

AN ACT

To amend 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; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 2105.39 (2105.38) and 5814.09 (5814.10); to enact new sections 2105.39 and 5814.09 and sections 1337.571, 2105.40, 2127.012, 2137.01, 2137.02, 2137.03, 2137.04, 2137.05, 2137.06, 2137.07, 2137.08, 2137.09, 2137.10, 2137.11, 2137.12, 2137.13, 2137.14, 2137.15, 2137.16, 2137.17, 2137.18, and 5802.04; and to repeal section 2105.38 of the Revised Code to revise the law governing decedent's estates by making changes in the Ohio Trust Code, the Probate Law, the Uniform Principal and Income Act, the Transfers to Minors Act, and the Uniform Simultaneous Death Act; to authorize the director or any designee of the Franklin County Guardianship Service Board to act on behalf of the Board on guardianship matters, and to permit the Board to charge a reasonable fee for services to wards; and to adopt the Revised Uniform Fiduciary Access to Digital Assets Act.

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

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

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

(A) Have access to any catalogue of electronic communications sent or received by the

principal:

(B) Have access to any other digital asset in which the principal has a right or interest;

(C) Have the right to access any of the principal's tangible personal property capable of receiving, storing, processing, or sending a digital asset;

(D) Take any action concerning the asset to the extent of the account holder's authority;

(E) Have access to the content of electronic communications sent or received by the principal.

Sec. 1337.60. A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by sections 1337.21 to 1337.64 of the Revised Code.

[INSERT NAME OF JURISDICTION]

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the Revised Code).

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

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

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

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

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

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

ACTIONS REQUIRING EXPRESS AUTHORITY

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

(1) Create a trust;

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

(3) Make a gift;

(4) Create or change rights of survivorship;

(5) Create or change a beneficiary designation;

(6) Delegate authority granted under the power of attorney;

(7) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a

survivor benefit under a retirement plan;

(8) Exercise fiduciary powers that the principal has authority to delegate.

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.

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.

DESIGNATION OF AGENT

I, (Name of Principal) name the following person as my agent:

Name of Agent:

.....

Agent's Address:

.....

Agent's Telephone Number:

.....

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent:

.....

Successor Agent's Address:

.....

Successor Agent's Telephone Number:

.....

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent:

.....

Second Successor Agent's Address:

.....

Second Successor Agent's Telephone Number:

.....

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the Revised Code):

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- (...) Real Property
- (...) Tangible Personal Property
- (...) Stocks and Bonds
- (...) Commodities and Options
- (...) Banks and Other Financial Institutions
- (...) Operation of Entity or Business
- (...) Insurance and Annuities
- (...) Estates, Trusts, and Other Beneficial Interests
- (...) Claims and Litigation
- (...) Personal and Family Maintenance
- (...) Benefits from Governmental Programs or Civil or Military Service
- (...) Retirement Plans
- (...) Taxes
- (...) Digital Assets
- (...) All Preceding Subjects
- (...) My agent shall have access to the content of electronic communications sent or received

by me.

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

.....

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EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a guardian of my estate or my person, I nominate the following person(s) for appointment:

Name of Nominee for guardian of my estate:

.....

Nominee's Address:

.....

Nominee's Telephone Number:

.....

Name of Nominee for guardian of my person:

.....

Nominee's Address:

.....

Nominee's Telephone Number:

.....

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

.....

Your Signature Date

.....

Your Name Printed

.....

Your Address

.....

Your Telephone Number

State of Ohio

County of

This document was acknowledged before me on (Date), by
(Name of Principal).

.....

Signature of Notary

My commission expires:

.....

This document prepared by:

.....

.....

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

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:

- (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;
- (2) Act in good faith;
- (3) Do nothing beyond the authority granted in this power of attorney;
- (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;
- (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 manner:

(Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

- (1) Act loyally for the principal's benefit;
- (2) Avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) Act with care, competence, and diligence;
- (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (5) Cooperate with any person that has authority to make health-care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) The death of the principal;
- (2) The principal's revocation of the power of attorney or your authority;
- (3) The occurrence of a termination event stated in the power of attorney;
- (4) The purpose of the power of attorney is fully accomplished;
- (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.

