, and exercise an option so acquired; 1905

(K) Insure the property of the trust against damage or 1906
loss and insure the trustee, the trustee's agents, and 1907
beneficiaries against liability arising from the administration 1908
of the trust; 1909

(L) Abandon or decline to administer property of no value 1910
or of insufficient value to justify its collection or continued 1911
administration; 1912

(M) With respect to possible liability for violation of 1913
environmental law, do any of the following: 1914

(1) Inspect or investigate property the trustee holds or 1915
has been asked to hold, or property owned or operated by an 1916
organization in which the trustee holds or has been asked to 1917
hold an interest, for the purpose of determining the application 1918

of environmental law with respect to the property;	1919
(2) Take action to prevent, abate, or otherwise remedy any	1920
actual or potential violation of any environmental law affecting	1921
property held directly or indirectly by the trustee, whether	1922
taken before or after the assertion of a claim or the initiation	1923
of governmental enforcement;	1924
(3) Decline to accept property into trust or disclaim any	1925
power with respect to property that is or may be burdened with	1926
liability for violation of environmental law;	1927
(4) Compromise claims against the trust that may be	1928
asserted for an alleged violation of environmental law;	1929
(5) Pay the expense of any inspection, review, abatement,	1930
or remedial action to comply with environmental law.	1931
(N) Pay or contest any claim, settle a claim by or against	1932
the trust, and release, in whole or in part, a claim belonging	1933
to the trust;	1934
(O) Pay taxes, assessments, compensation of the trustee	1935
and of employees and agents of the trust, and other expenses	1936
incurred in the administration of the trust;	1937
(P) Exercise elections with respect to federal, state, and	1938
local taxes;	1939
(Q) Select a mode of payment under any employee benefit or	1940
retirement plan, annuity, or life insurance policy payable to	1941
the trustee, exercise rights under any employee benefit or	1942
retirement plan, annuity, or life insurance policy payable to	1943
the trustee, including the right to indemnification for expenses	1944
and against liabilities, and take appropriate action to collect	1945
the proceeds;	1946

(R) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(S) Guarantee loans made by others to the settlor of a revocable trust and, if the settlor so directs, guarantee loans made by others to a third party and mortgage, pledge, or grant a security interest in the property of a revocable trust to secure the payment of loans made by others to the settlor of the revocable trust and, if the settlor so directs, loans made by others to a third party;

(T) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(U) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by doing any of the following:

(1) Paying it to the beneficiary's guardian of the estate, or, if the beneficiary does not have a guardian of the estate, the beneficiary's guardian of the person;

(2) Paying it to the beneficiary's custodian under sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code and, for that purpose, creating a custodianship;

(3) If the trustee does not know of a guardian of the person or estate, or custodian, paying it to an adult relative

or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf;	1976 1977
(4) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.	1978 1979 1980
(V) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;	1981 1982 1983 1984 1985
(W) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;	1986 1987 1988
(X) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;	1989 1990 1991
(Y) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;	1992 1993 1994
(Z) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it;	1995 1996 1997
(AA) Employ agents, attorneys, accountants, investment advisors, and other professionals.	1998 1999
Sec. 5812.32. (A) As used in this section, "payment" <u>is</u>	2000
<u>(1) "Payment"</u> means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred	2001 2002 2003

to the payer in exchange for future payments. "Payment" includes 2004
a payment made in money or property from the payer's general 2005
assets or from a separate fund created by the payer, ~~including~~. 2006
For purposes of divisions (D), (E), (F), and (G) of this 2007
section, "payment" also includes any payment made from any 2008
separate fund regardless of the reason for the payment. 2009

(2) "Separate fund" includes a private or commercial 2010
annuity, an individual retirement account, or a pension, profit- 2011
sharing, stock-bonus, or stock-ownership plan. 2012

(B) To the extent that a payment is characterized as 2013
interest ~~or~~, a dividend, or a payment made in lieu of interest 2014
or a dividend, a trustee shall allocate ~~it~~ the payment to 2015
income. The trustee shall allocate to principal the balance of 2016
the payment and any other payment received in the same 2017
accounting period that is not characterized as interest, a 2018
dividend, or an equivalent payment. 2019

(C) If no part of a payment is characterized as interest, 2020
a dividend, or an equivalent payment, and all or part of the 2021
payment is required to be made, a trustee shall allocate to 2022
income ten per cent of the part that is required to be made 2023
during the accounting period and the balance to principal. If no 2024
part of a payment is required to be made or the payment received 2025
is the entire amount to which the trustee is entitled, the 2026
trustee shall allocate the entire payment to principal. For 2027
purposes of this division, a payment is not "required to be 2028
made" to the extent that it is made because the trustee 2029
exercises a right of withdrawal. 2030

~~(D) If, to obtain an estate tax marital deduction for a~~ 2031
~~trust, a trustee must allocate more of a payment to income than~~ 2032
~~is provided for by this section, the trustee shall allocate to~~ 2033

~~income the additional amount necessary to obtain the marital-~~ 2034
~~deduction.~~ Except as otherwise provided in division (E) of this 2035
section, divisions (F) and (G) of this section apply, and 2036
divisions (B) and (C) of this section do not apply, in 2037
determining the allocation of a payment made from a separate 2038
fund to either of the following: 2039

(1) A trust for which an election to qualify for a marital 2040
deduction under section 2056(b) (7) of the Internal Revenue Code 2041
of 1986, 26 U.S.C. 2056(b) (7), as amended, has been made; 2042

(2) A trust that qualifies for the marital deduction under 2043
section 2056(b) (5) of the Internal Revenue Code of 1986, 26 2044
U.S.C. 2056(b) (5), as amended. 2045

(E) Divisions (D), (F), and (G) of this section do not 2046
apply if and to the extent that the series of payments would, 2047
without the application of division (D) of this section, qualify 2048
for the marital deduction under section 2056(b) (7) (C) of the 2049
Internal Revenue Code of 1986, 26 U.S.C. 2056(b) (7) (C), as 2050
amended. 2051

