

**As Passed by the Senate**

**131st General Assembly**

**Regular Session**

**2015-2016**

**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**

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**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, 30  
2105.14, 2105.31, 2105.32, 2105.33, 2105.34, 2105.35, 2105.36, 31  
2105.37, 2105.39, 2106.13, 2106.18, 2107.07, 2107.10, 2109.62, 32  
2111.131, 2113.86, 4505.10, 5801.10, 5803.02, 5804.02, 5808.16, 33  
5812.32, 5812.46, 5812.51, 5814.01, 5814.02, 5814.03, 5814.04, 34  
5814.05, 5814.06, 5814.07, 5814.08, 5814.09, and 5815.23 be 35  
amended; sections 2105.39 (2105.38) and 5814.09 (5814.10) be 36  
amended for the purpose of adopting new section numbers as shown 37  
in parentheses; and new sections 2105.39 and 5814.09 and 38  
sections 1337.571, 2105.40, 2127.012, 2137.01, 2137.02, 2137.03, 39  
2137.04, 2137.05, 2137.06, 2137.07, 2137.08, 2137.09, 2137.10, 40  
2137.11, 2137.12, 2137.13, 2137.14, 2137.15, 2137.16, 2137.17, 41  
2137.18, and 5802.04 of the Revised Code be enacted to read as 42  
follows: 43

**Sec. 1337.571.** Unless the power of attorney otherwise 44  
provides, language in a power of attorney granting general 45  
authority with respect to digital assets causes the agent to be 46  
an authorized user for the purpose of applicable computer fraud 47  
and unauthorized computer access laws and authorizes the agent 48

|  |    |
|--|----|
| <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 |
| <br>   |    |
| <b>Sec. 1337.60.</b> 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 |
| <br>   |    |
| [INSERT NAME OF JURISDICTION]                                    | 65 |
| <br>   |    |
| STATUTORY FORM POWER OF ATTORNEY                                 | 66 |
| <br>   |    |
| IMPORTANT INFORMATION  | 67 |
| <br>   |    |
| 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<br>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<br>107<br>108        |
| (8) Exercise fiduciary powers that the principal has authority to delegate.  | 109<br>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<br>112<br>113<br>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<br>116<br>117        |
| DESIGNATION OF AGENT   | 118                      |
| I, ..... (Name of Principal) name the following person as my agent:  | 119<br>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<br>Military Service   | 163<br>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><br><u>electronic communications sent or received by me.</u> | 169<br>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<br>234<br>235<br>236<br>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<br>239<br>240               |
| (2) Act in good faith;   | 241                             |
| (3) Do nothing beyond the authority granted in this power of attorney;   | 242<br>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<br>245<br>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<br>248<br>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<br>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<br>279<br>280<br>281<br>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<br>285<br>286<br>287<br>288   |
| If there is anything about this document or your duties that you do not understand, you should seek legal advice.  | 289<br>290  |
| <b>Sec. 2101.026.</b> (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<br>292<br>293<br>294<br>295<br>296<br>297<br>298<br>299<br>300<br>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<br>303<br>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  
425  
426  
427

~~(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  
429  
430  
431

(B) This section does not apply if its application would result in a taking of an intestate estate by the state. 432  
433

**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  
435  
436  
437  
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**Sec. 2105.34.** Except as provided in section 2105.36 of the Revised Code, the following shall apply: 441  
442