Liability of Agent

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.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

Sec. 2101.026. (A) The probate court of Franklin county may accept funds or other program assistance from, or charge fees for services described in division (B) of this section rendered to, 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 or fees 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.

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

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

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

(E)(1) A Franklin county guardianship service under division (D) of this section is established by creating a Franklin county guardianship service board comprised of three members. The judge of the probate court of Franklin county shall appoint one member. The board of directors of the Franklin county board of developmental disabilities shall appoint one member. The board of directors of the board of alcohol, drug addiction, and mental health services of Franklin county shall appoint one member. The term of appointment of each member is four years.

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

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

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

~~(4) If a new director replaces a previously appointed director of the Franklin county guardianship service board, the new director shall replace the former director serving as a guardian~~

~~under division (E)(3) of this section without the need of a successor guardianship hearing conducted by the probate court of Franklin county so long as the wards are the same wards for both the former director and the new director.~~

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

~~(6) The Franklin county guardianship service board that is created under division (E)(1) of this section shall promulgate all rules and regulations necessary for the efficient operation of the board and the Franklin county guardianship service.~~

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

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

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

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

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

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

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

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

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

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

~~(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;~~

~~(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.~~

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

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.

Sec. 2105.34. Except as provided in section 2105.36 of the Revised Code, the following shall apply:

(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.

(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 on that determination.~~

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

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

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

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

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

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

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

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

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

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

Sec. 2105.36. ~~A person who is not established by clear and convincing evidence to have survived another specified person by one hundred twenty hours shall not be deemed to have predeceased the other person.~~ Survival by one hundred twenty hours is not required if any of the following ~~apply~~ applies:

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

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

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

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

~~(E)~~ ~~(D)~~ The application of a one-hundred-twenty-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition, ~~and~~ but ~~the person's survival of the other specified person is~~ shall be established by clear and convincing evidence.

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

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

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

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

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

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

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

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

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

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

(B) Any rule of construction ~~or presumption regarding any provision of a governing instrument~~ that is provided in sections 2105.31 to ~~2105.39-2105.40~~ of the Revised Code applies to any governing instrument that is executed, ~~or any multiple-party account that is opened~~, prior to ~~May~~

~~16, 2002 the effective date of the amendment of this section, unless there is a clear indication of a contrary intent in the governing instrument or multiple-party account.~~

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

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

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

Sec. 2106.13. (A) If a person dies leaving a surviving spouse and no minor children, leaving a surviving spouse and minor children, or leaving minor children and no surviving spouse, the surviving spouse, minor children, or both shall be entitled to receive, subject to division (B) of this section, in money or property the sum of forty thousand dollars as an allowance for support. If the surviving spouse selected ~~two one or more~~ automobiles under section 2106.18 of the Revised Code, the allowance for support prescribed by this section shall be reduced by the value of the automobile having the ~~lower lowest~~ value of the ~~two automobiles if more than one automobile is so selected~~. The money or property set off as an allowance for support shall be considered estate assets.

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

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

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

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

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

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

(c) Allocate to the minor children who are not children of the surviving spouse, the share that is equitable in light of the needs of those minor children.

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

(C) If the surviving spouse selected ~~two one or more~~ automobiles under section 2106.18 of

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

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

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

(F) For the purposes of this section, the value of an automobile that a surviving spouse selects pursuant to section 2106.18 of the Revised Code is the value that the surviving spouse specifies for the automobile in the affidavit executed pursuant to division (B) of section 4505.10 of the Revised Code.

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

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

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

(2) A distributee;

(3) A purchaser.

(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:

(1) A legatee entitled to the automobile under the terms of the will;

(2) A distributee if the distribution of the automobile is made without court order pursuant to section 2113.55 of the Revised Code;

(3) A purchaser if the sale of the automobile is made pursuant to section 2113.39 of the Revised Code.

(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.

Sec. 2107.07. A will may be deposited by the testator, or by some person for the testator, in the office of the judge of the probate court in the county in which the testator lives, 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. That will shall be safely kept until delivered or disposed of as provided by section 2107.08 of the Revised Code. 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. The judge, ~~on being paid the fee of five dollars, shall receive, keep, and give a certificate of deposit for~~ shall retain an electronic copy of the will prior to its disposal after one hundred years under this section.

