

**As Introduced**

**135th General Assembly  
Regular Session  
2023-2024**

**H. B. No. 696**

**Representative Mathews**

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**A BILL**

To amend sections 1336.04, 1336.05, 1336.09, 1  
1337.34, 1337.36, 1337.42, 1337.52, 2109.21, 2  
2109.25, 2117.02, 2129.08, 5701.11, 5801.04, 3  
5801.07, 5806.02, 5806.03, 5808.19, 5810.08, 4  
5812.43, 5815.25, and 5816.11; to enact sections 5  
5808.161, 5818.01, 5818.011, 5818.02, 5818.03, 6  
5818.04, 5818.05, 5818.06, 5818.07, 5818.08, 7  
5818.09, 5818.10, 5818.11, 5818.12, 5818.13, 8  
5818.14, 5818.15, 5818.16, 5818.17, 5818.18, 9  
5818.19, 5818.20, 5818.21, 5818.22, 5818.23, 10  
5818.24, 5818.25, 5818.26, 5818.27, 5818.28, 11  
5818.29, 5818.30, 5818.31, 5818.32, and 5818.33; 12  
and to repeal section 5808.08 of the Revised 13  
Code to modify trust and probate laws. 14

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

**Section 1.** That sections 1336.04, 1336.05, 1336.09, 15  
1337.34, 1337.36, 1337.42, 1337.52, 2109.21, 2109.25, 2117.02, 16  
2129.08, 5701.11, 5801.04, 5801.07, 5806.02, 5806.03, 5808.19, 17  
5810.08, 5812.43, 5815.25, and 5816.11 be amended and sections 18  
5808.161, 5818.01, 5818.011, 5818.02, 5818.03, 5818.04, 5818.05, 19  
5818.06, 5818.07, 5818.08, 5818.09, 5818.10, 5818.11, 5818.12, 20

5818.13, 5818.14, 5818.15, 5818.16, 5818.17, 5818.18, 5818.19, 21  
5818.20, 5818.21, 5818.22, 5818.23, 5818.24, 5818.25, 5818.26, 22  
5818.27, 5818.28, 5818.29, 5818.30, 5818.31, 5818.32, and 23  
5818.33 of the Revised Code be enacted to read as follows: 24

**Sec. 1336.04.** (A) ~~A~~Subject to division (C) of this 25  
section, a transfer made or an obligation incurred by a debtor 26  
is fraudulent as to a creditor, whether the claim of the 27  
creditor arose before, or within a reasonable time not to exceed 28  
four years after, the transfer was made or the obligation was 29  
incurred, if the debtor made the transfer or incurred the 30  
obligation in either of the following ways: 31

(1) With actual intent to hinder, delay, or defraud any 32  
creditor of the debtor; 33

(2) Without receiving a reasonably equivalent value in 34  
exchange for the transfer or obligation, and if either of the 35  
following applies: 36

(a) The debtor was engaged or was about to engage in a 37  
business or a transaction for which the remaining assets of the 38  
debtor were unreasonably small in relation to the business or 39  
transaction; 40

(b) The debtor intended to incur, or believed or 41  
reasonably should have believed that the debtor would incur, 42  
debts beyond the debtor's ability to pay as they became due. 43

(B) In determining actual intent under division (A) (1) of 44  
this section, consideration may be given to all relevant 45  
factors, including, but not limited to, the following: 46

(1) Whether the transfer or obligation was to an insider; 47

(2) Whether the debtor retained possession or control of 48

the property transferred after the transfer;	49
(3) Whether the transfer or obligation was disclosed or concealed;	50 51
(4) Whether before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit;	52 53
(5) Whether the transfer was of substantially all of the assets of the debtor;	54 55
(6) Whether the debtor absconded;	56
(7) Whether the debtor removed or concealed assets;	57
(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;	58 59 60
(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;	61 62 63
(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred;	64 65
(11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.	66 67 68
<u>(C) No transfer made or obligation incurred by a debtor due to or as a result of the debtor's death is actionable under division (A) (2) of this section.</u>	69 70 71
<b>Sec. 1336.05.</b> (A) <u><del>A</del> Subject to division (C) of this section, a transfer made or an obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor</u>	72 73 74 75

made the transfer or incurred the obligation without receiving a 76  
reasonably equivalent value in exchange for the transfer or 77  
obligation and the debtor was insolvent at that time or the 78  
debtor became insolvent as a result of the transfer or 79  
obligation. 80

(B) A-Subject to division (C) of this section, a transfer 81  
made or an obligation incurred by a debtor is fraudulent as to a 82  
creditor whose claim arose before the transfer was made or the 83  
obligation was incurred if the transfer was made to or the 84  
obligation was incurred with respect to an insider for an 85  
antecedent debt, the debtor was insolvent at that time, and the 86  
insider had reasonable cause to believe that the debtor was 87  
insolvent. 88

(C) No transfer made or obligation incurred by a debtor 89  
due to or as a result of the debtor's death is actionable under 90  
this section. 91

**Sec. 1336.09.** A-(A) Subject to division (B) of this 92  
section, a claim for relief with respect to a transfer or an 93  
obligation that is fraudulent under section 1336.04 or 1336.05 94  
of the Revised Code is extinguished unless an action is brought 95  
in accordance with one of the following: 96

(A)(1) If the transfer or obligation is fraudulent under 97  
division (A) (1) of section 1336.04 of the Revised Code, within 98  
four years after the transfer was made or the obligation was 99  
incurred or, if later, within one year after the transfer or 100  
obligation was or reasonably could have been discovered by the 101  
claimant; 102

(B)(2) If the transfer or obligation is fraudulent under 103  
division (A) (2) of section 1336.04 or division (A) of section 104

1336.05 of the Revised Code, within four years after the 105  
transfer was made or the obligation was incurred; 106

~~(C)~~(3) If the transfer or obligation is fraudulent under 107  
division (B) of section 1336.05 of the Revised Code, within one 108  
year after the transfer was made or the obligation was incurred. 109

(B) Notwithstanding division (A) of this section, any 110  
claim for relief based on a transfer made or obligation incurred 111  
by a debtor due to or as a result of the debtor's death is 112  
extinguished unless an action is brought within six months after 113  
the debtor's death. 114

**Sec. 1337.34.** (A) Notwithstanding provisions in the power 115  
of attorney, an agent that has accepted appointment shall ~~do all~~ 116  
~~of the following~~ act in accordance with all of the following 117  
mandatory duties, none of which can be waived: 118

(1) Act in accordance with the principal's reasonable 119  
expectations to the extent actually known by the agent and, 120  
otherwise, in the principal's best interest; 121

(2) Act in good faith; 122

(3) Act only within the scope of authority granted in the 123  
power of attorney; 124

(4) Attempt to preserve the principal's estate plan to the 125  
extent actually known by the agent if preserving the plan is 126  
consistent with the principal's best interest based on all 127  
relevant factors, including all of the following: 128

(a) The value and nature of the principal's property; 129

(b) The principal's foreseeable obligations and need for 130  
maintenance; 131

(c) Minimization of taxes, including income, estate,	132
inheritance, generation-skipping transfer, and gift taxes;	133
(d) Eligibility for a benefit, a program, or assistance	134
under a statute or regulation.	135
(B) Except as otherwise provided in the power of attorney,	136
an agent that has accepted appointment shall do all of the	137
following:	138
(1) Act loyally for the principal's benefit;	139
(2) Act so as not to create a conflict of interest that	140
impairs the agent's ability to act impartially in the	141
principal's best interest;	142
(3) Act with the care, competence, and diligence	143
ordinarily exercised by agents in similar circumstances;	144
(4) Keep a record of all receipts, disbursements, and	145
transactions made on behalf of the principal;	146
(5) Cooperate with a person that has authority to make	147
health-care decisions for the principal to carry out the	148
principal's reasonable expectations to the extent actually known	149
by the agent and, otherwise, act in the principal's best	150
interest.	151
(C) An agent that acts in good faith is not liable to any	152
beneficiary of the principal's estate plan for failure to	153
preserve the plan.	154
(D) An agent that acts with care, competence, and	155
diligence for the best interest of the principal is not liable	156
solely because the agent also benefits from the act or has an	157
individual or conflicting interest in relation to the property	158
or affairs of the principal.	159

(E) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(F) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(G) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(H) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within thirty days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty days.