(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~~ 528  
individual, however the time of death of the other ~~person~~ 529  
individual is determined, establishes by clear and convincing 530  
evidence that the ~~person~~ individual survived the other ~~person~~ 531  
individual 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 ~~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 599  
claimed lack of entitlement ~~pursuant to~~ under sections 2105.31 600  
to ~~2105.39~~ 2105.40 of the Revised Code, a payor or other third 601  
party may pay any amount owed or transfer or deposit any item of 602  
~~real or personal~~ property held by it to or with the probate 603  
court that has jurisdiction over the decedent's estate. If no 604  
probate proceedings have been commenced, upon receipt of written 605  
notice of a claimed lack of entitlement ~~pursuant to~~ under 606  
sections 2105.31 to ~~2105.39~~ 2105.40 of the Revised Code, a payor 607  
or other third party may pay any amount owed or transfer or 608  
deposit any item of ~~real or personal~~ property held by it to or 609  
with the probate court located in the county of the decedent's 610  
residence. The court shall hold the funds or ~~real or personal~~ 611  
~~items of property until it is determined pursuant to~~, and upon 612  
~~its determination under~~ sections 2105.31 to ~~2105.39~~ 2105.40 of 613  
the Revised Code to whom the funds or ~~real or personal~~ items of 614  
property should be disbursed, shall order disbursement in 615  
accordance with its determination. ~~The court then shall order~~ 616  
~~disbursement of the funds or real or personal property in~~ 617  
~~accordance with that determination.~~ Payments, transfers, or 618  
deposits made to or with the court discharge the payor or other 619  
third party from all claims for the value of amounts paid to or 620  
items of property transferred to or deposited with the court. 621

(D) A person who purchases property for value or receives 622  
a payment or other item of property or benefit in partial or 623  
full satisfaction of a legally enforceable obligation, and 624  
without notice that the person selling or transferring the 625  
property or benefit or making a payment is not entitled to the 626  
property or benefit under sections 2105.31 to 2105.40 of the 627  
Revised Code, is neither obligated under those sections to 628  
return the payment or item of property or benefit nor liable 629

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<br>779<br>780  |
| (1) A legatee entitled to the automobile under the terms of the will;   | 781<br>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<br>784<br>785  |
| (3) A purchaser if the sale of the automobile is made pursuant to section 2113.39 of the Revised Code.  | 786<br>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<br>789<br>790<br>791   |
| <b>Sec. 2107.07.</b> 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, <del>on being paid the fee of five dollars, shall receive, keep, and</del> | 792<br>793<br>794<br>795<br>796<br>797<br>798<br>799<br>800<br>801<br>802<br>803<br>804<br>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  
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1054  
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(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  
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(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  
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(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

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|---|--|
| <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><br><u>review in camera.</u>  | 1242<br>1243   |
| <u>Sec. 2137.06. If a deceased user consented to or a court</u><br><u>directs disclosure of the contents of electronic communications</u><br><u>of the user, the custodian shall disclose to the personal</u><br><u>representative of the estate of the user the content of an</u><br><u>electronic communication sent or received by the user if the</u><br><u>personal representative gives the custodian all of the</u><br><u>following:</u> | 1244<br>1245<br>1246<br>1247<br>1248<br>1249<br>1250 |
| <u>(A) A written request for disclosure in physical or</u><br><u>electronic form;</u>   | 1251<br>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><br><u>representative, the entry appointing a commissioner under</u><br><u>division (E) of section 2113.03 of the Revised Code, or the</u><br><u>entry granting summary release from administration under</u><br><u>division (E) of section 2113.031 of the Revised Code;</u>   | 1254<br>1255<br>1256<br>1257<br>1258                 |
| <u>(D) Unless the user provided direction using an online</u><br><u>tool, a copy of the user's will, trust, power of attorney, or</u><br><u>other record evidencing the user's consent to disclosure of the</u><br><u>content of electronic communications;</u>   | 1259<br>1260<br>1261<br>1262                         |
| <u>(E) If requested by the custodian, any of the following:</u>   | 1263   |
| <u>(1) A number, username, address, or other unique</u><br><u>subscriber or account identifier assigned by the custodian to</u><br><u>identify the user's account;</u>  | 1264<br>1265<br>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 |
| <b><u>Sec. 2137.07. Unless the user prohibited disclosure of</u></b>           | 1282 |
| <b><u>digital assets or the court directs otherwise, a custodian shall</u></b> | 1283 |
| <b><u>disclose to the personal representative of the estate of a</u></b>       | 1284 |
| <b><u>deceased user a catalogue of electronic communications sent or</u></b>   | 1285 |
| <b><u>received by the user and digital assets, other than the content</u></b>  | 1286 |
| <b><u>of electronic communications, of the user, if the personal</u></b>       | 1287 |
| <b><u>representative gives the custodian all of the following:</u></b>         | 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