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

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

(B) No property or right, testate or intestate, passes to a beneficiary named in a will when the will was declared valid and filed with a probate judge pursuant to section 2107.084 of the Revised Code, the declaration and filing took place in a county different from the county in which the will of the testator would be probated under section 2107.11 of the Revised Code, and the named beneficiary knew of the declaration and filing and of the death of the testator and did not notify the probate judge with whom the will was filed. This division does not preclude a named beneficiary from acquiring property or rights from the estate of the testator for failing to notify a probate judge if the named beneficiary reasonably believes that the judge has previously been notified of the testator's death.

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

- (a) It is no longer economically feasible to continue the trust.
 - (b) The termination of the trust is for the benefit of the beneficiaries.
 - (c) The termination of the trust is equitable and practical.
 - (d) The current value of the trust is less than one hundred thousand dollars.
- (2) The existence of a spendthrift or similar provision in a trust instrument or will does not

preclude the termination of a trust pursuant to this section.

(B) If property is to be distributed from an estate being probated to a trust and the termination of the trust pursuant to this section does not clearly defeat the intent of the testator, the probate court has jurisdiction to order the outright distribution of the property or to make the property custodial property under sections 5814.01 to ~~5814.09~~5814.10 of the Revised Code. A probate court may so order whether the motion for the order is made by an inter vivos trustee named in the will of the decedent or by a testamentary trustee.

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

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

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

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

Sec. 2111.131. (A) The probate court may enter an order that authorizes a person under a duty to pay or deliver money or personal property to a minor who does not have a guardian of the person and estate or a guardian of the estate, to perform that duty in amounts not exceeding five thousand dollars annually, by paying or delivering the money or property to any of the following:

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

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

(3) The minor;

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

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

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

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

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

the moneys or property by the recipient.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.

(B) A ward's spouse who is the guardian of the estate may sell real estate to self pursuant to this section.

Sec. 2137.01. As used in this chapter:

(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.

(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.

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

(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.

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

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

(2) It is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

(O) "Information" means data, text, images, videos, sounds, codes, computer programs,

software, databases, or the like.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

death.

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

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

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

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

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

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

(C) A fiduciary's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under section 2137.03 of the Revised Code.

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

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

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

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

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

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

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

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

(2) All of the user's digital assets to the fiduciary or designated recipient;

(3) None of the user's digital assets;

(4) All of the user's digital assets to the court for review in camera.

Sec. 2137.06. If a deceased user consented to or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives the custodian all of the following:

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

(B) A copy of the death certificate of the user;

(C) 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;

(D) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications;

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

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

(2) Evidence linking the account to the user;

(3) A finding by the court that one of the following applies:

(a) The user had a specific account with the custodian, identifiable by the information specified in division (E)(1) of this section.

(b) Disclosure of the content of electronic communications of the user would not violate 18 U.S.C. 2701 et seq., as amended, 47 U.S.C. 222, as amended, or other applicable law.

(c) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications.

(d) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

Sec. 2137.07. Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the personal representative gives the custodian all of the following:

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

(B) A copy of the death certificate of the user;

(C) 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;

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

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

(2) Evidence linking the account to the user;

(3) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate;

(4) A finding by the court that either of the following applies:

(a) The user had a specific account with the custodian, identifiable by the information specified in division (D)(1) of this section.

(b) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

Sec. 2137.08. To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian all of the following:

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

(B) A copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

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

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

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

(2) Evidence linking the account to the principal.

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

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

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

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

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

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

(2) Evidence linking the account to the principal.

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

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

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

(B) Either a copy of the trust instrument that includes consent to disclosure of the content of electronic communications to the trustee 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 that includes a statement that the trust authorizes disclosure of the content of electronic communications to the trustee;

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

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

(2) Evidence linking the account to the trust.

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

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

(B) 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;

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

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

(2) Evidence linking the account to the trust.

Sec. 2137.13. (A) After an opportunity for a hearing, the court may grant a guardian access to the digital assets of a ward.

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

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

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

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

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

(b) Evidence linking the account to the ward.

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

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

(1) The duty of care;

(2) The duty of loyalty;

(3) The duty of confidentiality.

(B) All of the following apply to a fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(1) Except as otherwise provided in section 2137.03 of the Revised Code, it is subject to the applicable terms of service.

(2) It is subject to other applicable laws, including copyright law.