**Sec. 1337.36.** (A) Any of the following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(1) The principal or the agent;	189
(2) A guardian, conservator, or other fiduciary acting for the principal, including an executor or administrator of the estate of a deceased principal;	190 191 192
(3) A person authorized to make health-care decisions for the principal;	193 194
(4) The principal's spouse, parent, or descendant;	195
(5) An individual who would qualify as a presumptive heir of the principal;	196 197
(6) A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;	198 199 200 201
(7) A governmental agency having regulatory authority to protect the welfare of the principal;	202 203
(8) The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare;	204 205
(9) A person asked to accept the power of attorney.	206
(B) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.	207 208 209 210
<u>(C) In a judicial proceeding under this chapter involving the administration of a power of attorney, including actions under this section, the court, as justice may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party.</u>	211 212 213 214 215



**Sec. 1337.42.** (A) An agent under a power of attorney may 216  
do any of the following on behalf of the principal or with the 217  
principal's property only if the power of attorney expressly 218  
grants the agent the authority and if exercise of the authority 219  
is not otherwise prohibited by another agreement or instrument 220  
to which the authority or property is subject, and, with respect 221  
to a revocable trust of which the principal was the settlor, if 222  
the trust agreement also expressly authorizes the agent to 223  
exercise the principal's powers with respect to the revocation, 224  
amendment, or ~~distribution~~withdrawal of trust property, or the 225  
ability to direct the distribution of trust property: 226

(1) Create, amend, revoke, or terminate an inter vivos 227  
trust to the extent permitted by section 5801.05 of the Revised 228  
Code or any other provision of Title LVIII of the Revised Code; 229

(2) Make a gift; 230

(3) Create or change rights of survivorship; 231

(4) Create or change a beneficiary designation; 232

(5) Delegate authority granted under the power of 233  
attorney; 234

(6) Waive the principal's right to be a beneficiary of a 235  
joint and survivor annuity, including a survivor benefit under a 236  
retirement plan; 237

(7) Exercise fiduciary powers that the principal has 238  
authority to delegate. 239

(B) Notwithstanding a grant of authority to do an act 240  
described in division (A) of this section, unless the power of 241  
attorney otherwise provides, an agent that is not an ancestor, 242  
spouse, or descendant of the principal may not exercise 243

authority under a power of attorney to create in the agent, or 244  
in an individual to whom the agent owes a legal obligation of 245  
support, an interest in the principal's property, whether by 246  
gift, right of survivorship, beneficiary designation, 247  
disclaimer, or otherwise. 248

(C) Subject to divisions (A), (B), (D), and (E) of this 249  
section, if a power of attorney grants to an agent authority to 250  
do all acts that a principal could do, the agent has the general 251  
authority described in sections 1337.45 to 1337.57 of the 252  
Revised Code. 253

(D) Unless the power of attorney otherwise provides, a 254  
grant of authority to make a gift is subject to section 1337.58 255  
of the Revised Code. 256

(E) Subject to divisions (A), (B), and (D) of this 257  
section, if the subjects over which authority is granted in a 258  
power of attorney are similar or overlap, the broadest authority 259  
controls. 260

(F) Authority granted in a power of attorney is 261  
exercisable with respect to property that the principal has when 262  
the power of attorney is executed or acquires later, whether or 263  
not the property is located in this state and whether or not the 264  
authority is exercised or the power of attorney is executed in 265  
this state. 266

(G) An act performed by an agent pursuant to a power of 267  
attorney has the same effect and inures to the benefit of and 268  
binds the principal and the principal's successors in interest 269  
as if the principal had performed the act. 270

(H) Notwithstanding a grant of authority to perform any of 271  
the acts enumerated in division (A) of this section, an agent is 272

bound by the mandatory fiduciary duties set forth in division 273  
(A) of section 1337.34 of the Revised Code, including the duty 274  
to attempt to preserve the principal's estate plan, as well as 275  
the default duties set forth in division (B) of section 1337.34 276  
of the Revised Code that the principal has not modified. 277

**Sec. 1337.52.** (A) As used in this section, "estate, trust, 278  
or other beneficial interest" means a trust, probate estate, 279  
guardianship, conservatorship, escrow, or custodianship or a 280  
fund from which the principal is, may become, or claims to be 281  
entitled to a share or payment. 282

(B) ~~Unless~~ Subject to division (E) of section 5806.02 and 283  
division (A) of section 1337.42 of the Revised Code, unless the 284  
power of attorney otherwise provides, language in a power of 285  
attorney granting general authority with respect to estates, 286  
trusts, and other beneficial interests authorizes the agent to 287  
do all of the following: 288

(1) Accept, receive, receipt for, sell, assign, pledge, or 289  
exchange a share in or payment from an estate, trust, or other 290  
beneficial interest; 291

~~(2)~~ (2) (a) Demand or obtain money or another thing of value 292  
to which the principal is, may become, or claims to be entitled 293  
by reason of an estate, trust, or other beneficial interest, by 294  
litigation or otherwise; 295

(b) With respect to a revocable trust of which the 296  
principal is the settlor, an agent shall not exercise a right 297  
reserved by the principal to withdraw, or to direct the 298  
distribution of, trust property unless specifically permitted by 299  
the trust instrument. 300

(3) Exercise for the benefit of the principal a presently 301

exercisable general power of appointment held by the principal;	302
(4) Initiate, participate in, submit to alternative	303
dispute resolution, settle, oppose, or propose or accept a	304
compromise with respect to litigation to ascertain the meaning,	305
validity, or effect of a deed, will, declaration of trust, or	306
other instrument or transaction affecting the interest of the	307
principal;	308
(5) Initiate, participate in, submit to alternative	309
dispute resolution, settle, oppose, or propose or accept a	310
compromise with respect to litigation to remove, substitute, or	311
surcharge a fiduciary;	312
(6) Conserve, invest, disburse, or use anything received	313
for an authorized purpose;	314
(7) Transfer an interest of the principal in real	315
property, stocks and bonds, accounts with financial institutions	316
or securities intermediaries, insurance, annuities, and other	317
property to the trustee of a revocable trust created by the	318
principal as settlor;	319
(8) Reject, renounce, disclaim, release, or consent to a	320
reduction in or modification of a share in or payment from an	321
estate, trust, or other beneficial interest.	322
<b>Sec. 2109.21.</b> <del>(A) (A) (1)</del> An administrator, special	323
administrator, administrator de bonis non, or administrator with	324
the will annexed <del>shall</del> <u>may</u> be a resident <u>or nonresident</u> of this	325
state <del>and shall be removed on proof that the administrator is no</del>	326
<del>longer a resident of this state.</del>	327
<del>(B) (1) (a) To qualify for appointment as executor or</del>	328
<del>trustee, an</del> <u>(2)</u> An executor or a trustee named in a will or	329
nominated in accordance with any power of nomination conferred	330

in a will, may be a resident or nonresident of this state ~~or, as~~ 331  
~~provided in this division, a nonresident of this state. To~~ 332  
~~qualify for appointment, a nonresident executor or trustee named~~ 333  
~~in, or nominated pursuant to, a will shall be one of the~~ 334  
~~following:~~ 335

~~(i) An individual who is related to the testator by~~ 336  
~~consanguinity or affinity;~~ 337

~~(ii) A private trust company or family trust company~~ 338  
~~organized under the laws of any state;~~ 339

~~(iii) A person who resides in a state that has statutes or~~ 340  
~~rules that authorize the appointment of a nonresident person who~~ 341  
~~is not related to the testator by consanguinity or affinity, as~~ 342  
~~an executor or trustee when named in, or nominated pursuant to,~~ 343  
~~a will.~~ 344

~~(b) No executor or trustee under division (B) (1) (a) of~~ 345  
~~this section shall be refused appointment or removed solely~~ 346  
~~because the executor or trustee is not a resident of this state.~~ 347

~~(c) The court may require that a nonresident executor or~~ 348  
~~trustee named in, or nominated pursuant to, a will assure that~~ 349  
~~all of the assets of the decedent that are in the county at the~~ 350  
~~time of the death of the decedent will remain in the county~~ 351  
~~until distribution or until the court determines that the assets~~ 352  
~~may be removed from the county.~~ 353

~~(d) The court may require a nonresident private trust~~ 354  
~~company or family trust company appointed under division (B) (1)~~ 355  
~~(a) (ii) of this section to appoint a resident agent to accept~~ 356  
~~service of process, notices, and other documents.~~ 357

~~(2) (a) (3)~~ In accordance with this division and section 358  
2129.08 of the Revised Code, the court shall appoint as an 359

ancillary administrator a person who is named in the will of a 360  
nonresident decedent, or who is nominated in accordance with any 361  
power of nomination conferred in the will of a nonresident 362  
decedent, as a general executor of the decedent's estate or as 363  
executor of the portion of the decedent's estate located in this 364  
state, whether or not the person so named or nominated is a 365  
resident of this state. 366

~~To qualify for appointment as an ancillary administrator,~~ 367  
~~a person who is not a resident of this state and who is named or~~ 368  
~~nominated as described in this division, shall be one of the~~ 369  
~~following:—~~ 370

~~(i) An individual who is related to the testator by~~ 371  
~~consanguinity or affinity;—~~ 372

~~(ii) A private trust company or family trust company~~ 373  
~~organized under the laws of any state;—~~ 374

~~(iii) A person who resides in a state that has statutes or~~ 375  
~~rules that authorize the appointment of a nonresident of that~~ 376  
~~state who is not related to the testator by consanguinity or~~ 377  
~~affinity, as an ancillary administrator when the nonresident is~~ 378  
~~named in a will or nominated in accordance with any power of~~ 379  
~~nomination conferred in a will.—~~ 380

~~(b) If a person who is not a resident of this state and~~ 381  
~~who is named or nominated as described in division (B) (2) (a) of~~ 382  
~~this section so qualifies for appointment as an ancillary~~ 383  
~~administrator and if the provisions of section 2129.08 of the~~ 384  
~~Revised Code are satisfied, the court shall not refuse to~~ 385  
~~appoint the person, and shall not remove the person, as~~ 386  
~~ancillary administrator solely because the person is not a~~ 387  
~~resident of this state.—~~ 388