(F) A trustee shall determine the internal income of each 2052
separate fund for the accounting period as if the separate fund 2053
were a trust subject to sections 5812.01 to 5812.52 of the 2054
Revised Code. Upon request of the surviving spouse, the trustee 2055
shall demand that the person administering the separate fund 2056
distribute the internal income to the trust. The trustee shall 2057
allocate a payment from the separate fund to income to the 2058
extent of the internal income of the separate fund and 2059
distribute that amount to the surviving spouse. The trustee 2060
shall allocate the balance of the payment to principal. Upon 2061
request of the surviving spouse, the trustee shall allocate 2062
principal to income to the extent the internal income of the 2063

separate fund exceeds payments made from the separate fund to 2064
the trust during the accounting period. 2065

(G) If a trustee cannot determine the internal income of a 2066
separate fund but can determine the value of the separate fund, 2067
the internal income of the separate fund is deemed to equal four 2068
per cent of the fund's value according to the most recent 2069
statement of value preceding the beginning of the accounting 2070
period. If the trustee can determine neither the internal income 2071
of the separate fund nor the value of the fund, the internal 2072
income of the fund is deemed to equal the product of the 2073
interest rate and the present value of the expected future 2074
payments, as determined under section 7520 of the Internal 2075
Revenue Code of 1986, 26 U.S.C. 7520, as amended, for the month 2076
preceding the accounting period for which the computation is 2077
made. 2078

(H) This section does not apply to ~~payments~~ a payment to 2079
which section 5812.33 of the Revised Code applies. 2080

(I) (1) This section applies to a trust described in 2081
division (D) of this section on and after any of the following 2082
dates: 2083

(a) If the trust has not received a payment from a 2084
separate fund on the effective date of the amendment of this 2085
section, the date of the decedent's death; 2086

(b) If the trust receives the first payment from any and 2087
all separate funds payable to the trust in the calendar year 2088
beginning January 1 of the year in which the amendment of this 2089
section takes effect, the date of the decedent's death; 2090

(c) If the trust is not described in division (I) (1) (a) or 2091
(b) of this section, January 1 of the year in which the 2092

amendment of this section takes effect. 2093

(2) For purposes of division (I) (1) of this section, 2094
"decedent" means the individual by reason of whose death the 2095
trust may receive a payment from the separate fund. 2096

Sec. 5812.46. (A) A tax required to be paid by a trustee 2097
based on receipts allocated to income shall be paid from income. 2098

(B) A tax required to be paid by a trustee based on 2099
receipts allocated to principal shall be paid from principal, 2100
even if the tax is called an income tax by the taxing authority. 2101

(C) A tax required to be paid by a trustee on the trust's 2102
share of an entity's taxable income shall be paid 2103
~~proportionately~~ as follows: 2104

(1) From income, to the extent that receipts from the 2105
entity are allocated only to income; 2106

(2) From principal, ~~as follows:~~ 2107

~~(a) To~~ to the extent that receipts from the entity are 2108
allocated only to principal; ~~and~~ 2109

~~(b) To~~ (3) Proportionately from principal and income, to 2110
the extent that receipts from the entity are allocated to both 2111
income and principal; 2112

(4) From principal, to the extent that the trust's share 2113
of the entity's taxable income tax exceeds the total receipts 2114
described in divisions (C) (1) and (2) (a) of this section from 2115
the entity. 2116

(D) ~~For purposes of this section, receipts allocated to~~ 2117
~~principal or income shall be reduced by the amount distributed~~ 2118
~~to a beneficiary from principal or income for which the trust~~ 2119

~~receives a deduction in calculating the tax. After applying~~ 2120
~~divisions (A) to (C) of this section, the trustee shall adjust~~ 2121
~~income or principal receipts to the extent that the trust's~~ 2122
~~taxes are reduced because the trust receives a deduction for~~ 2123
~~payments made to a beneficiary.~~ 2124

Sec. 5812.51. (A) Sections 5812.01 to 5812.52 of the 2125
Revised Code may be cited as the "uniform principal and income 2126
act~~(1997)~~." 2127

(B) In applying and construing the "uniform principal and 2128
income act~~(1997)~~," ~~7~~ consideration shall be given to the need to 2129
promote uniformity of the law with respect to its subject matter 2130
among states that enact the "uniform principal and income 2131
act~~(1997)~~." ~~7~~ 2132

Sec. 5814.01. As used in sections 5814.01 to ~~5814.09~~ 2133
5814.10 of the Revised Code, unless the context otherwise 2134
requires: 2135

(A) "Benefit plan" means any plan of an employer for the 2136
benefit of any employee, any plan for the benefit of any 2137
partner, or any plan for the benefit of a proprietor, and 2138
includes, but is not limited to, any pension, retirement, death 2139
benefit, deferred compensation, employment agency, stock bonus, 2140
option, or profit-sharing contract, plan, system, account, or 2141
trust. 2142

(B) "Broker" means a person that is lawfully engaged in 2143
the business of effecting transactions in securities for the 2144
account of others. A "broker" includes a financial institution 2145
that effects such transactions and a person who is lawfully 2146
engaged in buying and selling securities for the person's own 2147
account, through a broker or otherwise, as a part of a regular 2148

business.	2149
(C) "Court" means the probate court.	2150
(D) "The custodial property" includes:	2151
(1) All securities, money, life or endowment insurance	2152
policies, annuity contracts, benefit plans, real estate,	2153
tangible and intangible personal property, proceeds of a life or	2154
endowment insurance policy, an annuity contract, or a benefit	2155
plan, and other types of property under the supervision of the	2156
same custodian for the same minor as a consequence of a transfer	2157
or transfers made to the minor, a gift or gifts made to the	2158
minor, or a purchase made by the custodian for the minor, in a	2159
manner prescribed in sections 5814.01 to 5814.09 <u>5814.10</u> of the	2160
Revised Code;	2161
(2) The income from the custodial property;	2162
(3) The proceeds, immediate and remote, from the sale,	2163
exchange, conversion, investment, reinvestment, or other	2164
disposition of the securities, money, life or endowment	2165
insurance policies, annuity contracts, benefit plans, real	2166
estate, tangible and intangible personal property, proceeds of a	2167
life or endowment insurance policy, an annuity contract, or a	2168
benefit plan, other types of property, and income.	2169
(E) "Custodian" or "successor custodian" means a person so	2170
designated in a manner prescribed in sections 5814.01 to 5814.09	2171
<u>5814.10</u> of the Revised Code.	2172
(F) "Financial institution" means any bank, as defined in	2173
section 1101.01, any building and loan association, as defined	2174
in section 1151.01, any credit union as defined in section	2175
1733.01 of the Revised Code, and any federal credit union, as	2176
defined in the "Federal Credit Union Act," 73 Stat. 628 (1959),	2177