(3) In the case of a fiduciary, it is limited by the scope of the fiduciary's duties.

(4) It may not be used to impersonate the user.

(C) A fiduciary with authority over the property of a decedent, ward, principal, or settlor has the right to access any digital asset in which the decedent, ward, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(D) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, ward, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including section 2913.04 of the Revised Code.

(E) Both of the following apply to a fiduciary with authority over the tangible, personal property of a decedent, ward, principal, or settlor:

(1) The fiduciary has the right to access the property and any digital asset stored in it.

(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.

(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.

(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:

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

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

(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;

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

(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

(d) For a guardian, a copy of the court order giving the guardian authority over the ward.

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

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

(b) Evidence linking the account to the user;

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

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

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

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

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

(E) Nothing in this chapter limits a custodian's ability to obtain, or to require a guardian, agent, or designated recipient requesting disclosure or termination under this chapter to obtain, a court order that does all of the following:

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

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

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

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

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

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

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

Sec. 4505.10. (A) In the event of the transfer of ownership of a motor vehicle by operation of law, as upon inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution sale, a motor vehicle is sold to satisfy storage or repair charges, or repossession is had upon default in performance of the terms of a security agreement as provided in Chapter 1309. of the Revised Code and the secured party has notified the debtor as required by division (B) of section 1309.611 of the Revised Code, a clerk of a court of common pleas, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or, when that is not possible, upon presentation of satisfactory proof to the clerk of ownership and rights of possession to the motor vehicle, and upon payment of the fee prescribed in section 4505.09 of the Revised Code and presentation of an application for certificate of title, may issue to the applicant a certificate of title to the motor vehicle. Only an affidavit by the person or agent of the person to whom possession of the motor vehicle has

passed, setting forth the facts entitling the person to the possession and ownership, together with a copy of the journal entry, court order, or instrument upon which the claim of possession and ownership is founded, is satisfactory proof of ownership and right of possession. If the applicant cannot produce that proof of ownership, the applicant may apply directly to the registrar of motor vehicles and submit the evidence the applicant has, and the registrar, if the registrar finds the evidence sufficient, then may authorize a clerk to issue a certificate of title. If the registrar finds the evidence insufficient, the applicant may petition the court of common pleas for a court order ordering the clerk to issue a certificate of title. The court shall grant or deny the petition based on the sufficiency of the evidence presented to the court. If, from the records in the office of the clerk involved, there appears to be any lien on the motor vehicle, the certificate of title shall contain a statement of the lien unless the application is accompanied by proper evidence of its extinction.

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

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

(D) Upon the death of the owner of a motor vehicle designated in beneficiary form under section 2131.13 of the Revised Code, upon application for a certificate of title by the transfer-on-death beneficiary or beneficiaries designated pursuant to that section, and upon presentation to the clerk of the certificate of title and the certificate of death of the 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 division (B)(1) of this section, the parties shall include the attorney general if an agreement described in division (C)(7) of this section is being made and either of the following applies:

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

(b) The trust is a charitable trust.

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

- (1) Determining classes of creditors, beneficiaries, heirs, next of kin, or other persons;
- (2) Resolving disputes arising out of the administration or distribution under the terms of the trust, including disputes over the construction of the language of the trust instrument or construction of the language of other writings that affect the terms of the trust;
- (3) Granting to the trustee necessary or desirable powers not granted in the terms of the trust or otherwise provided by law, to the extent that those powers either are not inconsistent with the express provisions or purposes of the terms of the trust or, if inconsistent with the express provisions or purposes of the terms of the trust, are necessary for the due administration of the terms of the trust;
- (4) Modifying the terms of the trust, if the modification is not inconsistent with any material purpose of the trust;
- (5) Modifying the terms of the trust in the manner required to qualify the gift under the terms of the trust for the charitable estate or gift tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by the Internal Revenue Code and regulations promulgated under it in any case in which the parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest;
- (6) Modifying the terms of the trust in the manner required to qualify any gift under the terms of the trust for the estate tax marital deduction available to noncitizen spouses, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the Internal Revenue Code and regulations promulgated under it in any case in which the parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(L) A trustee serving under the trust instrument is not liable to any third person arising from any loss due to that trustee's actions or inactions taken or omitted in good faith reliance on the terms of an agreement entered into under this section.

