

Sub. S. B. No. 199  
As Passed by the Senate

\_\_\_\_\_ moved to amend as follows:

In line 2 of the title, delete "and"; after "2131.09" insert ", and 1  
5808.19" 2

In line 11, delete the first "and"; after "2131.09" insert ", and 3  
5808.19" 4

After line 1373, insert: 5

**"Sec. 5808.19.** ~~(A)~~ (A) (1) As used in this section, unless 6  
otherwise provided in any other provision in this section: 7

~~(1)~~ (a) "Beneficiary" ~~means~~ includes the beneficiary of a 8  
primary gift, the beneficiary of a future interest, and includes 9  
a class member if the future interest is in the form of a class 10  
gift. 11

~~(2)~~ (b) "Class member" means an individual who fails to 12  
survive the distribution date by at least one hundred twenty 13  
hours but who would have taken under a future interest in the 14  
form of a class gift had the individual survived the 15  
distribution date by at least one hundred twenty hours. 16

~~(3)~~ (c) "Descendant of a grandparent of the transferor" 17  
means an individual who would qualify as a descendant of a 18  
grandparent of the transferor under the rules of construction 19  
that would apply to a class gift under the transferor's will to 20  
the descendants of the transferor's grandparent. 21

~~(4)~~ (d) "Distribution date," with respect to a future 22  
interest, means the time when the future interest is to take 23  
effect in possession or enjoyment. The distribution date need 24  
not occur at the beginning or end of a calendar day but may 25  
occur at a time during the course of a day. 26

~~(5)~~ (e) "Future interest" means an alternative future 27  
interest or a future interest in the form of a class gift. 28

~~(6)~~ (f) "Future interest under the terms of a trust" means 29  
a future interest that was created by a transfer creating a 30  
trust or a transfer to an existing trust, or by an exercise of a 31  
power of appointment to an existing trust, that directs the 32  
continuance of an existing trust, designates a beneficiary of an 33  
existing trust, or creates a trust. 34

~~(7)~~ (g) "Per stirpes" means that the shares of the 35  
descendants of a beneficiary who does not survive the 36  
distribution date by at least one hundred twenty hours are 37  
determined in the same way they would have been determined under 38  
division (A) of section 2105.06 of the Revised Code if the 39  
beneficiary had died intestate and unmarried on the distribution 40  
date. 41

~~(8)~~ (h) "Revocable trust" means a trust that was revocable 42  
immediately before the settlor's death by the settlor alone or 43  
by the settlor with the consent of any person other than a 44  
person holding an adverse interest. A trust's characterization 45

as revocable is not affected by the settlor's lack of capacity 46  
to exercise the power of revocation, regardless of whether an 47  
agent of the settlor under a power of attorney, or a guardian of 48  
the person or estate of the settlor, was serving. 49

~~(9)~~ (i) "Stepchild" means a child of the surviving, 50  
deceased, or former spouse of the transferor and not of the 51  
transferor. 52

~~(10)~~ (j) "Transferor" means any of the following: 53

~~(a)~~ (i) The donor and donee of a power of appointment, if 54  
the future interest was in property as a result of the exercise 55  
of a power of appointment; 56

~~(b)~~ (ii) The testator, if the future interest was devised 57  
by will; 58

~~(c)~~ (iii) The settlor, if the future interest was conveyed 59  
by inter vivos trust. 60

(2) Except as otherwise provided in this division, the 61  
amendment to division (A) (1) (a) of this section in this act 62  
shall be given retroactive effect to the fullest extent 63  
permitted under Ohio Constitution, Article II, Section 28. The 64  
amendment shall not be given retroactive effect in those 65  
instances where doing so would invalidate or supersede any 66  
instrument that conveys real property or any interest in the 67  
real property, recorded in the office of the county recorder in 68  
which that real property is situated. 69

(B) (1) (a) As used in "surviving descendants" in divisions 70  
(B) (2) (b) (i) and (ii) of this section, "descendants" means the 71  
descendants of a deceased beneficiary or class member who would 72  
take under a class gift created in the trust. 73

(b) As used in divisions (B) (2) (b) (i) and (ii) of this section, "surviving beneficiaries" or "surviving descendants" means beneficiaries or descendants, whichever is applicable, who survive the distribution date by at least one hundred twenty hours.

(2) Unless a contrary intent appears in the instrument creating a future interest under the terms of a trust, each of the following applies:

(a) A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date by at least one hundred twenty hours.

(b) If a beneficiary of a future interest under the terms of a trust does not survive the distribution date by at least one hundred twenty hours and if the beneficiary is a grandparent of the transferor, a descendant of a grandparent of the transferor, or a stepchild of the transferor, either of the following applies:

(i) If the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. The surviving descendants take, per stirpes, the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date by at least one hundred twenty hours.