12 U.S.C.A. 1752, as amended.	2178
(G) "Guardian of the minor" includes the general guardian,	2179
guardian, tutor, or curator of the property, estate, or person	2180
of a minor.	2181
(H) "Issuer" means a person who places or authorizes the	2182
placing of the person's name on a security, other than as a	2183
transfer agent, to evidence that it represents a share,	2184
participation, or other interest in the person's property or in	2185
an enterprise, or to evidence the person's duty or undertaking	2186
to perform an obligation that is evidenced by the security, or	2187
who becomes responsible for or in place of any such person.	2188
(I) "Legal representative" of a person means the executor,	2189
administrator, general guardian, guardian, committee,	2190
conservator, tutor, or curator of the person's property or	2191
estate.	2192
(J) "Member of the minor's family" means a parent,	2193
stepparent, spouse, grandparent, brother, sister, uncle, or aunt	2194
of the minor, whether of the whole or half blood, or by	2195
adoption.	2196
(K) "Minor" <u>(1) Except as provided in division (K) (2) of</u>	2197
<u>this section, "minor" means a person an individual who has not</u>	2198
<u>attained the age of twenty-one years.</u>	2199
<u>(2) When used with reference to the beneficiary for whose</u>	2200
<u>benefit custodial property is held or is to be held, "minor"</u>	2201
<u>means an individual who has not attained the age at which the</u>	2202
<u>custodian is required under section 5814.09 of the Revised Code</u>	2203
<u>to transfer the custodial property to the beneficiary.</u>	2204
(L) "Security" includes any note, stock, treasury stock,	2205
common trust fund, bond, debenture, evidence of indebtedness,	2206

certificate of interest or participation in an oil, gas, or 2207
mining title or lease or in payments out of production under an 2208
oil, gas, or mining title or lease, collateral trust 2209
certificate, transferable share, voting trust certificate, or, 2210
in general, any interest or instrument commonly known as a 2211
security, or any certificate of interest or participation in, 2212
any temporary or interim certificate, receipt or certificate of 2213
deposit for, or any warrant or right to subscribe to or 2214
purchase, any of the foregoing. A "security" does not include a 2215
security of which the donor or transferor is the issuer. A 2216
security is in "registered form" when it specifies a person who 2217
is entitled to it or to the rights that it evidences and its 2218
transfer may be registered upon books maintained for that 2219
purpose by or on behalf of the issuer. 2220

(M) "Transfer" means a disposition, other than a gift, by 2221
a person who is eighteen years of age or older that creates 2222
custodial property under sections 5814.01 to ~~5814.09~~ 5814.10 of 2223
the Revised Code. 2224

(N) "Transfer agent" means a person who acts as 2225
authenticating trustee, transfer agent, registrar, or other 2226
agent for an issuer in the registration of transfers of its 2227
securities, in the issue of new securities, or in the 2228
cancellation of surrendered securities. 2229

(O) "Transferor" means a person who is eighteen years of 2230
age or older, who makes a transfer. 2231

(P) "Trust company" means a financial institution that is 2232
authorized to exercise trust powers. 2233

(Q) "Administrator" includes an "administrator with the 2234
will annexed." 2235

Sec. 5814.02. (A) A person who is eighteen years of age or 2236
older may, during the person's lifetime, make a gift or transfer 2237
of a security, money, a life or endowment insurance policy, an 2238
annuity contract, a benefit plan, real estate, tangible or 2239
intangible personal property, or any other property to, may 2240
designate as beneficiary of a life or endowment insurance 2241
policy, an annuity contract, or a benefit plan, or make a 2242
transfer by the irrevocable exercise of a power of appointment 2243
in favor of, a person who is a minor on the date of the gift or 2244
transfer: 2245

(1) If the subject of the gift or transfer is a security 2246
in registered form, by registering it in the name of the donor 2247
or transferor, another person who is eighteen years of age or 2248
older, or a trust company, followed, in substance, by the words: 2249
"as custodian for (name of minor) under the 2250
Ohio Transfers to Minors Act;" 2251

(2) If the subject of the gift or transfer is a security 2252
not in registered form, by delivering it to the donor or 2253
transferor, another person who is eighteen years of age or 2254
older, or a trust company, accompanied by a statement of a gift 2255
or transfer in the following form, in substance, signed by the 2256
donor or transferor and the person or trust company designated 2257
as custodian: 2258

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT 2259

I, (name of donor or transferor), 2260
hereby deliver to (name of custodian) as custodian 2261
for (name of minor) under the Ohio Transfers 2262
to Minors Act, the following security (ies): (insert an 2263
appropriate description of the security or securities delivered, 2264
sufficient to identify it or them). 2265

.....	2266
(signature of donor or transferor)	2267
..... (name of custodian) hereby acknowledges	2268
receipt of the above described security (ies) as custodian for	2269
the above minor under the Ohio Transfers to Minors Act.	2270
Dated:	2271
(signature of custodian)"	2272
(3) If the subject of the gift or transfer is money, by	2273
paying or delivering it to a broker, or a financial institution	2274
for credit to an account in the name of the donor or transferor,	2275
another person who is eighteen years of age or older, or a trust	2276
company, followed, in substance, by the words: "as custodian for	2277
..... (name of minor) under the Ohio Transfers to	2278
Minors Act."	2279
(4) If the subject of the gift or transfer is a life or	2280
endowment insurance policy, an annuity contract, or a benefit	2281
plan, by assigning the policy, contract, or plan to the donor or	2282
transferor, another person who is eighteen years of age or	2283
older, or a trust company, followed, in substance by the words:	2284
"as custodian for (name of minor) under the	2285
Ohio Transfers to Minors Act."	2286
(5) If the subject of the gift or transfer is an interest	2287
in real estate, by executing and delivering in the appropriate	2288
manner a deed, assignment, or similar instrument in the name of	2289
the donor or transferor, another person who is eighteen years of	2290
age or older, or a trust company, followed, in substance, by the	2291
words: "as custodian for (name of minor) under	2292
the Ohio Transfers to Minors Act."	2293
(6) If the subject of the gift or transfer is tangible	2294

personal property, by delivering it to the donor or transferor, 2295
another person who is eighteen years of age or older, or a trust 2296
company, accompanied by a statement of a gift or transfer in the 2297
following form, in substance, signed by the donor or transferor 2298
and the person or trust company designated as custodian: 2299