(M) Subject to divisions (B)(2) and (C)(7) of this section, this section does not apply to any

of the following:

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

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

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

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

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

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

(N) This section does not prohibit some or all of the persons who could enter into an agreement under this section from entering into agreements that are not described in this section and are governed by other law, including the common law. Nothing in this section limits or negates any consents, releases, or ratifications, whether under section 5810.09 of the Revised Code or otherwise, relating to any agreement described in this section or governed by other law.

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

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

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

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

(2) ~~The Subject to division (F) of this section, the settlor of the trust, other than the settlor of a trust created by a court order, indicates an intention to create the trust.~~

(3) The trust has a definite beneficiary or is one of the following:

(a) A charitable trust;

(b) A trust for the care of an animal, as provided in section 5804.08 of the Revised Code;

(c) A trust for a noncharitable purpose, as provided in section 5804.09 of the Revised Code.

(4) The trustee has duties to perform.

(5) The same person is not the sole trustee and sole beneficiary.

(B) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(C) A power in a trustee or other person to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(D) A trust is valid regardless of the existence, size, or character of the corpus of the trust. This division applies to any trust instrument that was executed prior to, or is executed on or after, January 1, 2007.

(E) A trust is not invalid because a person, including, but not limited to, the creator of the trust, is or may become the sole trustee and the sole holder of the present beneficial enjoyment of the corpus of the trust, provided that one or more other persons hold a vested, contingent, or expectant interest relative to the enjoyment of the corpus of the trust upon the cessation of the present beneficial enjoyment. A merger of the legal and equitable titles to the corpus of a trust described in this division does not occur in its creator, and, notwithstanding any contrary provision of Chapter 2107. of the Revised Code, the trust is not a testamentary trust that is required to comply with that chapter in order for its corpus to be legally distributed to other beneficiaries in accordance with the provisions of the trust upon the cessation of the present beneficial enjoyment. This division applies to any trust that satisfies the provisions of this division, whether the trust was executed prior to, on, or after October 10, 1991.

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

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

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

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

(C) Exchange, partition, or otherwise change the character of trust property;

(D) Deposit trust money in an account in a regulated financial-service institution;

(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;

(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;

(G) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to do any of the following:

(1) Vote, or give proxies to vote, with or without power of substitution, or enter into or

continue a voting trust agreement;

(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;

(3) Pay calls, assessments, and other sums chargeable or accruing against the securities and sell or exercise stock subscription or conversion rights;

(4) Deposit the securities with a depository or other regulated financial-service institution.

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

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

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

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

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

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

(1) Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(2) Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(3) Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(4) Compromise claims against the trust that may be asserted for an alleged violation of environmental law;

(5) Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.

(N) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(O) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(P) Exercise elections with respect to federal, state, and local taxes;

(Q) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance policy payable to the trustee, exercise rights under any employee benefit or retirement plan, annuity, or life insurance policy payable to the trustee, including the right to indemnification for

expenses and against liabilities, and take appropriate action to collect the proceeds;

(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;

(4) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(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;

(W) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(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;

(Y) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;

(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;

(AA) Employ agents, attorneys, accountants, investment advisors, and other professionals.

Sec. 5812.32. (A) As used in this section, ~~"payment"~~:

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

any separate fund regardless of the reason for the payment.

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

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

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

(D) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than is provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction. Except as otherwise provided in division (E) of this section, divisions (F) and (G) of this section apply, and divisions (B) and (C) of this section do not apply, in determining the allocation of a payment made from a separate fund to either of the following:

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

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

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

(F) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to sections 5812.01 to 5812.52 of the Revised Code. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(G) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four per cent of the fund's value according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the value of the fund, the internal income of the fund is deemed to equal the product of the interest

rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code of 1986, 26 U.S.C. 7520, as amended, for the month preceding the accounting period for which the computation is made.

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

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

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

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

(c) If the trust is not described in division (I)(1)(a) or (b) of this section, January 1 of the year in which the amendment of this section takes effect.

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

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

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

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

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

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

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

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

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

~~(D) For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax. After applying divisions (A) to (C) of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.~~

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

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

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

(A) "Benefit plan" means any plan of an employer for the benefit of any employee, any plan

for the benefit of any partner, or any plan for the benefit of a proprietor, and includes, but is not limited to, any pension, retirement, death benefit, deferred compensation, employment agency, stock bonus, option, or profit-sharing contract, plan, system, account, or trust.

