

**As Passed by the House**

**131st General Assembly**

**Regular Session**

**2015-2016**

**Sub. S. B. No. 232**

**Senator Bacon**

**Cosponsors: Senators Coley, Burke, Brown, Eklund, Faber, Hackett, Hite, Hughes, Jordan, Peterson, Schiavoni, Seitz, Tavares, Thomas Representatives Dever, Gavarone, Green, Leland, Manning, Pelanda, Rezabek, Rogers, Sweeney**

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**A BILL**

To amend sections 2105.14, 2107.34, 2109.301, 1  
5302.23, and 5302.24 and to enact section 2  
5801.12 of the Revised Code to amend the law 3  
related to transfer on death designation deeds 4  
and affidavits and to make changes in the 5  
probate and trust laws regarding the inheritance 6  
and beneficial rights of afterborn or 7  
pretermitted children or heirs. 8

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

**Section 1.** That sections 2105.14, 2107.34, 2109.301, 9  
5302.23, and 5302.24 be amended and section 5801.12 of the 10  
Revised Code be enacted to read as follows: 11

**Sec. 2105.14.** ~~Descendants of an intestate begotten before~~ 12  
~~the intestate's death, but born after the intestate's death, in~~ 13  
~~all cases will inherit as if born in the lifetime of the~~ 14  
~~intestate and surviving the intestate; but in no other case can~~ 15  
~~a person~~ No descendant of an intestate shall inherit under this 16  
chapter unless living at the time of the death of surviving the 17

intestate for at least one hundred twenty hours, or unless born 18  
within three hundred days after the death of the intestate and 19  
living for at least one hundred twenty hours after birth. 20

**Sec. 2107.34.** ~~If~~ (A) Subject to division (C) of this 21  
section, if, after making a will, a testator has a child born 22  
alive, adopts a child, or designates an heir in the manner 23  
provided by section 2105.15 of the Revised Code, or if a child 24  
or designated heir who is absent and reported to be dead proves 25  
to be alive, and no provision has been made in the will or by 26  
settlement for the pretermitted child or heir, or for that 27  
child's or heir's issue, the will shall not be revoked. Unless 28  
it appears by the will that it was the intention of the testator 29  
to disinherit the pretermitted child or heir, the devises and 30  
legacies granted by the will, except those to a surviving 31  
spouse, shall be abated proportionately, or in any other manner 32  
that is necessary to give effect to the intention of the 33  
testator as shown by the will, so that the pretermitted child or 34  
heir will receive a share equal to that which the person would 35  
have been entitled to receive out of the estate if the testator 36  
had died intestate with no surviving spouse, owning only that 37  
portion of the testator's estate not devised or bequeathed to or 38  
for the use and benefit of a surviving spouse. If the 39  
pretermitted child or heir dies prior to the death of the 40  
testator, the issue of the deceased child or heir shall receive 41  
the share the parent would have received if living. 42

(B) If the pretermitted child or heir supposed to be dead 43  
at the time of executing the will has lineal descendants, 44  
provision for whom is made by the testator, the other legatees 45  
and devisees need not contribute, but the pretermitted child or 46  
heir shall take the provision made for the pretermitted child's 47  
or heir's lineal descendants or that part of it as, in the 48

opinion of the probate judge, may be equitable. In settling the 49  
claim of a pretermitted child or heir, any portion of the 50  
testator's estate received by a party interested, by way of 51  
advancement, is a portion of the estate and shall be charged to 52  
the party who has received it. 53

(C) Notwithstanding any provision in this chapter to the 54  
contrary, any person born more than three hundred days after the 55  
date of death of a testator shall not inherit under the 56  
testator's will as a child or heir of the testator unless the 57  
will clearly provides otherwise. If a will clearly provides that 58  
such a posthumously born child or heir shall inherit under the 59  
will, notwithstanding any provision in the will to the contrary,  
that child or heir shall inherit only if born within a period of 60  
one year and three hundred days from the date of death of the 61  
testator. This division does not apply to the terms of a 62  
testamentary trust. 63  
64

(D) Though measured by Chapter 2105. of the Revised Code,  
the share taken by a child born after the making of a will or by  
a pretermitted child or heir pursuant to division (A) of this  
section shall be considered as a testate succession. This 68  
section does not prejudice the right of any fiduciary to act 69  
under any power given by the will, nor shall the title of 70  
innocent purchasers for value of any of the property of the 71  
testator's estate be affected by any right given by this section 72  
to a child born after the making of a will or a pretermitted  
child or heir. 74

