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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

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 devisees 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, 60
that child or heir shall inherit only if born within a period of 61
one year and three hundred days from the date of death of the 62
testator. This division does not apply to the terms of a 63
testamentary trust. 64

(D) Though measured by Chapter 2105. of the Revised Code, 65
the share taken by a child born after the making of a will or by 66
a pretermitted child or heir pursuant to division (A) of this 67
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 73
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

(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

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repealed. 409