~~(e)(4) All fiduciaries identified in division (A) of this section shall post bond in compliance with section 2109.04 of the Revised Code and as the court may require.~~ 389  
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(5) The court may require that an ancillary administrator who is not a resident of this state and who is named or nominated as described in division (B)(2)(a) of this section, any nonresident fiduciary identified in division (A) of this section 392  
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395  
assure that all of the assets of the decedent that are in the 396  
county at the time of the death of the decedent will remain in 397  
the county until distribution or until the court determines that 398  
the assets may be removed from the county. 399

~~(d) The court may require a nonresident private trust company or family trust company appointed under division (B)(2)(a)(ii) of this section to appoint a resident agent to accept service of process, notices, and other documents.~~ 400  
401  
402  
403

(6) No fiduciary identified in division (A) of this section shall be refused appointment or removed solely because the fiduciary is not a resident of this state. 404  
405  
406

~~(C)(1)~~ (B)(1) A guardian of the estate shall be a resident 407  
of this state, except that the court may appoint a nonresident 408  
of this state as a guardian of the estate if any of the 409  
following applies: 410

(a) The nonresident is named in a will by a parent of a 411  
minor. 412

(b) The nonresident is selected by a minor over the age of 413  
fourteen years as provided by section 2111.12 of the Revised 414  
Code. 415

(c) The nonresident is nominated in or pursuant to a 416  
durable power of attorney under section 1337.24 of the Revised 417

Code or a writing as described in division (A) of section 418  
2111.121 of the Revised Code. 419

(2) A guardian of the estate, other than a guardian named 420  
in a will by a parent of a minor, selected by a minor over the 421  
age of fourteen years, or nominated in or pursuant to a durable 422  
power of attorney or writing described in division ~~(C)(1)~~ (B) 423  
(1)(c) of this section, may be removed on proof that the 424  
guardian of the estate is no longer a resident of this state. 425

(3) The court may appoint a resident or nonresident of 426  
this state as a guardian of the person. 427

~~(D) Any fiduciary, whose residence qualifications are not 428  
defined in this section, shall be a resident of this state, and 429  
shall be removed on proof that the fiduciary is no longer a 430  
resident of this state. 431~~

~~(E)~~ (C) Any fiduciary, in order to assist in the carrying 432  
out of the fiduciary's fiduciary duties, may employ agents who 433  
are not residents of the county or of this state. 434

~~(F)~~ (D) Every fiduciary shall sign and file with the court 435  
a statement of permanent address and shall notify the court of 436  
any change of address. A court may remove a fiduciary if the 437  
fiduciary fails to comply with this division. 438

**Sec. 2109.25.** (A) Whenever it appears to the satisfaction 439  
of the probate court that a fiduciary is unable to perform the 440  
fiduciary's duties because the fiduciary is engaged or is about 441  
to engage in military service as defined by this section, the 442  
court may remove the fiduciary and appoint a substitute or 443  
authorize the remaining fiduciaries to execute the trust. That 444  
action may be taken on the court's own motion or on the 445  
application of any party in interest, including the fiduciary or 446



cofiduciary, either without notice or upon notice to those 447  
persons and in the manner that the court shall direct. 448

If any of the duties of that office remain unexecuted when 449  
a fiduciary who has resigned or been removed on account of the 450  
fiduciary's military service ceases to be in that military 451  
service, the fiduciary shall be reappointed as fiduciary upon 452  
the fiduciary's application to the court and upon any notice 453  
that the court may direct, provided the fiduciary is at the time 454  
a suitable and competent person and has the qualifications ~~as to~~ 455  
~~residence~~ required by section 2109.21 of the Revised Code. If 456  
the person is reappointed, the court shall remove the substitute 457  
fiduciary and revoke the substitute fiduciary's letters of 458  
appointment and shall make such further order or decree as 459  
justice requires. 460

(B) As used in this section, "military service" means any 461  
service, work, or occupation that in the opinion of the court is 462  
directly or indirectly in furtherance of any military effort of 463  
the United States. "Military service" includes internment in an 464  
enemy country, residence in any foreign country, or residence in 465  
any possession or dependency of the United States, if by reason 466  
of the internment or residence the fiduciary is unable to return 467  
to this state. 468

**Sec. 2117.02.** An executor or administrator within three 469  
months after the date of appointment, and before the expiration 470  
of the period prescribed for the claim by section 2117.06 of the 471  
Revised Code, shall present any claim the executor or 472  
administrator has against the estate to the probate court for 473  
allowance. The claim shall not be paid unless allowed by the 474  
court. When an executor or administrator presents a claim 475  
amounting to five hundred dollars or more, the court shall fix a 476

day not less than four nor more than six weeks from its 477  
presentation, when the testimony touching it shall be heard. The 478  
court shall issue an order directed to the executor or 479  
administrator requiring the executor or administrator to give 480  
notice in writing to all the heirs, legatees, or devisees of the 481  
decedent interested in the estate, and to the creditors named in 482  
the order. The notice shall contain a statement of the amount 483  
claimed, designate the time fixed for hearing the testimony, and 484  
be served upon the persons named in the order at least twenty 485  
days before the time for hearing. If any persons mentioned in 486  
the order are not residents of the county, service of notice may 487  
be made upon them by publication for three consecutive weeks in 488  
a newspaper published or circulating in the county, or as the 489  
court may direct. All persons named in the order shall be 490  
parties to the proceeding, and any other person having an 491  
interest in the estate may be made a party. 492

**Sec. 2129.08.** (A) After an authenticated copy of the will 493  
of a nonresident decedent has been allowed and admitted to 494  
record as provided in this chapter, and after there has been 495  
filed in the probate court a complete exemplification of the 496  
record of the grant of the domiciliary letters of appointment 497  
and of any other records of the court of domiciliary 498  
administration that the court requires, the court shall appoint 499  
as the ancillary administrator the person named in the will, or 500  
nominated in accordance with any power of nomination conferred 501  
in the will, as general executor of the decedent's estate or as 502  
executor of the portion of the decedent's estate located in this 503  
state, provided that the person makes application and qualifies 504  
under ~~division (B) (2) of~~ section 2109.21 of the Revised Code and 505  
in all other respects as required by law. If the testator in the 506  
will naming or providing for the nomination of that executor 507

orders or requests that bond not be given by that executor, bond 508  
shall not be required unless, for sufficient reason, the court 509  
requires it. 510

(B) If a nonresident decedent died intestate, or failed to 511  
designate in the nonresident decedent's will any person 512  
qualified to act as ancillary administrator or to confer in the 513  
will a power to nominate a person as an executor as described in 514  
division (A) of this section, or if the will of a nonresident 515  
decedent conferred that power but no person qualified to act as 516  
ancillary administrator was nominated, the court shall appoint 517  
in that capacity a suitable person ~~who is a resident of the~~ 518  
~~county~~ including, but not limited to, a creditor of the estate. 519

(C) An ancillary administrator, acting as to the estate of 520  
a testate decedent that is located in this state, may sell and 521  
convey the real and personal property by virtue of the will as 522  
executors or administrators with the will annexed may do. 523

(D) No person shall be appointed as an ancillary 524  
administrator of the estate of a nonresident presumed decedent 525  
that is located in this state, except after Chapter 2121. of the 526  
Revised Code, relative to the appointment of an ancillary 527  
administrator, has been complied with. 528

**Sec. 5701.11.** The effective date to which this section 529  
refers is the effective date of this section as amended by S.B. 530  
10 of the 135th general assembly. 531

(A) (1) Except as provided under division (A) (2) or (B) of 532  
this section, any reference in Title LVII or section 149.311, 533  
3123.90, 3770.073, ~~or 3772.37,~~ or 5812.43 of the Revised Code to 534  
the Internal Revenue Code, to the Internal Revenue Code "as 535  
amended," to other laws of the United States, or to other laws 536

of the United States, "as amended," means the Internal Revenue 537  
Code or other laws of the United States as they exist on the 538  
effective date. 539

(2) This section does not apply to any reference in Title 540  
LVII of the Revised Code to the Internal Revenue Code as of a 541  
date certain specifying the day, month, and year, or to other 542  
laws of the United States as of a date certain specifying the 543  
day, month, and year. 544

(B) (1) For purposes of applying section 5733.04, 5745.01, 545  
or 5747.01 of the Revised Code to a taxpayer's taxable year 546  
ending after February 17, 2022, and before the effective date, a 547  
taxpayer may irrevocably elect to incorporate the provisions of 548  
the Internal Revenue Code or other laws of the United States 549  
that are in effect for federal income tax purposes for that 550  
taxable year if those provisions differ from the provisions 551  
that, under division (A) of this section, would otherwise apply. 552  
The filing by the taxpayer for that taxable year of a report or 553  
return that incorporates the provisions of the Internal Revenue 554  
Code or other laws of the United States applicable for federal 555  
income tax purposes for that taxable year, and that does not 556  
include any adjustments to reverse the effects of any 557  
differences between those provisions and the provisions that 558  
would otherwise apply, constitutes the making of an irrevocable 559  
election under this division for that taxable year. 560

(2) Elections under prior versions of division (B) (1) of 561  
this section remain in effect for the taxable years to which 562  
they apply. 563