**Sec. 2109.301.** (A) An administrator or executor shall 75  
render an account at any time other than a time otherwise 76  
mentioned in this section upon an order of the probate court 77  
issued for good cause shown either at its own instance or upon 78

the motion of any person interested in the estate. Except as 79  
otherwise provided in division (B) (2) of this section, an 80  
administrator or executor shall render a final account within 81  
thirty days after completing the administration of the estate or 82  
within any other period of time that the court may order. 83

Every account shall include an itemized statement of all 84  
receipts of the administrator or executor during the accounting 85  
period and of all disbursements and distributions made by the 86  
executor or administrator during the accounting period. In 87  
addition, the account shall include an itemized statement of all 88  
funds, assets, and investments of the estate known to or in the 89  
possession of the administrator or executor at the end of the 90  
accounting period and shall show any changes in investments 91  
since the last previous account. 92

Every account shall be upon the signature of the 93  
administrator or executor. When two or more administrators or 94  
executors render an account, the court may allow the account 95  
upon the signature of one of them. The court may examine the 96  
administrator or executor under oath concerning the account. 97

When an administrator or executor is authorized by law or 98  
by the instrument governing distribution to distribute the 99  
assets of the estate, in whole or in part, the administrator or 100  
executor may do so and include a report of the distribution in 101  
the administrator's or executor's succeeding account. 102

In estates of decedents in which none of the legatees, 103  
devisees, or heirs is under a legal disability, each partial 104  
accounting of an executor or administrator may be waived by the 105  
written consent of all the legatees, devisees, or heirs filed in 106  
lieu of a partial accounting otherwise required. 107

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| (B) (1) Every administrator and executor, within six months            | 108 |
| after appointment, shall render a final and distributive account       | 109 |
| of the administrator's or executor's administration of the             | 110 |
| estate unless one or more of the following circumstances apply:        | 111 |
| (a) An Ohio estate tax return must be filed for the                    | 112 |
| estate.  | 113 |
| (b) A proceeding contesting the validity of the decedent's             | 114 |
| will pursuant to section 2107.71 of the Revised Code has been          | 115 |
| commenced.   | 116 |
| (c) The surviving spouse has filed an election to take                 | 117 |
| against the will.  | 118 |
| (d) The administrator or executor is a party in a civil                | 119 |
| action.  | 120 |
| (e) The estate is insolvent.   | 121 |
| (f) <u>The decedent's will provides that a posthumously born</u>       | 122 |
| <u>child or heir, which includes a child or heir born through the</u>  | 123 |
| <u>use of assisted reproductive technologies as defined in section</u> | 124 |
| <u>5801.12 of the Revised Code, shall inherit under the will as</u>    | 125 |
| <u>provided in section 2107.34 of the Revised Code.</u>                | 126 |
| <u>(g)</u> For other reasons set forth by the administrator or         | 127 |
| executor, subject to court approval, it would be detrimental to        | 128 |
| the estate and its beneficiaries or heirs to file a final and          | 129 |
| distributive account.  | 130 |
| (2) In estates of decedents in which the sole legatee,                 | 131 |
| devisee, or heir is also the administrator or executor of the          | 132 |
| estate, no partial accountings are required. The administrator         | 133 |
| or executor of an estate of that type shall file a final account       | 134 |
| or final and distributive account or, in lieu of filing a final        | 135 |

account, the administrator or executor may file with the court 136  
within thirty days after completing the administration of the 137  
estate a certificate of termination of an estate that states all 138  
of the following: 139

(a) All debts and claims presented to the estate have been 140  
paid in full or settled finally. 141

(b) An estate tax return, if required under the provisions 142  
of the Internal Revenue Code or Chapter 5731. of the Revised 143  
Code, has been filed, and any estate tax has been paid. 144

(c) All attorney's fees have been waived by or paid to 145  
counsel of record of the estate, and all executor or 146  
administrator fees have been waived or paid. 147

(d) The amount of attorney's fees and the amount of 148  
administrator or executor fees that have been paid. 149

(e) All assets remaining after completion of the 150  
activities described in divisions (B) (2) (a) to (d) of this 151  
section have been distributed to the sole legatee, devisee, or 152  
heir. 153