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|---|------|
| <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 computer fraud and unauthorized computer access laws, including section 2913.04 of the Revised Code. 1460  
1461  
1462

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

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

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

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

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

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

(c) For a trustee, either a copy of the trust instrument and a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust or a certification of the trust under section 5810.13 of the Revised Code; or 1482  
1483  
1484  
1485  
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 of trust property;   | 1862<br>1863   |
| (D) Deposit trust money in an account in a regulated financial-service institution;   | 1864<br>1865   |
| (E) Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;  | 1866<br>1867<br>1868                                 |
| (F) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital; | 1869<br>1870<br>1871<br>1872<br>1873<br>1874<br>1875 |
| (G) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to do any of the following:   | 1876<br>1877<br>1878                                 |
| (1) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;   | 1879<br>1880<br>1881                                 |
| (2) Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;   | 1882<br>1883<br>1884                                 |
| (3) Pay calls, assessments, and other sums chargeable or accruing against the securities and sell or exercise stock subscription or conversion rights;  | 1885<br>1886<br>1887                                 |
| (4) Deposit the securities with a depository or other regulated financial-service institution.  | 1888<br>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<br>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<br>1979<br>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<br>1982<br>1983<br>1984<br>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<br>1987<br>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<br>1990<br>1991                 |
| (Y) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;  | 1992<br>1993<br>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<br>1996<br>1997                 |
| (AA) Employ agents, attorneys, accountants, investment advisors, and other professionals.  | 1998<br>1999                         |
| <b>Sec. 5812.32.</b> (A) As used in this section, <del>"payment"</del> <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<br>2002<br>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 <del>5814.09</del> <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 <del>5814.09</del>       | 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 |

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| 12 U.S.C.A. 1752, as amended.  | 2178   |
| (G) "Guardian of the minor" includes the general guardian,<br>guardian, tutor, or curator of the property, estate, or person<br>of a minor.  | 2179<br>2180<br>2181                                 |
| (H) "Issuer" means a person who places or authorizes the<br>placing of the person's name on a security, other than as a<br>transfer agent, to evidence that it represents a share,<br>participation, or other interest in the person's property or in<br>an enterprise, or to evidence the person's duty or undertaking<br>to perform an obligation that is evidenced by the security, or<br>who becomes responsible for or in place of any such person. | 2182<br>2183<br>2184<br>2185<br>2186<br>2187<br>2188 |
| (I) "Legal representative" of a person means the executor,<br>administrator, general guardian, guardian, committee,<br>conservator, tutor, or curator of the person's property or<br>estate.   | 2189<br>2190<br>2191<br>2192                         |
| (J) "Member of the minor's family" means a parent,<br>stepparent, spouse, grandparent, brother, sister, uncle, or aunt<br>of the minor, whether of the whole or half blood, or by<br>adoption.   | 2193<br>2194<br>2195<br>2196                         |
| (K) <del>"Minor"</del> <u>(1) Except as provided in division (K) (2) of<br/>this section, "minor" means a person an individual who has not<br/>attained the age of twenty-one years.</u>   | 2197<br>2198<br>2199                                 |
| <u>(2) When used with reference to the beneficiary for whose<br/>benefit custodial property is held or is to be held, "minor"<br/>means an individual who has not attained the age at which the<br/>custodian is required under section 5814.09 of the Revised Code<br/>to transfer the custodial property to the beneficiary.</u>   | 2200<br>2201<br>2202<br>2203<br>2204                 |
| (L) "Security" includes any note, stock, treasury stock,<br>common trust fund, bond, debenture, evidence of indebtedness,  | 2205<br>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<br>2569<br>2570<br>2571<br>2572 |
| <b>Sec. 5814.05.</b> (A) A custodian is entitled to reimbursement from the custodial property for reasonable expenses incurred in the performance of the custodian's duties.  | 2573<br>2574<br>2575                 |
| (B) A custodian may act without compensation for the custodian's services.  | 2576<br>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<br>2579<br>2580<br>2581         |
| (1) A direction by the donor or transferor when the gift or transfer is made;   | 2582<br>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 <del>5814.09</del> <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<br>2588<br>2589<br>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<br>2592<br>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

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| 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 |