**Sec. 5801.04.** (A) Except as otherwise provided in the 564  
terms of the trust, Chapters 5801. to 5811. of the Revised Code 565  
govern the duties and powers of a trustee, relations among 566

trustees, and the rights and interests of a beneficiary.	567
(B) The terms of a trust prevail over any provision of	568
Chapters 5801. to 5811. of the Revised Code except the	569
following:	570
(1) The requirements for creating a trust;	571
(2) The duty of a trustee to act in good faith and in	572
accordance with the purposes of the trust;	573
(3) The requirement that the trust have a purpose that is	574
lawful, not contrary to public policy, and possible to achieve;	575
(4) The power of the court to modify or terminate a trust	576
under sections 5804.10 to 5804.16 of the Revised Code;	577
(5) The effect of a spendthrift provision and the rights	578
of certain creditors and assignees to reach a trust as provided	579
in Chapter 5805. of the Revised Code;	580
(6) The power of the court under section 5807.02 of the	581
Revised Code to require, dispense with, or modify or terminate a	582
bond;	583
(7) The power of the court under division (B) of section	584
5807.08 of the Revised Code to adjust a trustee's compensation	585
specified in the terms of the trust which is unreasonably low or	586
high;	587
(8) Subject to division (C) of this section, the duty	588
under divisions (B) (2) and (3) of section 5808.13 of the Revised	589
Code to notify current beneficiaries of an irrevocable trust who	590
have attained twenty-five years of age of the existence of the	591
trust, of the identity of the trustee, and of their right to	592
request trustee's reports;	593

(9) Subject to division (C) of this section, the duty 594  
under division (A) of section 5808.13 of the Revised Code to 595  
respond to the request of a current beneficiary of an 596  
irrevocable trust for trustee's reports and other information 597  
reasonably related to the administration of a trust; 598

(10) The effect of an exculpatory term under section 599  
5810.08 of the Revised Code; 600

(11) The rights under sections 5810.10 to 5810.13 of the 601  
Revised Code of a person other than a trustee or beneficiary; 602

(12) Periods of limitation for commencing a judicial 603  
proceeding; 604

(13) The power of the court to take any action and 605  
exercise any jurisdiction that may be necessary in the interests 606  
of justice; 607

(14) The subject-matter jurisdiction of the court for 608  
commencing a proceeding as provided in section 5802.03 of the 609  
Revised Code. 610

(C) With respect to one or more of the current 611  
beneficiaries, the settlor, in the trust instrument, may waive 612  
or modify the duties of the trustee described in divisions (B) 613  
(8) and (9) of this section. The waiver or modification may be 614  
made only by the settlor designating in the trust instrument one 615  
or more beneficiary surrogates to receive any notices, 616  
information, or reports otherwise required under those divisions 617  
to be provided to the current beneficiaries. If the settlor 618  
makes a waiver or modification pursuant to this division, the 619  
trustee shall provide the notices, information, and reports to 620  
the beneficiary surrogate or surrogates in lieu of providing 621  
them to the current beneficiaries. The beneficiary surrogate or 622

surrogates shall act in good faith to protect the interests of 623  
the current beneficiaries for whom the notices, information, or 624  
reports are received. A waiver or modification made under this 625  
division shall be effective for so long as the beneficiary 626  
surrogate or surrogates, or their successor or successors 627  
designated in accordance with the terms of the trust instrument, 628  
act in that capacity. 629

(D) Except as provided under divisions (B) and (C) of this 630  
section, it is the policy of this state to give maximum effect 631  
to the principle of freedom of disposition and to the 632  
enforceability of governing instruments. 633

**Sec. 5801.07.** (A) Without precluding other means for 634  
establishing a sufficient connection with the designated 635  
jurisdiction, the terms of a trust designating the principal 636  
place of administration of the trust are valid and controlling 637  
if a trustee's principal place of business is located in or a 638  
trustee is a resident of the designated jurisdiction or if all 639  
or part of the administration occurs in the designated 640  
jurisdiction. 641

(B) A trustee is under a continuing duty to administer the 642  
trust at a place appropriate to its purposes, its 643  
administration, and the interests of the beneficiaries. If there 644  
is more than one place reasonably appropriate for administration 645  
of a trust, the trustee may administer the trust at any of those 646  
places. The original place of administration selected by the 647  
settlor remains an appropriate place of administration. 648

(C) Without precluding the right of the court to order, 649  
approve, or disapprove a transfer, the trustee, in furtherance 650  
of the duty prescribed by division (B) of this section, may 651  
transfer the trust's principal place of administration to 652

another state or to a jurisdiction outside of the United States. 653

(D) The trustee shall notify the current beneficiaries of 654  
a proposed transfer of a trust's principal place of 655  
administration not less than sixty days before initiating the 656  
transfer. The notice of a proposed transfer shall include all of 657  
the following: 658

(1) The name of the jurisdiction to which the principal 659  
place of administration is to be transferred; 660

(2) The address and telephone number at the new location 661  
at which the trustee can be contacted; 662

(3) An explanation of the reasons for the proposed 663  
transfer; 664

(4) The date on which the trustee expects the proposed 665  
transfer to occur. 666

(E) In connection with a transfer of the trust's principal 667  
place of administration, the trustee may transfer some or all of 668  
the trust property to a successor trustee designated in the 669  
terms of the trust or appointed pursuant to section 5807.04 of 670  
the Revised Code. 671

**Sec. 5806.02.** (A) Unless the terms of a trust expressly 672  
provide that the trust is irrevocable, the settlor may revoke or 673  
amend the trust. This division does not apply to a trust created 674  
under an instrument executed before January 1, 2007. 675

(B) If a revocable trust is created or funded by more than 676  
one settlor, all of the following apply: 677

(1) To the extent the trust consists of community 678  
property, either spouse acting alone may revoke the trust, but 679  
the trust may be amended only by joint action of both spouses. 680



(2) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(3) Upon the revocation or amendment of the trust by less than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(C) The settlor may revoke or amend a revocable trust by substantial compliance with a method provided in the terms of the trust or, if the terms of the trust do not provide a method, by any method manifesting clear and convincing evidence of the settlor's intent, provided that a revocable trust may not be revoked or amended by a will or codicil, regardless of whether it refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust unless the terms of the trust expressly allow it to be revoked or amended by a will or codicil.

(D) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(E) An agent under a power of attorney may exercise a settlor's powers with respect to revocation, amendment, withdrawal of trust property, or the ability to direct the distribution of trust property only to the extent expressly authorized by both the terms of the trust and the power.

(F) A guardian of the estate of the settlor or, if no guardian of the estate has been appointed, a guardian of the person of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the

guardianship. 710

(G) A trustee who does not know that a trust has been 711  
revoked or amended is not liable to the settlor or settlor's 712  
successors in interest for distributions made and other actions 713  
taken on the assumption that the trust had not been amended or 714  
revoked. 715

**Sec. 5806.03.** (A) During the lifetime of the settlor of a 716  
revocable trust, whether or not the settlor has capacity to 717  
revoke the trust, the rights of the beneficiaries are subject to 718  
the control of the settlor, and the duties of the trustee, 719  
including the duties to inform and report under section 5808.13 720  
of the Revised Code, are owed exclusively to the settlor. If the 721  
trustee breaches its duty during the lifetime of the settlor, 722  
any recovery obtained from the trustee after the settlor becomes 723  
incapacitated or dies shall be apportioned by the court. If the 724  
settlor is living when the recovery is obtained, the court shall 725  
apportion the recovery between the settlor and the trust, or 726  
allocate the entire recovery to the settlor or the trust, as it 727  
determines to be equitable under the circumstances. If the 728  
settlor is not living when the recovery is obtained, the court 729  
shall apportion the recovery between the settlor's estate and 730  
the trust, or allocate the entire recovery to the settlor's 731  
estate or the trust, as it determines to be equitable under the 732  
circumstances. 733

(B) During the period the power may be exercised, the 734  
holder of a power of withdrawal has the rights of a settlor of a 735  
revocable trust under this section to the extent of the property 736  
subject to the power. 737

(C) While a trust is revocable, the trustee may follow a 738  
direction of the settlor that is contrary to the terms of the 739

trust. 740

Sec. 5808.161. (A) As used in this section: 741

(1) "Protector" has the same meaning as in section 5818.01 742  
of the Revised Code. 743

(2) "Internal Revenue Code" has the same meaning as in 744  
section 5747.01 of the Revised Code. 745

(B) With respect to any trust, or portion thereof, that is 746  
treated as being owned by a person under sections 671 to 679 of 747  
the Internal Revenue Code or any similar federal, state, or 748  
other tax law, the trustee may, in the trustee's sole 749  
discretion, reimburse the person being treated as the owner for 750  
any amount of the person's federal, state, or other income tax 751  
liability which is attributable to the inclusion of the trust's 752  
income, capital gains, deductions, or credits in the calculation 753  
of the person's taxable income. In the trustee's sole 754  
discretion, the trustee may pay such tax reimbursement amount to 755  
the person directly or to the appropriate taxing authority. 756

(C) This section applies to all trusts, whether created 757  
on, before, or after the effective date of this section, unless 758  
any of the following apply: 759

(1) Applying this section would reduce or prevent a 760  
contribution to the trust from qualifying for a federal tax 761  
benefit, including a federal tax exclusion or deduction, which 762  
was originally claimed or could have been claimed for the 763  
contribution; 764