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT 2300

I, (name of donor or transferor), hereby 2301
deliver to (name of custodian) as custodian 2302
for (name of minor) under the Ohio Transfers 2303
to Minors Act, the following property: (insert an appropriate 2304
description of the property delivered, sufficient to identify 2305
it). 2306

..... 2307

(signature of donor or transferor) 2308

..... (name of custodian) hereby 2309
acknowledges receipt of the above described property as 2310
custodian for the above minor under the Ohio Transfers to Minors 2311
Act. 2312

Dated: 2313

(signature of custodian)" 2314

(7) If the subject of the gift or transfer is tangible 2315
personal property, title to which is evidenced by a certificate 2316
of title issued by a department or agency of a state or of the 2317
United States, by issuing title to the donor or transferor, 2318
another person who is eighteen years of age or older, or a trust 2319
company, accompanied by a statement of a gift or transfer in the 2320
following form, in substance: "as custodian 2321
for (name of minor) under the Ohio 2322
Transfers to Minors Act;" or by delivering the title to another 2323
person who is eighteen years of age or older or a trust company, 2324

endorsed to that person followed in substance by the following 2325
words: "as custodian for..... (name of minor) 2326
under the Ohio Transfers to Minors Act." 2327

(8) If the subject of the gift or transfer is the 2328
designation of a minor as beneficiary of a life or endowment 2329
insurance policy, an annuity contract, or a benefit plan, by 2330
designating as beneficiary of the policy, contract, or plan the 2331
donor or transferor, another person who is eighteen years of age 2332
or older, or a trust company, followed, in substance, by the 2333
words: "as custodian for (name of minor) 2334
under the Ohio Transfers to Minors Act." 2335

(9) If the subject of the gift or transfer is an 2336
irrevocable exercise of a power of appointment in favor of a 2337
minor or is an interest in any property that is not described in 2338
divisions (A) (1) to (8) of this section, by causing the 2339
ownership of the property to be transferred by any written 2340
document in the name of the donor or transferor, another person 2341
who is eighteen years of age or older, or a trust company, 2342
followed, in substance, by the words: "as custodian 2343
for (name of minor) under the Ohio Transfers 2344
to Minors Act." 2345

(B) Trustees, inter vivos or testamentary, executors, and 2346
administrators having authority to distribute or pay any trust 2347
or estate property to or for the benefit of a minor, or having 2348
authority to distribute or pay any trust or estate property to 2349
any other person for the benefit of a minor may, if authorized 2350
by a will or trust instrument, distribute or pay trust or estate 2351
property of any type mentioned in division (A) of this section 2352
in the manner and form provided in that division, and may name 2353
the custodian or successor custodian of the property if the will 2354

or trust instrument does not name an eligible custodian, or if 2355
the will or trust does not name an eligible successor custodian 2356
and the naming of a successor custodian is necessary. A person 2357
who is eighteen years of age or older, in the person's will or 2358
trust instrument, may provide that the fiduciary shall make any 2359
payment or distribution as provided in this division and may 2360
name the custodian and a successor custodian of the trust or 2361
estate property. As to any distribution or payment so made, the 2362
testator of a will, under the provisions of which a testamentary 2363
trust or estate is being administered, or the settlor of an 2364
inter vivos trust shall be deemed the donor or transferor. 2365

(C) Any gift, transfer, payment, or distribution that is 2366
made in a manner prescribed in division (A), (B), or (E) of this 2367
section may be made to only one minor and only one person may be 2368
the custodian. All gifts, transfers, payments, and distributions 2369
made by a person in a manner prescribed in sections 5814.01 to 2370
~~5814.09~~ 5814.10 of the Revised Code to the same custodian for 2371
the benefit of the same minor result in a single custodianship. 2372

(D) A donor or transferor who makes a gift or transfer to 2373
a minor in a manner prescribed in division (A) of this section 2374
and a trustee, executor, or administrator acting under division 2375
(B) or (E) of this section shall promptly do all things within 2376
the donor's, transferor's, trustee's, executor's, or 2377
administrator's power to put the subject of the gift or transfer 2378
in the possession and control of the custodian, but neither the 2379
donor's, transferor's, trustee's, executor's, or administrator's 2380
failure to comply with this division, nor the designation by the 2381
donor, transferor, trustee, executor, or administrator of an 2382
ineligible custodian, nor the renunciation by the person or 2383
trust company designated as custodian, affects the consummation 2384
of the gift or transfer. 2385

(E) If there is no will, or if a will, trust, or other governing instrument does not contain an authorization to make a transfer as described in this division, a trustee, executor, or administrator may make a transfer in a manner prescribed in division (A) of this section to self, another person who is eighteen years of age or older, or a trust company, as custodian, if all of the following apply:

(1) Irrespective of the value of the property, the trustee, executor, or administrator considers the transfer to be in the best interest of the minor;

(2) Irrespective of the value of the property, the transfer is not prohibited by or inconsistent with the applicable will, trust agreement, or other governing instrument;

(3) If the value of the property exceeds ~~ten~~ twenty-five thousand dollars, the transfer is authorized by the appropriate court.

(F) Except with respect to real property, a donor or transferor who makes a gift or transfer to a minor in a manner prescribed in division (A) of this section and a trustee, executor, or administrator acting under division (B) or (E) of this section may also designate one or more successor custodians, in substance, by adding to such designation the following words or words of similar import for the successor or successors designated: "In the event of the death or inability or unwillingness to serve of (name of custodian), or any successor custodian designated hereby, (name of first successor custodian), followed by (name of second successor custodian), in the order named, shall serve as successor custodian."