(ii) If the future interest is in the form of a class gift, other than a future interest to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import that includes more than one generation, a substitute gift is

created in the surviving descendants of the deceased beneficiary 103  
or beneficiaries. The property to which the beneficiaries would 104  
have been entitled had all of them survived the distribution 105  
date by at least one hundred twenty hours passes to the 106  
surviving beneficiaries and the surviving descendants of the 107  
deceased beneficiaries. Each surviving beneficiary takes the 108  
share to which the surviving beneficiary would have been 109  
entitled had the deceased beneficiaries survived the 110  
distribution date by at least one hundred twenty hours. Each 111  
deceased beneficiary's surviving descendants who are substituted 112  
for the deceased beneficiary take, per stirpes, the share to 113  
which the deceased beneficiary would have been entitled had the 114  
deceased beneficiary survived the distribution date by at least 115  
one hundred twenty hours. For purposes of division (B) (2) (b) (ii) 116  
of this section, "deceased beneficiary" means a class member who 117  
failed to survive the distribution date by at least one hundred 118  
twenty hours and left one or more surviving descendants. 119

(C) For purposes of this section, each of the following 120  
applies: 121

(1) Describing a class of beneficiaries as "surviving" or 122  
"living," without specifying when the beneficiaries must be 123  
surviving or living, such as a gift "for my spouse for life, 124  
then to my surviving (or living) children," is not, in the 125  
absence of other language in the trust instrument or other 126  
evidence to the contrary, a sufficient indication of an intent 127  
to negate the application of division (B) (2) (b) of this section. 128

(2) Subject to division (C) (1) of this section, attaching 129  
words of survivorship to a future interest under the terms of a 130  
trust, such as "for my spouse for life, then to my children who 131  
survive my spouse" or "for my spouse for life, then to my then- 132

living children" is, in the absence of other language in the 133  
trust instrument or other evidence to the contrary, a sufficient 134  
indication of an intent to negate the application of division 135  
(B) (2) (b) of this section. Words of survivorship under division 136  
(C) (2) of this section include words of survivorship that relate 137  
to the distribution date or to an earlier or an unspecified 138  
time, whether those words of survivorship are expressed as 139  
condition-precedent, condition-subsequent, or in any other form. 140

(3) A residuary clause in a will is not a sufficient 141  
indication of an intent that is contrary to the application of 142  
this section, whether or not the will specifically provides that 143  
lapsed or failed devises are to pass under the residuary clause. 144  
A residuary clause in a revocable trust instrument is not a 145  
sufficient indication of an intent that is contrary to the 146  
application of this section unless the distribution date is the 147  
date of the settlor's death and the revocable trust instrument 148  
specifically provides that upon lapse or failure the 149  
nonresiduary devise, or nonresiduary devises in general, pass 150  
under the residuary clause. 151

(D) If, after the application of divisions (B) and (C) of 152  
this section there is no surviving taker of the property, and a 153  
contrary intent does not appear in the instrument creating the 154  
future interest, the property passes in the following order: 155

(1) If the future interest was created by the exercise of 156  
a power of appointment, the property passes under the donor's 157  
gift-in-default clause, if any, which clause is treated as 158  
creating a future interest under the terms of a trust. 159

(2) If no taker is produced under division (D) (1) of this 160  
section and the trust was created in a nonresiduary devise in 161  
the transferor's will or in a codicil to the transferor's will, 162

the property passes under the residuary clause in the 163  
transferor's will. For purposes of division (D)(2) of this 164  
section, the residuary clause is treated as creating a future 165  
interest under the terms of a trust. 166

(3) If no taker is produced under divisions (D)(1) and (2) 167  
of this section, the transferor is deceased, and the trust was 168  
created in a nonresiduary gift under the terms of a revocable 169  
trust of the transferor, the property passes under the residuary 170  
clause in the transferor's revocable trust instrument. For 171  
purposes of division (D)(3) of this section, the residuary 172  
clause in the transferor's revocable trust instrument is treated 173  
as creating a future interest under the terms of a trust. 174

(4) If no taker is produced under divisions (D)(1), (2), 175  
and (3) of this section, the property passes to those persons 176  
who would succeed to the transferor's intestate estate and in 177  
the shares as provided in the intestate succession law of the 178  
transferor's domicile if the transferor died on the distribution 179  
date. Notwithstanding division ~~(A)(10)~~ (A)(1)(j) of this 180  
section, for purposes of division (D)(4) of this section, if the 181  
future interest was created by the exercise of a power of 182  
appointment, "transferor" means the donor if the power is a 183  
nongeneral power, or the donee if the power is a general power. 184

(E) This section applies to all trusts that become 185  
irrevocable on or after March 22, 2012. This section does not 186  
apply to any trust that was irrevocable before March 22, 2012, 187  
even if property was added to the trust on or after March 22, 188  
2012." 189

In line 1375, delete "and"; after "2131.09" insert ", and 5808.19" 190

The motion was \_\_\_\_\_ agreed to.

<u>SYNOPSIS</u>	191
<b>Anti-lapse provisions in the law on trusts</b>	192
<b>R.C. 5808.19</b>	193
Expands the definition of "beneficiary" in the portion of	194
the trust law relating to survivorship with respect to future	195
interests and lapsed or failed transfers, to include a	196
beneficiary of a primary gift, as opposed to limiting the	197
definition to the beneficiary of a future interest or a class	198
member if the future interest is in the form of a class gift.	199
Specifies that, generally, the new definition is to be	200
applied retroactively to the fullest extent permitted under the	201
Ohio Constitution's provision on retroactive laws.	202