(2) The trust is a grantor retained annuity trust or 765  
grantor retained unitrust during a term interest under division 766  
(c) (3) of section 2702 of the Internal Revenue Code; 767

(3) Applying this section would be the only trigger that 768  
would result in any trust, or portion thereof, as treated as 769  
being owned by a person under sections 671 to 679 of the 770  
Internal Revenue Code or any similar federal, state, or other 771  
tax law. This division does not prohibit reimbursement in a 772  
subsequent year provided that the reimbursement relates to a 773  
year in which the person was treated as an owner under sections 774  
671 to 679 of the Internal Revenue Code. 775

(D) A trustee who acts in good faith in exercising or not 776  
exercising the power granted by this section is rebuttably 777  
presumed to have acted in accordance with the terms and purposes 778  
of the trust and the interests of the beneficiaries, and no 779  
inference of impropriety shall arise as a result of a trustee 780  
exercising or not exercising the power. 781

(E) (1) If the terms of a trust require the trustee to act 782  
at the direction or with the consent of a trust advisor, a 783  
protector, or any other person, or that the decisions governed 784  
by this section be made directly by a trust advisor, a 785  
protector, or any other person, the powers granted by this 786  
section to the trustee shall instead or also be granted, 787  
pursuant to the terms of the trust, to the advisor, protector, 788  
or other person. 789

(2) If a trust advisor, a protector, or any other person 790  
is granted powers under division (E) (1) of this section, that 791  
person is subject to the limitations described in this section, 792  
which shall be applied as if the advisor, protector, or other 793  
person were a trustee. 794

(F) A person shall not be considered a beneficiary of a 795  
trust solely by reason of the application of this section or the 796  
application of a similar provision in the trust instrument. 797

**Sec. 5808.19.** (A) As used in this section, unless 798  
otherwise provided in any other provision in this section: 799

~~(1)~~(1)(a) "Beneficiary" ~~means~~ includes the beneficiary of 800  
a primary gift, the beneficiary of a future interest, and 801  
~~includes~~ a class member if the future interest is in the form of 802  
a class gift. 803

(b) Except as otherwise provided in this division, the 804  
amendment to division (A)(1)(a) of this section in this act 805  
shall be given retroactive effect to the fullest extent 806  
permitted under Ohio Constitution, Article II, Section 28. The 807  
amendment shall not be given retroactive effect in those 808  
instances where doing so would invalidate or supersede any 809  
instrument that conveys real property or any interest in the 810  
real property, recorded in the office of the county recorder in 811  
which that real property is situated. 812

(2) "Class member" means an individual who fails to 813  
survive the distribution date by at least one hundred twenty 814  
hours but who would have taken under a future interest in the 815  
form of a class gift had the individual survived the 816  
distribution date by at least one hundred twenty hours. 817

(3) "Descendant of a grandparent of the transferor" means 818  
an individual who would qualify as a descendant of a grandparent 819  
of the transferor under the rules of construction that would 820  
apply to a class gift under the transferor's will to the 821  
descendants of the transferor's grandparent. 822

(4) "Distribution date," with respect to a future 823  
interest, means the time when the future interest is to take 824  
effect in possession or enjoyment. The distribution date need 825  
not occur at the beginning or end of a calendar day but may 826

occur at a time during the course of a day.	827
(5) "Future interest" means an alternative future interest	828
or a future interest in the form of a class gift.	829
(6) "Future interest under the terms of a trust" means a	830
future interest that was created by a transfer creating a trust	831
or a transfer to an existing trust, or by an exercise of a power	832
of appointment to an existing trust, that directs the	833
continuance of an existing trust, designates a beneficiary of an	834
existing trust, or creates a trust.	835
(7) "Per stirpes" means that the shares of the descendants	836
of a beneficiary who does not survive the distribution date by	837
at least one hundred twenty hours are determined in the same way	838
they would have been determined under division (A) of section	839
2105.06 of the Revised Code if the beneficiary had died	840
intestate and unmarried on the distribution date.	841
(8) "Revocable trust" means a trust that was revocable	842
immediately before the settlor's death by the settlor alone or	843
by the settlor with the consent of any person other than a	844
person holding an adverse interest. A trust's characterization	845
as revocable is not affected by the settlor's lack of capacity	846
to exercise the power of revocation, regardless of whether an	847
agent of the settlor under a power of attorney, or a guardian of	848
the person or estate of the settlor, was serving.	849
(9) "Stepchild" means a child of the surviving, deceased,	850
or former spouse of the transferor and not of the transferor.	851
(10) "Transferor" means any of the following:	852
(a) The donor and donee of a power of appointment, if the	853
future interest was in property as a result of the exercise of a	854
power of appointment;	855

(b) The testator, if the future interest was devised by 856  
will; 857

(c) The settlor, if the future interest was conveyed by 858  
inter vivos trust. 859

(B) (1) (a) As used in "surviving descendants" in divisions 860  
(B) (2) (b) (i) and (ii) of this section, "descendants" means the 861  
descendants of a deceased beneficiary or class member who would 862  
take under a class gift created in the trust. 863

(b) As used in divisions (B) (2) (b) (i) and (ii) of this 864  
section, "surviving beneficiaries" or "surviving descendants" 865  
means beneficiaries or descendants, whichever is applicable, who 866  
survive the distribution date by at least one hundred twenty 867  
hours. 868

(2) Unless a contrary intent appears in the instrument 869  
creating a future interest under the terms of a trust, each of 870  
the following applies: 871

(a) A future interest under the terms of a trust is 872  
contingent on the beneficiary's surviving the distribution date 873  
by at least one hundred twenty hours. 874

(b) If a beneficiary of a future interest under the terms 875  
of a trust does not survive the distribution date by at least 876  
one hundred twenty hours and if the beneficiary is a grandparent 877  
of the transferor, a descendant of a grandparent of the 878  
transferor, or a stepchild of the transferor, either of the 879  
following applies: 880

(i) If the future interest is not in the form of a class 881  
gift and the deceased beneficiary leaves surviving descendants, 882  
a substitute gift is created in the beneficiary's surviving 883  
descendants. The surviving descendants take, per stirpes, the 884

property to which the beneficiary would have been entitled had 885  
the beneficiary survived the distribution date by at least one 886  
hundred twenty hours. 887

(ii) If the future interest is in the form of a class 888  
gift, other than a future interest to "issue," "descendants," 889  
"heirs of the body," "heirs," "next of kin," "relatives," or 890  
"family," or a class described by language of similar import 891  
that includes more than one generation, a substitute gift is 892  
created in the surviving descendants of the deceased beneficiary 893  
or beneficiaries. The property to which the beneficiaries would 894  
have been entitled had all of them survived the distribution 895  
date by at least one hundred twenty hours passes to the 896  
surviving beneficiaries and the surviving descendants of the 897  
deceased beneficiaries. Each surviving beneficiary takes the 898  
share to which the surviving beneficiary would have been 899  
entitled had the deceased beneficiaries survived the 900  
distribution date by at least one hundred twenty hours. Each 901  
deceased beneficiary's surviving descendants who are substituted 902  
for the deceased beneficiary take, per stirpes, the share to 903  
which the deceased beneficiary would have been entitled had the 904  
deceased beneficiary survived the distribution date by at least 905  
one hundred twenty hours. For purposes of division (B) (2) (b) (ii) 906  
of this section, "deceased beneficiary" means a class member who 907  
failed to survive the distribution date by at least one hundred 908  
twenty hours and left one or more surviving descendants. 909

(C) For purposes of this section, each of the following 910  
applies: 911

(1) Describing a class of beneficiaries as "surviving" or 912  
"living," without specifying when the beneficiaries must be 913  
surviving or living, such as a gift "for my spouse for life, 914



then to my surviving (or living) children," is not, in the 915  
absence of other language in the trust instrument or other 916  
evidence to the contrary, a sufficient indication of an intent 917  
to negate the application of division (B) (2) (b) of this section. 918

(2) Subject to division (C) (1) of this section, attaching 919  
words of survivorship to a future interest under the terms of a 920  
trust, such as "for my spouse for life, then to my children who 921  
survive my spouse" or "for my spouse for life, then to my then- 922  
living children" is, in the absence of other language in the 923  
trust instrument or other evidence to the contrary, a sufficient 924  
indication of an intent to negate the application of division 925  
(B) (2) (b) of this section. Words of survivorship under division 926  
(C) (2) of this section include words of survivorship that relate 927  
to the distribution date or to an earlier or an unspecified 928  
time, whether those words of survivorship are expressed as 929  
condition-precedent, condition-subsequent, or in any other form. 930

(3) A residuary clause in a will is not a sufficient 931  
indication of an intent that is contrary to the application of 932  
this section, whether or not the will specifically provides that 933  
lapsed or failed devises are to pass under the residuary clause. 934  
A residuary clause in a revocable trust instrument is not a 935  
sufficient indication of an intent that is contrary to the 936  
application of this section unless the distribution date is the 937  
date of the settlor's death and the revocable trust instrument 938  
specifically provides that upon lapse or failure the 939  
nonresiduary devise, or nonresiduary devises in general, pass 940  
under the residuary clause. 941