(3) In an estate of the type described in division (B) (2) 154  
of this section, a sole legatee, devisee, or heir of a decedent 155  
may be liable to creditors for debts of and claims against the 156  
estate that are presented after the filing of the certificate of 157  
termination described in that division and within the time 158  
allowed by section 2117.06 of the Revised Code for presentation 159  
of the creditors' claims. 160

(4) Not later than thirteen months after appointment, 161  
every administrator and executor shall render an account of the 162  
administrator's or executor's administration, unless a partial 163  
account is waived under division (A) of this section or a 164

certificate of termination is filed under division (B) (2) of 165  
this section. After the initial account is rendered or a waiver 166  
of a partial account is filed, every administrator and executor 167  
shall, at least once each year, render further accounts or file 168  
waivers of partial accounts until the estate is closed, unless a 169  
certificate of termination is filed under division (B) (2) of 170  
this section. 171

**Sec. 5302.23.** (A) Any affidavit containing language that 172  
shows a clear intent to designate a transfer on death 173  
beneficiary shall be liberally construed to do so. 174

(B) Real property or an interest in real property that is 175  
the subject of a transfer on death designation affidavit as 176  
provided in section 5302.22 of the Revised Code or as described 177  
in division (A) of this section has all of the following 178  
characteristics and ramifications: 179

(1) An interest of a deceased owner shall be transferred 180  
to the transfer on death beneficiaries who are identified in the 181  
affidavit by name and who survive the deceased owner or that are 182  
in existence on the date of the deceased owner's death. If there 183  
is a designation of more than one transfer on death beneficiary, 184  
the beneficiaries shall take title to the interest in equal 185  
shares as tenants in common, unless the deceased owner has 186  
specifically designated other than equal shares or has 187  
designated that the beneficiaries take title as survivorship 188  
tenants, subject to division (B) (3) of this section. If a 189  
transfer on death beneficiary does not survive the deceased 190  
owner or is not in existence on the date of the deceased owner's 191  
death, and the deceased owner has designated one or more persons 192  
as contingent transfer on death beneficiaries as provided in 193  
division (B) (2) of this section, the designated contingent 194

transfer on death beneficiaries shall take the same interest 195  
that would have passed to the transfer on death beneficiary had 196  
that transfer on death beneficiary survived the deceased owner 197  
or been in existence on the date of the deceased owner's death. 198  
If none of the designated transfer on death beneficiaries 199  
survives the deceased owner or is in existence on the date of 200  
the deceased owner's death and no contingent transfer on death 201  
beneficiaries have been designated, have survived the deceased 202  
owner, or are in existence on the date of death of the deceased 203  
owner, the interest of the deceased owner shall be distributed 204  
as part of the probate estate of the deceased owner of the 205  
interest. If there are two or more transfer on death 206  
beneficiaries and the deceased owner has designated that title 207  
to the interest in the real property be taken by those 208  
beneficiaries as survivorship tenants, no designated contingent 209  
transfer on death beneficiaries shall take title to the interest 210  
unless none of the transfer on death beneficiaries survives the 211  
deceased owner on the date of death of the deceased owner. 212

(2) A transfer on death designation affidavit may contain 213  
a designation of one or more persons as contingent transfer on 214  
death beneficiaries, who shall take the interest of the deceased 215  
owner that would otherwise have passed to the transfer on death 216  
beneficiary if that named transfer on death beneficiary does not 217  
survive the deceased owner or is not in existence on the date of 218  
death of the deceased owner. Persons designated as contingent 219  
transfer on death beneficiaries shall be identified in the 220  
affidavit by name. 221

(3) Any transfer on death beneficiary or contingent 222  
transfer on death beneficiary may be a natural or legal person, 223  
including, but not limited to, a bank as trustee of a trust, 224  
except that if two or more transfer on death beneficiaries are 225



designated as survivorship tenants, all of those beneficiaries 226  
shall be natural persons and if two or more contingent transfer 227  
on death beneficiaries are designated as survivorship tenants, 228  
all of those contingent beneficiaries shall be natural persons. 229  
A natural person who is designated a transfer on death 230  
beneficiary or contingent transfer on death beneficiary solely 231  
in that natural person's capacity as a trustee of a trust is not 232  
considered a natural person for purposes of designating the 233  
transfer on death beneficiaries or contingent transfer on death 234  
beneficiaries as survivorship tenants under division (B) (3) of 235  
this section. 236

(4) The designation of a transfer on death beneficiary has 237  
no effect on the present ownership of real property, and a 238  
person designated as a transfer on death beneficiary has no 239  
interest in the real property until the death of the owner of 240  
the interest. 241