Sec. 5814.03. (A) A gift or transfer made in a manner 2416
prescribed in sections 5814.01 to ~~5814.09~~5814.10 of the Revised 2417
Code, is irrevocable and conveys to the minor indefeasibly 2418
vested legal title to the security, money, life or endowment 2419
insurance policy, annuity contract, benefit plan, real estate, 2420
tangible or intangible personal property, or other property 2421
given or, subject to the right of the owner of the policy, 2422
contract, or benefit plan to change the beneficiary if the 2423
custodian is not the owner, to the proceeds of a life or 2424
endowment insurance policy, an annuity contract, or a benefit 2425
plan given, but no guardian of the minor has any right, power, 2426
duty, or authority with respect to the custodial property except 2427
as provided in sections 5814.01 to ~~5814.09~~5814.10 of the 2428
Revised Code. 2429

(B) By making a gift or transfer in a manner prescribed in 2430
sections 5814.01 to ~~5814.09~~5814.10 of the Revised Code, the 2431
donor or transferor incorporates in the gift or transfer all the 2432
provisions of these sections and grants to the custodian, and to 2433
any issuer, transfer agent, financial institution, broker, or 2434
third person dealing with a person or trust company designated 2435
as custodian, the respective powers, rights, and immunities 2436
provided in these sections. 2437

Sec. 5814.04. (A) The custodian shall collect, hold, 2438
manage, invest, and reinvest the custodial property. 2439

(B) The custodian shall pay over to the minor for 2440
expenditure by the minor, or expend for the use or benefit of 2441
the minor, as much of or all the custodial property as the 2442
custodian considers advisable for the use and benefit of the 2443
minor in the manner, at the time or times, and to the extent 2444
that the custodian in the custodian's discretion considers 2445

suitable and proper, with or without court order, with or 2446
without regard to the duty or ability of the custodian or of any 2447
other person to support the minor or the minor's ability to do 2448
so, and with or without regard to any other income or property 2449
of the minor that may be applicable or available for any 2450
purpose. Any payment or expenditure that is made under this 2451
division is in addition to, is not a substitute for, and does 2452
not affect the obligation of any person to support the minor for 2453
whom the payment or expenditure is made. 2454

(C) The court, on the petition of a parent or guardian of 2455
the minor or of the minor, if the minor has attained the age of 2456
fourteen years, may order the custodian to pay over to the minor 2457
for expenditure by the minor or to expend as much of or all the 2458
custodial property as is necessary for the use and benefit of 2459
the minor. 2460

(D) (1) Except as provided in division (D) (2) of this 2461
section and in section 5814.09 of the Revised Code, to the 2462
extent that the custodial property is not so expended, the 2463
custodian shall deliver or pay the custodial property over to 2464
the minor on the minor's attaining the age of twenty-one years 2465
or, if the minor dies before attaining the age of twenty-one 2466
years, shall, upon the minor's death, deliver or pay the 2467
custodial property over to the estate of the minor. 2468

(2) If the donor or transferor, in the written instrument 2469
that makes or provides for the gift or transfer, directs the 2470
custodian to deliver or pay over the custodial property to the 2471
minor on the minor's attaining any age between eighteen and 2472
twenty-one, the custodian shall deliver or pay over the 2473
custodial property to the minor on the minor's attaining that 2474
age, or, if the minor dies before attaining that age, the 2475

custodian shall, upon the minor's death, deliver or pay the 2476
custodial property over to the estate of the minor. 2477

(E) The custodian, notwithstanding statutes restricting 2478
investments by fiduciaries, shall invest and reinvest the 2479
custodial property as would a prudent person of discretion and 2480
intelligence dealing with the property of another, except that 2481
the custodian may, in the discretion of the custodian and 2482
without liability to the minor or the estate of the minor, 2483
retain any custodial property received in a manner prescribed in 2484
sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code. If a 2485
custodian has special skills or is named custodian on the basis 2486
of representations of special skills or expertise, the custodian 2487
is under a duty to use those skills or that expertise. 2488

(F) The custodian may sell, exchange, convert, or 2489
otherwise dispose of custodial property in the manner, at the 2490
time or times, for the price or prices, and upon the terms the 2491
custodian considers advisable. The custodian may vote in person 2492
or by general or limited proxy a security that is custodial 2493
property. The custodian may consent, directly or through a 2494
committee or other agent, to the reorganization, consolidation, 2495
merger, dissolution, or liquidation of an issuer of a security 2496
that is custodial property, and to the sale, lease, pledge, or 2497
mortgage of any property by or to such an issuer, and to any 2498
other action by such an issuer. The custodian may purchase any 2499
life or endowment insurance policy or annuity contract on the 2500
life of the minor or any member of the family of the minor and 2501
pay, from funds in the custodian's custody, any premiums on any 2502
life or endowment insurance policy or annuity contract held by 2503
the custodian as custodial property. The custodian may execute 2504
and deliver any and all instruments in writing that the 2505
custodian considers advisable to carry out any of the 2506

custodian's powers as custodian. 2507

(G) The custodian shall register each security that is 2508
custodial property and in registered form in the name of the 2509
custodian, followed, in substance, by the words: "as custodian 2510
for (name of minor) under the Ohio Transfers to 2511
Minors Act," or shall maintain each security that is custodial 2512
property and in registered form in an account with a broker or 2513
in a financial institution in the name of the custodian, 2514
followed, in substance, by the words: "as custodian 2515
for (name of minor) under the Ohio Transfers to 2516
Minors Act." A security held in account with a broker or in a 2517
financial institution in the name of the custodian may be held 2518
in the name of the broker or financial institution. A security 2519
that is custodial property and in registered form and that is 2520
held by a broker or in a financial institution in which the 2521
broker or financial institution does not have a lien for 2522
indebtedness due to it from a custodial account may not be 2523
pledged, lent, hypothecated, or disposed of except upon the 2524
specific instructions of the custodian. The custodian shall hold 2525
all money that is custodial property in an account with a broker 2526
or in a financial institution in the name of the custodian, 2527
followed, in substance, by the words: "as custodian 2528
for (name of minor) under the Ohio Transfers to 2529
Minors Act." The custodian shall hold all life or endowment 2530
insurance policies, annuity contracts, or benefit plans that are 2531
custodial property in the name of the custodian, followed, in 2532
substance, by the words "as custodian for (name 2533
of minor) under the Ohio Transfers to Minors Act." The custodian 2534
shall take title to all real estate that is custodial property 2535
in the name of the custodian, followed, in substance, by the 2536
words: "as custodian for (name of minor) under the 2537