(D) If, after the application of divisions (B) and (C) of 942  
this section there is no surviving taker of the property, and a 943  
contrary intent does not appear in the instrument creating the 944

future interest, the property passes in the following order: 945

(1) If the future interest was created by the exercise of 946  
a power of appointment, the property passes under the donor's 947  
gift-in-default clause, if any, which clause is treated as 948  
creating a future interest under the terms of a trust. 949

(2) If no taker is produced under division (D) (1) of this 950  
section and the trust was created in a nonresiduary devise in 951  
the transferor's will or in a codicil to the transferor's will, 952  
the property passes under the residuary clause in the 953  
transferor's will. For purposes of division (D) (2) of this 954  
section, the residuary clause is treated as creating a future 955  
interest under the terms of a trust. 956

(3) If no taker is produced under divisions (D) (1) and (2) 957  
of this section, the transferor is deceased, and the trust was 958  
created in a nonresiduary gift under the terms of a revocable 959  
trust of the transferor, the property passes under the residuary 960  
clause in the transferor's revocable trust instrument. For 961  
purposes of division (D) (3) of this section, the residuary 962  
clause in the transferor's revocable trust instrument is treated 963  
as creating a future interest under the terms of a trust. 964

(4) If no taker is produced under divisions (D) (1), (2), 965  
and (3) of this section, the property passes to those persons 966  
who would succeed to the transferor's intestate estate and in 967  
the shares as provided in the intestate succession law of the 968  
transferor's domicile if the transferor died on the distribution 969  
date. Notwithstanding division (A) (10) of this section, for 970  
purposes of division (D) (4) of this section, if the future 971  
interest was created by the exercise of a power of appointment, 972  
"transferor" means the donor if the power is a nongeneral power, 973  
or the donee if the power is a general power. 974

(E) This section applies to all trusts that become 975  
irrevocable on or after March 22, 2012. This section does not 976  
apply to any trust that was irrevocable before March 22, 2012, 977  
even if property was added to the trust on or after March 22, 978  
2012. 979

Sec. 5810.08. A-(A) As used in this section, "trust 980  
directive" has the same meaning as in section 5818.01 of the 981  
Revised Code. 982

(B) Except as provided in division (C) of this section, a 983  
term of a trust relieving a trustee of liability for breach of 984  
trust is unenforceable to the extent that ~~it~~either of the 985  
following apply: 986

(1) The term relieves the trustee of liability for breach 987  
of trust committed in bad faith or with reckless indifference to 988  
the purposes of the trust or the interests of the beneficiaries 989  
~~or;~~ 990

(2) The term was inserted as the result of an abuse by the 991  
trustee of a fiduciary or confidential relationship ~~to~~with the 992  
settlor. 993

(C) A trustee may be relieved from liability if the breach 994  
of trust is committed by implementing or complying with a trust 995  
directive, to the extent that the relief meets any of the 996  
following criteria: 997

(1) The relief is permitted or allowed by Chapter 5818. of 998  
the Revised Code. 999

(2) The relief is authorized by any term of a trust that 1000  
is permitted or allowed by Chapter 5818. of the Revised Code. 1001

(3) The relief is otherwise allowed by the Ohio Trust 1002

<u>Code.</u>	1003
<b>Sec. 5812.43.</b> (A) A trustee shall make all of the	1004
following disbursements from principal:	1005
(1) The remaining one-half of the disbursements described	1006
in divisions (A) and (B) of section 5812.42 of the Revised Code;	1007
(2) All of the trustee's compensation calculated on	1008
principal as a fee for acceptance, distribution, or termination,	1009
and disbursements made to prepare property for sale;	1010
(3) Payments on the principal of a trust debt;	1011
(4) Expenses of a proceeding that concerns primarily	1012
principal, including a proceeding to construe the trust or to	1013
protect the trust or its property;	1014
(5) Premiums paid on a policy of insurance not described	1015
in division (D) of section 5812.42 of the Revised Code of which	1016
the trust is the owner and beneficiary;	1017
(6) Estate, inheritance, and other transfer taxes,	1018
including penalties, apportioned to the trust;	1019
(7) Disbursements related to environmental matters,	1020
including reclamation, assessing environmental conditions,	1021
remedying and removing environmental contamination, monitoring	1022
remedial activities and the release of substances, preventing	1023
future releases of substances, collecting amounts from persons	1024
liable or potentially liable for the costs of those activities,	1025
penalties imposed under environmental laws or regulations and	1026
other payments made to comply with those laws or regulations,	1027
statutory or common law claims by third parties, and defending	1028
claims based on environmental matters;	1029
<u>(8) Disbursements related to direct payments to a taxing</u>	1030

authority or reimbursement of a person being treated as the 1031  
owner under sections 671 to 679 of the Internal Revenue Code, as 1032  
defined in section 5747.01 of the Revised Code, or any similar 1033  
federal, state, or local tax law, for any amount of the person's 1034  
federal, state, or local income tax liability which is 1035  
attributable to the inclusion of the trust's income, capital 1036  
gains, deductions, or credits in the calculation of the person's 1037  
taxable income. 1038

(B) If a principal asset is encumbered with an obligation 1039  
that requires income from that asset to be paid directly to the 1040  
creditor, the trustee shall transfer from principal to income an 1041  
amount equal to the income paid to the creditor in reduction of 1042  
the principal balance of the obligation. 1043

**Sec. 5815.25.** (A) As used in this section, "fiduciary" 1044  
means a trustee under any testamentary, inter vivos, or other 1045  
trust, an executor or administrator, or any other person who is 1046  
acting in a fiduciary capacity for any person, trust, or estate. 1047

(B) If an instrument or other applicable written agreement 1048  
describes, appoints, or directs a fiduciary to handle only the 1049  
administrative duties and responsibilities of a trust, that 1050  
administrative fiduciary shall not have any duties, 1051  
responsibilities, or liabilities to the trust beneficiaries or 1052  
to other persons interested in a trust except for those 1053  
administrative duties and responsibilities specifically 1054  
described in the instrument or written agreement. The 1055  
administrative duties and responsibilities of a trust under this 1056  
division may include any of the following: 1057

(1) Opening and maintaining bank, brokerage, financial, or 1058  
other custodial accounts to receive trust income or 1059  
contributions and from which trust expenditures, bills, and 1060

distributions may be disbursed;	1061
(2) Maintaining and handling trust records, reports, correspondence, or communications;	1062 1063
(3) Maintaining an office for trust business;	1064
(4) Filing any trust tax returns;	1065
(5) Employing agents in connection with the fiduciary's administrative duties;	1066 1067
(6) Taking custody of or storing trust property;	1068
(7) Any other similar administrative duties for the trust.	1069
(C) <del>If an instrument under which a fiduciary acts reserves to the grantor, or vests in an advisory or investment committee or in one or more other persons, including one or more fiduciaries, to the exclusion of the fiduciary or of one or more of several fiduciaries, any power, including, but not limited to, the authority to direct the acquisition, disposition, or retention of any investment or the power to authorize any act that an excluded fiduciary may propose, any excluded fiduciary is not liable, either individually or as a fiduciary, for either of the following:</del>	1070 1071 1072 1073 1074 1075 1076 1077 1078 1079
<del>(1) Any loss that results from compliance with an authorized direction of the grantor, committee, person, or persons;</del>	1080 1081 1082
<del>(2) Any loss that results from a failure to take any action proposed by an excluded fiduciary that requires a prior authorization of the grantor, committee, person, or persons if that excluded fiduciary timely sought but failed to obtain that authorization.</del>	1083 1084 1085 1086 1087

~~(D)~~ Any administrative fiduciary as described in division 1088  
(B) of this section ~~or any excluded fiduciary as described in~~ 1089  
~~division (C) of this section~~ is relieved from any obligation to 1090  
perform investment reviews and make recommendations with respect 1091  
to any investments to the extent the ~~grantor~~settlor, an advisory 1092  
or investment committee, or one or more other persons have 1093  
authority to direct the acquisition, disposition, or retention 1094  
of any investment. 1095

~~(E)~~(D) This section does not apply to the extent that the 1096  
instrument under which an administrative fiduciary as described 1097  
in division (B) of this section ~~or an excluded fiduciary as~~ 1098  
~~described in division (C) of this section~~ contains provisions 1099  
that are inconsistent with this section. 1100

**Sec. 5816.11.** (A) Any person may serve as an advisor of a 1101  
legacy trust, except that as follows: 1102

(1) A transferor may act as an advisor only in connection 1103  
with investment decisions. 1104

(2) No person shall concurrently serve as a trustee and 1105  
advisor of a legacy trust. 1106

(B) If a person concurrently serves or purports to 1107  
concurrently serve as trustee and advisor of a legacy trust in 1108  
violation of division (A) (2) of this section, then the effects, 1109  
consequences, and time period of that concurrent service are 1110  
subject to section 5818.06 of the Revised Code. 1111

(C) An advisor shall be considered a fiduciary unless the 1112  
terms of a legacy trust instrument expressly provide otherwise. 1113

**Sec. 5818.01.** As used in this chapter: 1114

(A) (1) "Breach of trust" means a breach of a fiduciary 1115

duty imposed on a protector by this chapter, any other 1116  
applicable laws of this state, or the terms of a trust. 1117

(2) "Breach of trust" includes only acts or omissions 1118  
undertaken by a protector while acting in a fiduciary capacity, 1119  
and does not include any act or omission undertaken by a 1120  
protector in a nonfiduciary capacity. 1121