(5) The designation in a transfer on death designation 242  
affidavit of any transfer on death beneficiary may be revoked or 243  
changed at any time, without the consent of that transfer on 244  
death beneficiary, by the owner of the interest, by the 245  
surviving survivorship tenants of the interest, or by the 246  
remaining tenant by the entireties of the interest, by executing 247  
and recording, prior to the death of the owner of the interest, 248  
of the surviving survivorship tenants of the interest, or of the 249  
remaining tenant by the entireties of the interest, as the case 250  
may be, a new transfer on death designation affidavit pursuant 251  
to section 5302.22 of the Revised Code stating the revocation or 252  
change in that designation. The new transfer on death 253  
designation affidavit shall automatically supersede and revoke 254  
all prior recorded transfer on death designation affidavits with 255  
respect to the real property or the interest in real property 256

identified in the new affidavit, provided that the prior 257  
recorded affidavit was executed before the later recorded 258  
affidavit. 259

(6) A fee simple title or any fractional interest in a fee 260  
simple title may be subjected to a transfer on death beneficiary 261  
designation. 262

(7) (a) A transfer on death beneficiary takes only the 263  
interest that the deceased owner or owners of the interest held 264  
on the date of death, subject to all encumbrances, reservations, 265  
and exceptions. 266

(b) If the owners hold title to the interest in a 267  
survivorship tenancy, the death of all except the last 268  
survivorship tenant automatically terminates and nullifies any 269  
transfer on death beneficiary designations made solely by the 270  
deceased survivorship tenant or tenants without joinder by the 271  
last surviving survivorship tenant. The termination or 272  
nullification of any transfer on death beneficiary designations 273  
under division (B) (7) (b) of this section is effective as of the 274  
date of death of a deceased survivorship tenant. No affirmative 275  
act of revocation is required of the last surviving survivorship 276  
tenant for the termination or nullification of the transfer on 277  
death beneficiary designations to occur as described in division 278  
(B) (7) (b) of this section. If the last surviving survivorship 279  
tenant dies with no transfer on death beneficiary designation, 280  
the entire interest of that last surviving survivorship tenant 281  
shall be distributed as part of the tenant's probate estate. 282

(c) If the owners hold title to the interest in a tenancy 283  
by the entireties, the death of the first tenant by the 284  
entireties automatically terminates and nullifies any transfer 285  
on death beneficiary designations made solely by that deceased 286

first tenant without joinder by the remaining tenant by the 287  
entireties. The termination or nullification of any transfer on 288  
death beneficiary designations under division (B)(7)(c) of this 289  
section is effective as of the date of death of the first tenant 290  
by the entireties. No affirmative act of revocation is required 291  
of the remaining tenant by the entireties for the termination or 292  
nullification of the transfer on death beneficiary designations 293  
to occur as described in division (B)(7)(c) of this section. If 294  
the remaining tenant by the entireties dies with no transfer on 295  
death beneficiary designation, the entire interest of that 296  
remaining tenant shall be distributed as part of the tenant's 297  
probate estate. 298

(8) No rights of any lienholder, including, but not 299  
limited to, any mortgagee, judgment creditor, or mechanic's lien 300  
holder, shall be affected by the designation of a transfer on 301  
death beneficiary pursuant to this section and section 5302.22 302  
of the Revised Code. If any lienholder takes action to enforce 303  
the lien, by foreclosure or otherwise through a court 304  
proceeding, it is not necessary to join any transfer on death 305  
beneficiary as a party defendant in the action unless the 306  
transfer on death beneficiary has another interest in the real 307  
property. 308

(9) Any transfer on death of real property or of an 309  
interest in real property that results from a transfer on death 310  
designation affidavit designating a transfer on death 311  
beneficiary is not testamentary. That transfer on death shall 312  
supersede any attempted testate or intestate transfer of that 313  
real property or interest in real property. 314

(10) The execution and recording of a transfer on death 315  
designation affidavit shall be effective to terminate the 316

designation of a transfer on death beneficiary in a transfer on 317  
death deed involving the same real property or interest in real 318  
property and recorded prior to the effective date of this 319  
section. 320

(11) The execution and recording of a transfer on death 321  
designation affidavit shall be effective to bar the vesting of 322  
any rights of dower in a subsequent spouse of the owner of the 323  
real property who executed that affidavit unless the affidavit 324  
is revoked or changed. 325