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

(C) "Court" means the probate court.

(D) "The custodial property" includes:

(1) All securities, money, life or endowment insurance policies, annuity contracts, benefit plans, real estate, tangible and intangible personal property, proceeds of a life or endowment insurance policy, an annuity contract, or a benefit plan, and other types of property under the supervision of the same custodian for the same minor as a consequence of a transfer or transfers made to the minor, a gift or gifts made to the minor, or a purchase made by the custodian for the minor, in a manner prescribed in sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code;

(2) The income from the custodial property;

(3) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, or other disposition of the securities, money, life or endowment insurance policies, annuity contracts, benefit plans, real estate, tangible and intangible personal property, proceeds of a life or endowment insurance policy, an annuity contract, or a benefit plan, other types of property, and income.

(E) "Custodian" or "successor custodian" means a person so designated in a manner prescribed in sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code.

(F) "Financial institution" means any bank, as defined in section 1101.01, any building and loan association, as defined in section 1151.01, any credit union as defined in section 1733.01 of the Revised Code, and any federal credit union, as defined in the "Federal Credit Union Act," 73 Stat. 628 (1959), 12 U.S.C.A. 1752, as amended.

(G) "Guardian of the minor" includes the general guardian, guardian, tutor, or curator of the property, estate, or person of a minor.

(H) "Issuer" means a person who places or authorizes the placing of the person's name on a security, other than as a transfer agent, to evidence that it represents a share, participation, or other interest in the person's property or in an enterprise, or to evidence the person's duty or undertaking to perform an obligation that is evidenced by the security, or who becomes responsible for or in place of any such person.

(I) "Legal representative" of a person means the executor, administrator, general guardian, guardian, committee, conservator, tutor, or curator of the person's property or estate.

(J) "Member of the minor's family" means a parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt of the minor, whether of the whole or half blood, or by adoption.

(K) ~~"Minor"~~ (1) Except as provided in division (K)(2) of this section, "minor" means a person an individual who has not attained the age of twenty-one years.

(2) When used with reference to the beneficiary for whose benefit custodial property is held or is to be held, "minor" means an individual who has not attained the age at which the custodian is

required under section 5814.09 of the Revised Code to transfer the custodial property to the beneficiary.

(L) "Security" includes any note, stock, treasury stock, common trust fund, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under an oil, gas, or mining title or lease, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. A "security" does not include a security of which the donor or transferor is the issuer. A security is in "registered form" when it specifies a person who is entitled to it or to the rights that it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

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

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

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

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

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

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

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

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

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT

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

.....

(signature of donor or transferor)

..... (name of custodian) hereby acknowledges receipt of the above described security (ies) as custodian for the above minor under the Ohio Transfers to Minors Act.

Dated:
.....

(signature of custodian)"

(3) If the subject of the gift or transfer is money, by paying or delivering it to a broker, or a financial institution for credit to an account in the name of the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act."

(4) If the subject of the gift or transfer is a life or endowment insurance policy, an annuity contract, or a benefit plan, by assigning the policy, contract, or plan to the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act."

(5) If the subject of the gift or transfer is an interest in real estate, by executing and delivering in the appropriate manner a deed, assignment, or similar instrument in the name of the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act."

(6) If the subject of the gift or transfer is tangible personal property, by delivering it to the donor or transferor, another person who is eighteen years of age or older, or a trust company, accompanied by a statement of a gift or transfer in the following form, in substance, signed by the donor or transferor and the person or trust company designated as custodian:

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT

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

.....

(signature of donor or transferor)

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

Dated:
.....

(signature of custodian)"

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

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

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

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

(B) Trustees, inter vivos or testamentary, executors, and administrators having authority to distribute or pay any trust or estate property to or for the benefit of a minor, or having authority to distribute or pay any trust or estate property to any other person for the benefit of a minor may, if authorized by a will or trust instrument, distribute or pay trust or estate property of any type mentioned in division (A) of this section in the manner and form provided in that division, and may name the custodian or successor custodian of the property if the will or trust instrument does not name an eligible custodian, or if the will or trust does not name an eligible successor custodian and the naming of a successor custodian is necessary. A person who is eighteen years of age or older, in the person's will or trust instrument, may provide that the fiduciary shall make any payment or distribution as provided in this division and may name the custodian and a successor custodian of the trust or estate property. As to any distribution or payment so made, the testator of a will, under the provisions of which a testamentary trust or estate is being administered, or the settlor of an inter vivos trust shall be deemed the donor or transferor.