(3) "Breach of trust" does not encompass or include any 1122  
act or omission of a protector if the act or omission is allowed 1123  
by either of the following: 1124

(a) The terms of a trust, except where those terms are 1125  
expressly prohibited by this chapter or other applicable laws of 1126  
this state; 1127

(b) This chapter, except if the trust expressly prohibits 1128  
the act or omission. 1129

(B) "Directed trust" means a trust that includes terms 1130  
granting a power of direction to a protector. 1131

(C) "Legacy trust" has the same meaning as in section 1132  
5816.02 of the Revised Code. 1133

(D) "Ohio legacy trust act" means Chapter 5816. of the 1134  
Revised Code. 1135

(E) "Person" has the same meaning as in section 5801.01 of 1136  
the Revised Code. 1137

(F) "Power of direction" means a power vested in a 1138  
protector by the terms of a trust that allows a protector to do 1139  
any of the following: 1140

(1) Issue binding trust directives to another trust 1141  
officeholder, including trust directives that direct, order, 1142



<u>mandate, require, veto, bar, prohibit, or prevent any actual or</u>	1143
<u>proposed decisions or actions by a trust officeholder regarding</u>	1144
<u>the trust or trust estate, including decisions or actions</u>	1145
<u>regarding trust investments, trust administration, or</u>	1146
<u>distributions to or for trust beneficiaries;</u>	1147
<u>(2) Remove another trust officeholder from a trust office,</u>	1148
<u>or appoint another person to a trust office;</u>	1149
<u>(3) Modify or amend the trust instrument, including</u>	1150
<u>amendments that do any of the following:</u>	1151
<u>(a) Achieve favorable tax treatment;</u>	1152
<u>(b) Respond to or take advantage of any changes in any</u>	1153
<u>federal, state, local, or other tax laws that affect or might</u>	1154
<u>affect a trust, the trust settlor, any of the trust</u>	1155
<u>beneficiaries, or the trust administration;</u>	1156
<u>(c) Respond to or take advantage of any changes in the</u>	1157
<u>circumstances of any beneficiary.</u>	1158
<u>(4) Increase or decrease the interests of any</u>	1159
<u>beneficiaries to the trust;</u>	1160
<u>(5) Modify the terms of any power of appointment granted</u>	1161
<u>by the trust, provided that, except to the extent the terms of a</u>	1162
<u>trust expressly allow otherwise, such a modification shall not</u>	1163
<u>allow appointments of any person or class of persons who are not</u>	1164
<u>beneficiaries of the trust;</u>	1165
<u>(6) Terminate a trust;</u>	1166
<u>(7) Change the situs or the governing law of a trust;</u>	1167
<u>(8) Make binding interpretations of the terms of a trust;</u>	1168
<u>(9) Require a trustee to consult with the protector</u>	1169

<u>regarding specified matters;</u>	1170
<u>(10) Add or remove persons as beneficiaries of a trust;</u>	1171
<u>(11) Add or remove powers and discretion granted under the terms of a trust;</u>	1172 1173
<u>(12) Otherwise direct the administration of a trust or a trust officeholder.</u>	1174 1175
<u>(G) "Protector" means a trust officeholder, other than a trustee, that holds a power of direction pursuant to the terms of a trust, regardless of whether the terms of a trust refer to the trust officeholder as a "protector," "adviser," "director," or some other name or title.</u>	1176 1177 1178 1179 1180
<u>(H) "Settlor," "state," "terms of a trust," "trustee," and "trust instrument" have the same meanings as in section 5801.01 of the Revised Code.</u>	1181 1182 1183
<u>(I) "Trust directive" means a verbal, written, or other directive, order, or instruction issued by a protector to another trust officeholder whereby the protector, as part of the protector's exercise or nonexercise of a power of direction, requires the trust officeholder to implement, comply with, or otherwise act in a manner consistent with the directive, order, or instruction.</u>	1184 1185 1186 1187 1188 1189 1190
<u>(J) (1) "Trust office" means any office, position, or role created by the terms of a trust whereby the person holding or occupying such office is wholly or partially responsible for either of the following:</u>	1191 1192 1193 1194
<u>(a) The management, administration, or supervision of the trust or the trust estate;</u>	1195 1196
<u>(b) The investment of trust property.</u>	1197

(2) Without limiting the generality of division (J) (1) of this section, "trust office" includes the offices of trustee, protector, advisor, and investment advisor. 1198  
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(3) "Trust office" does not include the position or role of settlor or beneficiary. 1201  
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(4) "Trust office" does not include the position or role of beneficiary surrogate, as defined in section 5801.01 of the Revised Code, unless the trust instrument expressly provides otherwise. 1203  
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(K) "Trust officeholder" means any person who holds a trust office. 1207  
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(L) "Willful misconduct" means an intentional deviation from a clear duty or from a definite rule of conduct, a deliberate purpose not to discharge some duty necessary to safety, or purposefully doing wrongful acts with knowledge or appreciation of the likelihood of resulting injury. 1209  
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Sec. 5818.011. This chapter may be cited as the Ohio trust protector and directed trust act. 1214  
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Sec. 5818.02. (A) This chapter governs the rights, powers, discretion, duties, and liabilities of a protector in connection with the protector's exercise or nonexercise of a power of direction. Where permitted by this chapter, the terms of a trust prevail over this chapter and may modify, supplement, limit, eliminate, waive, or restrict the application of this chapter. 1216  
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(B) (1) Except as otherwise provided by the terms of a trust or section 5518.03 of the Revised Code, and to the maximum extent allowed by state and federal law, this chapter applies to any trust, whenever created, that is wholly or partially administered in this state or that is wholly or partially 1222  
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governed by the laws of this state. 1227

(2) The terms of a trust may provide that the laws of this 1228  
state wholly or partially govern some of the rights, powers, 1229  
discretion, duties, or liabilities of a protector while the laws 1230  
of one or more jurisdictions other than this state govern all 1231  
other rights, powers, discretion, duties, or liabilities of a 1232  
protector. 1233

Sec. 5818.03. Any person who is an "advisor" within the 1234  
meaning of the Ohio legacy trust act is considered a protector 1235  
in connection with the legacy trust for the purposes of this 1236  
chapter. This chapter applies to any legacy trust that provides 1237  
for, permits, allows, or includes such an advisor, except that 1238  
the Ohio legacy trust act governs and controls in the event of 1239  
any conflict between the Ohio legacy trust act and this chapter. 1240

Sec. 5818.04. A protector is a fiduciary unless the terms 1241  
of a trust expressly provide otherwise. 1242

Sec. 5818.05. (A) Except as otherwise provided by this 1243  
section, any person who is not at the time in question a trustee 1244  
of a trust may serve as a protector to that trust. No person 1245  
shall concurrently serve as trustee and protector to the same 1246  
trust. 1247

(B) The terms of a trust may further restrict or limit the 1248  
eligibility of a person to serve as a protector to the trust. 1249

(C) If a trust instrument creates more than one trust, a 1250  
person may serve as protector to any such trust for which the 1251  
person is not concurrently serving as trustee. 1252

(D) The terms of a trust may provide that any rights, 1253  
powers, or authority granted to a protector may vest in and be 1254  
exercised by a trustee during any time the protector's office is 1255

vacant or upon the occurrence of a stated contingency, but the 1256  
trustee shall be treated as holding and exercising those vested 1257  
rights, powers, and authorities in the trustee's capacity as a 1258  
trustee and fiduciary. 1259

(E) A person that is a transferor to a legacy trust, 1260  
within the meaning of the Ohio legacy trust act, may serve as an 1261  
advisor to that legacy trust only to the extent authorized by 1262  
division (A) of section 5816.11 of the Revised Code. 1263

**Sec. 5818.06.** If a person attempts or purports to 1264  
concurrently serve as a trustee and protector to the same trust, 1265  
both of the following apply: 1266

(A) The person shall be treated as having acted as a 1267  
trustee rather than as a protector during the time of the 1268  
attempted or purported concurrent service. 1269

(B) (1) The terms of a trust may provide rules and 1270  
procedures which permit a subsequent protector to wholly or 1271  
partially ratify, assume, affirm, reject, invalidate, or disavow 1272  
any trust directives issued by the person during the time of the 1273  
person's attempted or purported concurrent service as trustee 1274  
and protector. 1275

(2) Except to the extent otherwise provided by or decided 1276  
pursuant to the terms of a trust, a subsequent protector is 1277  
presumed to have ratified and affirmed all trust directives 1278  
issued by the person during the person's time of attempted or 1279  
purported concurrent service. 1280

(3) Any actions taken or treated as having been taken by 1281  
the person in the capacity of trustee during the person's time 1282  
of attempted or purported concurrent service shall be treated as 1283  
valid and effective to the same extent, and in the same fashion, 1284

that the trustee actions would be if the office of protector was 1285  
vacant during the time of concurrent service. 1286

**Sec. 5818.07.** Subject to section 5818.13 of the Revised 1287  
Code, the rights, powers, discretion, duties, and liabilities of 1288  
a protector may be varied, allocated, and limited among one or 1289  
more protectors as follows: 1290

(A) The terms of a trust may do either of the following: 1291

(1) Provide that a protector is a fiduciary in connection 1292  
with some matters and not a fiduciary in connection with other 1293  
matters; 1294