(12) If, after the execution and recording of a transfer 326  
on death designation affidavit under which the owner of the real 327  
property's spouse is designated the transfer on death 328  
beneficiary, the owner of the real property and such owner's 329  
spouse are divorced, obtain a dissolution of the marriage, or 330  
have the marriage annulled, then the designation of the owner's 331  
spouse as a transfer on death beneficiary on such instrument 332  
shall be terminated and the spouse shall be deemed to have 333  
predeceased the owner of the real property. 334

(C) If, after the execution and recording of a transfer on 335  
death deed under which the owner of the real property's spouse 336  
is designated the transfer on death beneficiary, the owner of 337  
the real property and such owner's spouse are divorced, obtain a 338  
dissolution of the marriage, or have the marriage annulled, then 339  
the designation of the owner's spouse as a transfer on death 340  
beneficiary on such instrument shall be terminated and the 341  
spouse shall be deemed to have predeceased the owner of the real 342  
property. 343

**Sec. 5302.24.** Sections Except as otherwise provided in 344  
divisions (B) (12) and (C) of section 5302.23 of the Revised 345  
Code, sections 5302.22, 5302.222, and 5302.23 of the Revised 346

Code do not affect any deed that was executed and recorded prior 347  
~~to the effective date of this section, December 28, 2009,~~ or any 348  
transfer on death beneficiary designation made, pursuant to 349  
section 5302.22 of the Revised Code as it existed prior to ~~the~~ 350  
~~effective that date of this section.~~ If that deed or designation 351  
is valid on the day prior to ~~the effective that date of this~~ 352  
~~section,~~ the deed or designation continues to be valid on and 353  
after ~~the effective that date of this section.~~ A grantee of that 354  
deed need not execute a transfer on death designation affidavit 355  
that designates the same transfer on death beneficiary or 356  
beneficiaries as in the deed unless the grantee chooses to do 357  
so. 358

**Sec. 5801.12.** (A) As used in this section: 359

(1) "Assisted reproductive technologies" means any medical 360  
or scientific technology or method designed to assist one or 361  
more persons to cause a pregnancy through means other than by 362  
sexual intercourse, including technologies that are developed 363  
after the date of this amendment. 364

(2) "Trust" includes a revocable or irrevocable trust. 365

(B) Notwithstanding any other section of the Revised Code, 366  
this section governs the beneficial rights under a trust of any 367  
child born through the use of any assisted reproductive 368  
technologies, and also applies to the exercise of any power of 369  
appointment granted under a trust instrument or any other power 370  
to otherwise expand the class of beneficiaries under a trust 371  
instrument. 372

(C) No child of a settlor born through the use of any 373  
assisted reproductive technologies more than three hundred days 374  
after the date of death of the settlor of a trust instrument 375

shall be considered the settlor's child under that trust 376  
instrument, under the exercise of any power to appoint trust 377  
assets in favor of the settlor's children, or under the exercise 378  
of any other power to otherwise expand the class of 379  
beneficiaries under the trust instrument, unless the terms of 380  
the trust clearly provide otherwise. No other person born 381  
through the use of any assisted reproductive technologies more 382  
than three hundred days after the date of the event that caused 383  
a class of beneficiaries to close under the terms of a trust 384  
shall be included in that class unless the terms of the trust 385  
clearly provide otherwise. 386

(D) (1) If the terms of a trust provide for a child or 387  
other person born through the use of assisted reproductive 388  
technologies and further provide for a time period in which that 389  
child or other person must be born in order to benefit under the 390  
terms of the trust, that time period shall apply in order for 391  
the child or other person to benefit under the terms of the 392  
trust, subject to a maximum time period of five years from the 393  
date of death of the settlor or the date of the event that 394  
caused a class of beneficiaries to close, whichever is 395  
applicable. 396

(2) If the terms of a trust provide for a child or other 397  
person born through the use of assisted reproductive 398  
technologies but do not provide for a time period in which that 399  
child or other person must be born in order to benefit under the 400  
terms of the trust, that child or other person must be born 401  
within a period of one year and three hundred days from the date 402  
of death of the settlor or the date of the event that caused a 403  
class of beneficiaries to close, whichever is applicable, in 404  
order for the child or other person to benefit under the terms 405  
of the trust. 406

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| <b>Section 2.</b> That existing sections 2105.14, 2107.34,    | 407 |
| 2109.301, 5302.23, and 5302.24 of the Revised Code are hereby | 408 |
| repealed.   | 409 |