Ohio Transfers to Minors Act." In the event one or more 2538
successor custodians have been designated by the donor, 2539
transferor, trustee, executor, or administrator pursuant to 2540
division (F) of section 5814.02 of the Revised Code or by the 2541
custodian pursuant to division (E) of section 5814.07 of the 2542
Revised Code, each registration, account, policy, contract, 2543
plan, or title in the name of the custodian set forth in this 2544
division shall include such designation of successor custodian 2545
or custodians. The custodian shall keep all other custodial 2546
property separate and distinct from the custodian's own property 2547
in a manner to identify it clearly as custodial property. 2548

(H) The custodian shall keep records of all transactions 2549
with respect to the custodial property and make the records 2550
available for inspection at reasonable intervals by a parent or 2551
legal representative of the minor or by the minor, if the minor 2552
has attained the age of fourteen years. 2553

(I) A custodian has, with respect to the custodial 2554
property, in addition to the rights and powers provided in 2555
sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code, all the 2556
rights and powers that a guardian has with respect to property 2557
not held as custodial property. 2558

(J) The custodian may invest in or pay premiums on any 2559
life or endowment insurance policy or annuity contract on either 2560
of the following: 2561

(1) The life of the minor, if the minor or the estate of 2562
the minor is the sole beneficiary under the policy or contract; 2563

(2) The life of any person in whom the minor has an 2564
insurable interest, if the minor, the minor's estate, or the 2565
custodian in the custodian's capacity as custodian is the sole 2566

beneficiary.	2567
(K) All of the rights, powers, and authority of the custodian over custodial property, including all of the incidents of ownership in any life or endowment insurance policy, annuity contract, or benefit plan, are held only in the capacity of the custodian as custodian.	2568 2569 2570 2571 2572
Sec. 5814.05. (A) A custodian is entitled to reimbursement from the custodial property for reasonable expenses incurred in the performance of the custodian's duties.	2573 2574 2575
(B) A custodian may act without compensation for the custodian's services.	2576 2577
(C) Unless the custodian is a donor or transferor, the custodian may receive from custodial property reasonable compensation for the custodian's services determined by one of the following standards in the order stated:	2578 2579 2580 2581
(1) A direction by the donor or transferor when the gift or transfer is made;	2582 2583
(2) A statute of this state applicable to custodians;	2584
(3) The statute of this state applicable to guardians;	2585
(4) An order of the court.	2586
(D) Except as otherwise provided in sections 5814.01 to 5814.09 <u>5814.10</u> of the Revised Code, a custodian shall not be required to give a bond for the performance of the custodian's duties.	2587 2588 2589 2590
(E) A custodian not compensated for the custodian's services is not liable for losses to the custodial property unless they result from the custodian's bad faith, intentional	2591 2592 2593

wrongdoing, or gross negligence or from the custodian's failure 2594
to maintain the standard of prudence in investing the custodial 2595
property provided in sections 5814.01 to ~~5814.09~~ 5814.10 of the 2596
Revised Code. 2597

Sec. 5814.06. An issuer, transfer agent, financial 2598
institution, broker, life insurance company, or other person 2599
acting on the instructions of or otherwise dealing with any 2600
person purporting to act as a donor or transferor or dealing 2601
with any person or trust company purporting to act as a 2602
custodian is not required to do any of the following: 2603

(A) Determine either of the following: 2604

(1) Whether the person or trust company designated by the 2605
purported donor or transferor, or the person or trust company 2606
purporting to act as a custodian, has been duly designated; 2607

(2) Whether any purchase, sale, or transfer to or by, or 2608
any other act of, any person or trust company purporting to act 2609
as a custodian is in accordance with or authorized by sections 2610
5814.01 to ~~5814.09~~ 5814.10 of the Revised Code. 2611

(B) Inquire into the validity or propriety under sections 2612
5814.01 to ~~5814.09~~ 5814.10 of the Revised Code of any instrument 2613
or instructions executed or given by a person purporting to act 2614
as a donor or transferor or by a person or trust company 2615
purporting to act as a custodian; 2616

(C) See to the application by any person or trust company 2617
purporting to act as a custodian of any money or other property 2618
paid or delivered to the person or trust company. 2619

Sec. 5814.07. (A) Any person who is eighteen years of age 2620
or older or a trust company is eligible to become a successor 2621
custodian. A successor custodian has all the rights, powers, 2622

duties, and immunities of a custodian designated in a manner 2623
prescribed by sections 5814.01 to ~~5814.09~~5814.10 of the Revised 2624
Code. 2625

(B) A custodian may resign and designate the custodian's 2626
successor by doing all of the following: 2627

(1) Executing an instrument of resignation that designates 2628
the successor custodian; 2629

(2) Causing each security that is custodial property and 2630
in registered form to be registered in the name of the successor 2631
custodian followed, in substance, by the words: "as custodian 2632
for (name of minor) under the Ohio 2633
Transfers to Minors Act;" 2634

(3) Executing in the appropriate manner a deed, 2635
assignment, or similar instrument for all interest in real 2636
estate that is custodial property in the name of the successor 2637
custodian, followed, in substance, by the words: "as custodian 2638
for (name of minor) under the Ohio 2639
Transfers to Minors Act;" 2640

(4) Delivering to the successor custodian the instrument 2641
of resignation, each security registered in the name of the 2642
successor custodian, each deed, assignment, or similar 2643
instrument for all interest in real estate that is in the name 2644
of the successor custodian, and all other custodial property, 2645
together with any additional instruments that are required for 2646
the transfer of the custodial property. 2647

(C) A custodian may petition the court for permission to 2648
resign and for the designation of a successor custodian. 2649

(D) A custodian may designate by the custodian's will a 2650
successor custodian, which designation is effective at the 2651

custodian's death. Upon the custodian's death, the custodian's 2652
legal representative shall do each of the following: 2653

(1) Cause each security that is custodial property and in 2654
registered form to be registered in the name of the successor 2655
custodian, followed, in substance, by the words: "as custodian 2656
for (name of minor) under the Ohio 2657
Transfers to Minors Act;" 2658

(2) Execute in the appropriate manner a deed, assignment, 2659
or similar instrument for all interest in real estate that is 2660
custodial property in the name of the successor custodian, 2661
followed, in substance, by the words: "as custodian 2662
for (name of minor) under the Ohio 2663
Transfers to Minors Act;" 2664