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

(D) 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 shall promptly do all things within the donor's, transferor's, trustee's, executor's, or administrator's power to put the subject of the gift or transfer in the possession and control of the custodian, but neither the donor's, transferor's, trustee's, executor's, or administrator's failure to comply with this division, nor the designation by the donor, transferor, trustee, executor, or administrator of an ineligible custodian, nor the renunciation by the person or trust company designated as custodian, affects the consummation of the gift or transfer.

(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 prescribed in sections 5814.01 to ~~5814.09~~5814.10 of the Revised Code, is irrevocable and conveys to the minor indefeasibly vested legal title to the security, money, life or endowment insurance policy, annuity contract, benefit plan, real estate, tangible or intangible personal property, or other property given or, subject to the right of the owner of the policy, contract, or benefit plan to change the beneficiary if the custodian is not the owner, to the proceeds of a life or endowment insurance policy, an annuity contract, or a benefit plan given, but no guardian of the minor has any right, power, duty, or authority with respect to the custodial property except as provided in sections 5814.01 to ~~5814.09~~5814.10 of the Revised Code.

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

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

(B) The custodian shall pay over to the minor for expenditure by the minor, or expend for the use or benefit of the minor, as much of or all the custodial property as the custodian considers advisable for the use and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in the custodian's discretion considers suitable and proper, with or without court order, with or without regard to the duty or ability of the custodian or of any other person to support the minor or the minor's ability to do so, and with or without regard to any other income or property of the minor that may be applicable or available for any purpose. Any payment or expenditure that is made under this division is in addition to, is not a substitute for, and does not affect the obligation of any person to support the minor for whom the payment or expenditure is made.

(C) The court, on the petition of a parent or guardian of the minor or of the minor, if the minor has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by the minor or to expend as much of or all the custodial property as is necessary for the

use and benefit of the minor.

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

(2) If the donor or transferor, in the written instrument that makes or provides for the gift or transfer, directs the custodian to deliver or pay over the custodial property to the minor on the minor's attaining any age between eighteen and twenty-one, the custodian shall deliver or pay over the custodial property to the minor on the minor's attaining that age, or, if the minor dies before attaining that age, the custodian shall, upon the minor's death, deliver or pay the custodial property over to the estate of the minor.

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

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

(G) The custodian shall register each security that is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act," or shall maintain each security that is custodial property and in registered form in an account with a broker or in a financial institution in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act." A security held in account with a broker or in a financial institution in the name of the custodian may be held in the name of the broker or financial institution. A security that is custodial property and in registered form and that is held by a broker or in a financial institution in which the broker or financial institution does not have a lien for indebtedness due to it from a custodial account may not be pledged, lent, hypothecated, or disposed of except upon the specific instructions of the custodian. The custodian shall hold all money that is custodial

property in an account with a broker or in a financial institution in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act." The custodian shall hold all life or endowment insurance policies, annuity contracts, or benefit plans that are custodial property in the name of the custodian, followed, in substance, by the words "as custodian for (name of minor) under the Ohio Transfers to Minors Act." The custodian shall take title to all real estate that is custodial property in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act." In the event one or more successor custodians have been designated by the donor, transferor, trustee, executor, or administrator pursuant to division (F) of section 5814.02 of the Revised Code or by the custodian pursuant to division (E) of section 5814.07 of the Revised Code, each registration, account, policy, contract, plan, or title in the name of the custodian set forth in this division shall include such designation of successor custodian or custodians. The custodian shall keep all other custodial property separate and distinct from the custodian's own property in a manner to identify it clearly as custodial property.

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

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

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

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

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

(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.

Sec. 5814.05. (A) A custodian is entitled to reimbursement from the custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(B) A custodian may act without compensation for the custodian's services.

(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:

(1) A direction by the donor or transferor when the gift or transfer is made;

(2) A statute of this state applicable to custodians;

(3) The statute of this state applicable to guardians;

(4) An order of the court.