(3) Deliver to the successor custodian each security 2665
registered in the name of the successor custodian, each deed, 2666
assignment, or similar instrument for all interest in real 2667
estate that is in the name of the successor custodian, and all 2668
other custodial property, together with any additional 2669
instruments that are required for the transfer of the custodial 2670
property. 2671

(E) A custodian may designate one or more successor 2672
custodians by transferring the property of any type specified in 2673
division (A) of section 5814.02 of the Revised Code, other than 2674
real estate, in the manner and form provided in that division, 2675
to self as custodian, followed by the designation of the 2676
successor custodian or custodians in the manner and form 2677
provided in division (F) of section 5814.02 of the Revised Code. 2678
A custodian may designate one or more successor custodians of 2679
real property by designating the successor custodian or 2680
custodians in the manner and form provided in sections 5302.22 2681

to 5302.23 of the Revised Code. A designation of a successor 2682
custodian or custodians by the custodian shall replace any 2683
previous designation of successor custodians by the donor, 2684
transferor, or previous custodian. 2685

(F) If no eligible successor custodian is designated by 2686
the donor ~~or~~, transferor, trustee, executor, or administrator 2687
pursuant to division (F) of section 5814.02 of the Revised Code 2688
or in the donor's or transferor's will or trust, or by the 2689
custodian in the custodian's will, ~~or if the custodian dies~~ 2690
~~intestate~~ pursuant to division (D) of this section or by 2691
transfer pursuant to division (E) of this section, the legal 2692
representative of a custodian who is deceased or is adjudged to 2693
be an incompetent by a court, ~~the legal representative of the~~ 2694
~~custodian~~ may designate a successor custodian. If the court in 2695
which the estate or guardianship proceedings relative to the 2696
custodian are pending approves the designation, the designation 2697
shall be regarded as having been effective as of the date of the 2698
death of the custodian or as of the date the custodian was 2699
adjudged to be an incompetent. Upon the approval of the court, 2700
the legal representative of the custodian shall cause the 2701
custodial property to be transferred or registered in the name 2702
of the successor custodian as provided in divisions (D) (1) to 2703
(3) of this section. 2704

~~(F)~~ (G) If a person or entity designated as successor 2705
custodian is not eligible, or renounces or dies before the minor 2706
attains the age of twenty-one years or before the minor attains 2707
the age at which the custodian is required under section 5814.09 2708
of the Revised Code to deliver the custodial property to the 2709
minor, or if the custodian dies without designating a successor 2710
custodian and division ~~(E)~~ (F) of this section does not apply 2711
because the custodian does not have a legal representative, the 2712

guardian of the minor shall be the successor custodian. If the 2713
minor does not have a guardian, a donor or transferor, the legal 2714
representative of the donor or transferor, the legal 2715
representative of the custodian, a member of the minor's family 2716
who is eighteen years of age or older, or the minor, if the 2717
minor has attained the age of fourteen years, may petition the 2718
court for the designation of a successor custodian. 2719

~~(G)~~ (H) A donor or transferor, the legal representative of 2720
a donor or transferor, a member of the minor's family who is 2721
eighteen years of age or older, a guardian of the minor, or the 2722
minor, if the minor has attained the age of fourteen years, may 2723
petition the court that, for cause shown in the petition, the 2724
custodian be removed and a successor custodian be designated or, 2725
in the alternative, that the custodian be required to give bond 2726
for the performance of the custodian's duties. 2727

~~(H)~~ (I) Upon the filing of a petition as provided in this 2728
section, the court shall grant an order, directed to the persons 2729
and returnable on any notice that the court may require, to show 2730
cause why the relief prayed for in the petition should not be 2731
granted and, in due course, grant any relief that the court 2732
finds to be in the best interests of the minor. 2733

Sec. 5814.08. (A) The minor, if the minor has attained the 2734
age of fourteen years, or the legal representative of the minor, 2735
a member of the minor's family who is eighteen years of age or 2736
older, or a donor or transferor or the donor's or transferor's 2737
legal representative may petition the court for an accounting by 2738
the custodian or the custodian's legal representative. A 2739
successor custodian may petition the court for an accounting by 2740
the custodian that the successor custodian succeeded. 2741

(B) The court, in a proceeding under sections 5814.01 to 2742

~~5814.09~~5814.10 of the Revised Code, or otherwise, may require 2743
or permit the custodian or the custodian's legal representative 2744
to account and, if the custodian is removed, shall so require 2745
and order delivery of all custodial property to the successor 2746
custodian and the execution of all instruments required for the 2747
transfer of the custodial property. 2748

Sec. 5814.09. (A) Subject to the requirements and 2749
limitations of this section, the time for delivery to the minor 2750
of custodial property transferred under or pursuant to division 2751
(A) of section 5814.02 of the Revised Code may be delayed until 2752
a specified time after the minor attains the age of twenty-one 2753
years, which time shall be specified in the written instrument 2754
that makes or provides for the gift or transfer pursuant to 2755
divisions (A) (1) to (9) of section 5814.02 of the Revised Code. 2756

(B) To specify a delayed time for delivery to the minor of 2757
the custodial property, the words "as custodian 2758
for (name of minor) until age 2759
(age of delivery of property to minor) under the Ohio Transfers 2760
to Minors Act," shall be substituted in substance for the words 2761
"as custodian for (name of minor) under the 2762
Ohio Transfers to Minors Act." 2763

(C) The time for delivery to the minor of custodial 2764
property transferred under a will, trust instrument, or 2765
irrevocable exercise of a testamentary power of appointment may 2766
be delayed under this section only if the governing will, trust, 2767
or exercise of the power of appointment provides in substance 2768
that the custodianship is to continue until the time the minor 2769
attains a specified age, which time shall not be later than the 2770
date the minor attains the age of twenty-five years. 2771

(D) If the custodial property is transferred by inter 2772

vivos gift and the time for delivery of the custodial property 2773
to the minor is delayed beyond the time the minor attains the 2774
age of twenty-one years, the custodian, nevertheless, shall 2775
deliver the custodial property to the minor if requested in 2776
writing by the minor within sixty days of the minor attaining 2777
the age of twenty-one years, unless the donor or transferor, in 2778
the written instrument of gift or transfer pursuant to divisions 2779
(A) (1) to (9) of section 5814.02 of the Revised Code, provides 2780
that the custodial property may not be delivered to the minor 2781
prior to attaining the specified age of delivery, which time 2782
shall not be later than the date the minor attains the age of 2783
twenty-five years. 2784