(D) Except as otherwise provided in sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code, a custodian shall not be required to give a bond for the performance of the custodian's duties.

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

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

(A) Determine either of the following:

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

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

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

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

Sec. 5814.07. (A) Any person who is eighteen years of age or older or a trust company is eligible to become a successor custodian. A successor custodian has all the rights, powers, duties, and immunities of a custodian designated in a manner prescribed by sections 5814.01 to ~~5814.09~~5814.10 of the Revised Code.

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

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

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

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

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

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

(D) A custodian may designate by the custodian's will a successor custodian, which designation is effective at the custodian's death. Upon the custodian's death, the custodian's legal representative shall do each of the following:

(1) Cause each security that is custodial property and in registered form to be registered in the

name of the successor custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act;"

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

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

(E) A custodian may designate one or more successor custodians by transferring the property of any type specified in division (A) of section 5814.02 of the Revised Code, other than real estate, in the manner and form provided in that division, to self as custodian, followed by the designation of the successor custodian or custodians in the manner and form provided in division (F) of section 5814.02 of the Revised Code. A custodian may designate one or more successor custodians of real property by designating the successor custodian or custodians in the manner and form provided in sections 5302.22 to 5302.23 of the Revised Code. A designation of a successor custodian or custodians by the custodian shall replace any previous designation of successor custodians by the donor, transferor, or previous custodian.

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

(F)-(G) If a person or entity designated as successor custodian is not eligible, or renounces or dies before the minor attains the age of twenty-one years or before the minor attains the age at which the custodian is required under section 5814.09 of the Revised Code to deliver the custodial property to the minor, or if the custodian dies without designating a successor custodian and division (E)-(F) of this section does not apply because the custodian does not have a legal representative, the guardian of the minor shall be the successor custodian. If the minor does not have a guardian, a donor or transferor, the legal representative of the donor or transferor, the legal representative of the custodian, a member of the minor's family who is eighteen years of age or older, or the minor, if the minor has attained the age of fourteen years, may petition the court for the designation of a successor custodian.

(G)-(H) A donor or transferor, the legal representative of a donor or transferor, a member of the minor's family who is eighteen years of age or older, a guardian of the minor, or the minor, if the

minor has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of the custodian's duties.

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

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

(B) The court, in a proceeding under sections 5814.01 to ~~5814.09~~5814.10 of the Revised Code, or otherwise, may require or permit the custodian or the custodian's legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer of the custodial property.

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

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

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

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

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

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

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

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

(C) Nothing in sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code, shall affect gifts made under former sections 1339.19 to 1339.28 of the Revised Code, nor the powers, duties, and immunities conferred by gifts in such manner upon custodians and persons dealing with custodians. Sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code henceforth apply, however, to all gifts made in a manner and form prescribed in former sections 1339.19 to 1339.28 of the Revised Code, except insofar as the application impairs constitutionally vested rights. Sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code shall be construed as a continuation of the provisions of former sections 1339.19 to 1339.28 of the Revised Code, according to the language employed, and not as a new enactment.

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

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

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

(2) The property qualifies for the federal estate tax marital deduction allowed by subtitle B, Chapter 11 of the "Internal Revenue Code of 1986," 26 U.S.C. 2056, as amended, the estate tax marital deduction allowed by division (A) of section 5731.15 of the Revised Code, or the qualified terminable interest property deduction allowed by division (B) of section 5731.15 of the Revised Code.

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

(2) Division (A) of this section does not apply to any beneficiary of an inter vivos or testamentary trust other than the surviving spouse of the testator or other settlor or to any inter vivos or testamentary trust of which the surviving spouse of the testator or other settlor is a beneficiary if an interest in property does not qualify for a marital deduction or a qualified terminable interest

property deduction as described in division (A)(2) of this section.

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

~~(2) A trustee's fiduciary duty as described in division (C)(1) of this section is satisfied if the terms of the trust instrument expressly provide the surviving spouse a right to withdraw all of the assets from the trust or a right to compel the trustee to withdraw and distribute the income of the individual retirement account to the surviving spouse.~~

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

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

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

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

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

Director, Legislative Service Commission.

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

Secretary of State.

File No. _____ Effective Date _____