(E) If the time for delivery to the minor of custodial 2785
property is delayed until a specified time after the minor 2786
attains the age of twenty-one years and the minor dies prior to 2787
attaining that age, the custodian shall, upon the minor's death, 2788
deliver the custodial property to the estate of the minor. 2789

(F) A custodian may not commingle the assets of custodial 2790
property that have different delivery dates. 2791

Sec. ~~5814.09~~ 5814.10. (A) Sections 5814.01 to ~~5814.09~~ 2792
~~5814.10~~ of the Revised Code shall be construed to effectuate 2793
their general purpose to make uniform the law of those states 2794
that enact similar provisions. 2795

(B) Sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised 2796
Code shall not be construed as providing an exclusive method for 2797
making gifts or transfers to minors. 2798

(C) Nothing in sections 5814.01 to ~~5814.09~~ 5814.10 of the 2799
Revised Code, shall affect gifts made under former sections 2800
1339.19 to 1339.28 of the Revised Code, nor the powers, duties, 2801

and immunities conferred by gifts in such manner upon custodians 2802
and persons dealing with custodians. Sections 5814.01 to ~~5814.09~~ 2803
5814.10 of the Revised Code henceforth apply, however, to all 2804
gifts made in a manner and form prescribed in former sections 2805
1339.19 to 1339.28 of the Revised Code, except insofar as the 2806
application impairs constitutionally vested rights. Sections 2807
5814.01 to ~~5814.09~~ 5814.10 of the Revised Code shall be 2808
construed as a continuation of the provisions of former sections 2809
1339.19 to 1339.28 of the Revised Code, according to the 2810
language employed, and not as a new enactment. 2811

(D) Nothing in sections 5814.01 to ~~5814.09~~ 5814.10 of the 2812
Revised Code, as of May 7, 1986, shall affect gifts made under 2813
those sections as they existed prior to May 7, 1986, or the 2814
powers, duties, and immunities conferred by the gifts in any 2815
manner upon custodians and persons dealing with custodians. 2816
Sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code, as of 2817
May 7, 1986, hereafter apply to all gifts made in a manner and 2818
form prescribed in those sections as they existed prior to May 2819
7, 1986, except to the extent that the application of those 2820
sections, as of May 7, 1986, would impair constitutionally 2821
vested rights. 2822

Sec. 5815.23. (A) Except as provided in division (B) of 2823
this section, an instrument that creates an inter vivos or 2824
testamentary trust shall not require or permit the accumulation 2825
for more than one year of any income of property that satisfies 2826
both of the following: 2827

(1) The property is granted to a surviving spouse of the 2828
testator or other settlor. 2829

(2) The property qualifies for the federal estate tax 2830
marital deduction allowed by subtitle B, Chapter 11 of the 2831

"Internal Revenue Code of 1986," 26 U.S.C. 2056, as amended, the 2832
estate tax marital deduction allowed by division (A) of section 2833
5731.15 of the Revised Code, or the qualified terminable 2834
interest property deduction allowed by division (B) of section 2835
5731.15 of the Revised Code. 2836

(B) (1) Division (A) of this section does not apply if an 2837
instrument that creates an inter vivos or testamentary trust 2838
expressly states the intention of the testator or other settlor 2839
that obtaining a marital deduction or a qualified terminable 2840
interest property deduction as described in division (A) (2) of 2841
this section is less important than requiring or permitting the 2842
accumulation of income of property in accordance with a 2843
provision in the instrument that requires or permits the 2844
accumulation for more than one year of any income of property. 2845

(2) Division (A) of this section does not apply to any 2846
beneficiary of an inter vivos or testamentary trust other than 2847
the surviving spouse of the testator or other settlor or to any 2848
inter vivos or testamentary trust of which the surviving spouse 2849
of the testator or other settlor is a beneficiary if an interest 2850
in property does not qualify for a marital deduction or a 2851
qualified terminable interest property deduction as described in 2852
division (A) (2) of this section. 2853

~~(C) (1) The trustee of a trust that qualifies for an estate 2854
tax marital deduction for federal or Ohio estate tax purposes— 2855
and that is the beneficiary of an individual retirement account— 2856
has a fiduciary duty, in regard to the income distribution— 2857
provision of the trust, to withdraw and distribute the income of 2858
the individual retirement account, at least annually, to the 2859
surviving spouse of the testator or other settlor. 2860~~

~~(2) A trustee's fiduciary duty as described in division— 2861~~

~~(C) (1) of this section is satisfied if the terms of the trust instrument expressly provide the surviving spouse a right to withdraw all of the assets from the trust or a right to compel the trustee to withdraw and distribute the income of the individual retirement account to the surviving spouse.~~

~~(D)~~ Divisions (A) and (B) and ~~(C) (1)~~ of this section are intended to codify existing fiduciary and trust law principles relating to the interpretation of a testator's or other settlor's intent with respect to the income provisions of a trust. Divisions (A) and (B) and ~~(C)~~ of this section apply to trust instruments executed prior to and existing on October 1, 1996, or executed thereafter. The trustee of a trust described in division (A) or (B) of this section, in a written trust amendment, may elect to not apply divisions (A) and (B) of this section to the trust. Any election of that nature, when made, is irrevocable.

Section 2. That existing sections 1337.60, 2101.026, 2105.02, 2105.14, 2105.31, 2105.32, 2105.33, 2105.34, 2105.35, 2105.36, 2105.37, 2105.39, 2106.13, 2106.18, 2107.07, 2107.10, 2109.62, 2111.131, 2113.86, 4505.10, 5801.10, 5803.02, 5804.02, 5808.16, 5812.32, 5812.46, 5812.51, 5814.01, 5814.02, 5814.03, 5814.04, 5814.05, 5814.06, 5814.07, 5814.08, 5814.09, and 5815.23 and section 2105.38 of the Revised Code are hereby repealed.

Section 3. Section 2101.16 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. S.B. 23 and Am. Sub. S.B. 43 of the 130th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous

operation, finds that the composite is the resulting version of	2892
the section in effect prior to the effective date of the section	2893
as presented in this act.	2894