(2) Impose different duties and liabilities on a protector 1295  
regarding different matters. 1296

(B) If a trust has more than one protector, the terms of 1297  
the trust may do either of the following: 1298

(1) Allocate different rights, powers, duties, discretion, 1299  
and authority to different protectors; 1300

(2) Provide different standards of liability for different 1301  
protectors. 1302

**Sec. 5818.08.** Except to the extent otherwise provided by 1303  
the terms of a trust, a protector may take additional, 1304  
supplemental, or ancillary steps that the protector reasonably 1305  
deems to be necessary or appropriate to exercise or refrain from 1306  
exercising a power of direction. 1307

**Sec. 5818.09.** Subject to sections 5818.08, 5818.11, 1308  
5818.12, and 5818.13 of the Revised Code, all of the following 1309  
apply to the scope of a protector's discretion: 1310

(A) If a protector is acting in a fiduciary capacity, then 1311

the protector may exercise any power of direction to the same 1312  
extent as, and subject to the same fiduciary obligations and 1313  
limitations applicable to, a trustee of the trust if the trustee 1314  
is authorized to exercise the same power. 1315

(B) If a protector is not acting in a fiduciary capacity, 1316  
then, except as otherwise provided by the terms of the trust, 1317  
the protector may exercise any protector's power in the 1318  
protector's sole and absolute discretion. 1319

(C) Nothing in this section limits or impairs any power or 1320  
discretion that a person serving as protector might hold in such 1321  
person's capacity as a settlor or beneficiary. 1322

Sec. 5818.10. Except to the extent that the terms of a 1323  
trust expressly provide otherwise, a person serving as protector 1324  
shall not exercise a protector's power of direction to require 1325  
or compel a distribution to or for the benefit of such person. 1326

Sec. 5818.11. Notwithstanding any contrary terms of a 1327  
trust, a protector shall not use a power of direction to do 1328  
either of the following: 1329

(A) Require another person to release a trust officeholder 1330  
from liability for the willful misconduct of that trust 1331  
officeholder; 1332

(B) Alter the terms of a trust in ways that exculpate a 1333  
trust officeholder from liability for the willful misconduct of 1334  
that trust officeholder. 1335

Sec. 5818.12. (A) (1) If a protector holds a power of 1336  
direction in a fiduciary capacity, then the protector may be 1337  
found liable for breach of trust due to the protector's exercise 1338  
or nonexercise of that power of direction whenever the protector 1339  
has committed such a breach. 1340

(2) If a protector is found liable for breach of trust, 1341  
then the protector's liability shall be the same that would 1342  
attach under the following circumstances: 1343

(a) To a sole trustee holding a similar power in a 1344  
fiduciary capacity, if the protector is the only protector 1345  
holding that power; 1346

(b) To a co-trustee holding a similar power in a fiduciary 1347  
capacity with another co-trustee, if the protector holds that 1348  
power with one or more other protectors. 1349

(3) Nothing in division (A) of this section precludes a 1350  
protector from being found liable for wrongful acts or omissions 1351  
other than, or in addition to, breach of trust. 1352

(B)(1) If a protector holds a power of direction in a 1353  
nonfiduciary capacity, then the protector is not liable for 1354  
breach of trust or other breach of fiduciary duty due to a 1355  
protector's exercise or nonexercise of that power of direction. 1356

(2) Nothing in division (B) of this section precludes a 1357  
protector from being found liable for wrongful acts or omissions 1358  
other than breach of trust or breach of fiduciary duty. 1359

(C) If a protector is licensed, certified, or otherwise 1360  
authorized by law to provide health care in the ordinary course 1361  
of the protector's business or practice of a profession, then, 1362  
to the extent the protector acts in the capacity of a health 1363  
care provider, the protector has no duty or liability under this 1364  
chapter. 1365

(D) The terms of a trust may impose duties or liabilities 1366  
on a protector in addition to the duties and liabilities imposed 1367  
by this chapter. 1368



Sec. 5818.13. (A) Whenever a protector is not acting as a 1369  
fiduciary, the terms of a trust may vary, limit, restrict, or 1370  
eliminate the duties or liability of a protector, except that 1371  
the terms of a trust shall not do either of the following: 1372

(1) Eliminate a protector's liability for acts or 1373  
omissions that constitute willful misconduct by the protector; 1374

(2) Preclude a court of competent jurisdiction from 1375  
removing a fiduciary on account of the fiduciary's willful 1376  
misconduct. 1377

(B) Whenever a protector is acting as a fiduciary, a term 1378  
of a trust relieving the protector of liability for breach of 1379  
trust is unenforceable if either of the following apply: 1380

(1) The term relieves the protector of liability for a 1381  
breach of trust committed in bad faith or with reckless 1382  
indifference to the purposes of the trust or the interests of 1383  
the beneficiaries; 1384

(2) The term is added to the trust as the result of an 1385  
abuse by the protector of a fiduciary or confidential 1386  
relationship with the settlor. 1387

(C) Notwithstanding any other provision of this chapter, a 1388  
protector is always liable for any act or omission that 1389  
constitutes willful misconduct by the protector. 1390

(D) In the event of any conflict between this section and 1391  
any other provision of this chapter, this section governs and 1392  
controls. 1393

Sec. 5818.14. (A) In any action against a protector, the 1394  
protector may assert any defense available at law or equity, 1395  
including any defense available under this chapter or under the 1396

terms of a trust. 1397

(B) If a protector is a fiduciary, then, in connection 1398  
with any claim for breach of trust asserted against that 1399  
protector, the protector may also assert any defense that would 1400  
be available to a trustee in that position and under similar 1401  
circumstances regarding an action for breach of trust against 1402  
the trustee. 1403

(C) A protector who undertakes acts or omissions in a 1404  
nonfiduciary capacity is not liable for breach of trust based on 1405  
such acts or omissions. 1406

**Sec. 5818.15.** (A) (1) Upon receipt of a trust directive, a 1407  
trust officeholder shall take reasonable steps to implement or 1408  
comply with the trust directive. 1409

(2) A trust officeholder has no duty to implement or 1410  
comply with a trust directive until the trust directive is 1411  
actually received by the trust officeholder. 1412

(B) Except to the extent that a trust officeholder's 1413  
conduct constitutes willful misconduct, all of the following 1414  
apply: 1415

(1) A trust officeholder may presume that a trust 1416  
directive is valid and appropriate. 1417

(2) A trust officeholder may rely upon information 1418  
provided by a protector in connection with a trust directive. 1419

(3) A trust officeholder may ask a protector to clarify a 1420  
trust directive. 1421

(4) A trust officeholder may require a protector to place 1422  
a verbal trust directive in writing before the trust 1423  
officeholder implements or complies with the trust directive. 1424

(5) A trust officeholder has no liability to any person 1425  
for implementing or complying with a trust directive. 1426

(C) A trust officeholder shall not do any of the 1427  
following, to the extent that such acts would constitute willful 1428  
misconduct by the trust officeholder: 1429

(1) Presume that a trust directive is valid or 1430  
appropriate; 1431

(2) Implement or comply with a trust directive; 1432

(3) Rely upon information provided by a protector in 1433  
connection with a trust directive. 1434

(D) Any person who claims that a trust officeholder 1435  
engaged in willful misconduct when implementing or complying 1436  
with a trust directive bears the burden of proving that 1437  
misconduct. 1438

(E) The terms of a trust may impose duties or liabilities 1439  
on a trust officeholder in addition to the duties and 1440  
liabilities imposed by divisions (A) to (D) of this section. 1441

(F) Notwithstanding any contrary provision of this 1442  
chapter, a trust officeholder that has actually received a trust 1443  
directive is always liable for any act or omission undertaken by 1444  
the trust officeholder in connection with such trust directive 1445  
that constitutes willful misconduct by the trust officeholder. 1446

(G) In the event of any conflict between this section and 1447  
any other provision of this chapter, this section governs and 1448  
controls. 1449

**Sec. 5818.16.** A trust officeholder may petition a court of 1450  
competent jurisdiction for instructions regarding the trust 1451  
officeholder's duties under section 5818.15 of the Revised Code. 1452

The right conferred by this section is in addition to the trust officeholder's rights under section 5818.15 of the Revised Code to seek clarification of a trust directive from a protector and require a trust directive to be in writing, and the trust officeholder's right under section 5818.23 of the Revised Code to ask a person to clarify the capacity in which that person is acting. 1453  
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A trust officeholder may exercise the rights granted by sections 5818.15 and 5818.23 of the Revised Code in addition to or instead of petitioning for judicial instructions under this section. 1460  
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**Sec. 5818.17.** The following rules of construction apply in connection with all protectors, directed trusts, and trust directives: 1464  
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(A) Courts shall give effect to this state's policy of maximizing a settlor's freedom of disposition as set forth in division (D) of section 5801.04 of the Revised Code. 1467  
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(B) Courts shall liberally interpret, construe, and apply this chapter in ways and means that do all of the following: 1470  
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(1) (a) Recognize and allow directed trusts; 1472

(b) Uphold the rights, powers, discretion, and authority of a protector; 1473  
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(c) Uphold the validity and enforceability of trust directives. 1475  
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(2) Without limiting the generality of the foregoing, the term "power of direction" shall be liberally and broadly interpreted, construed, and applied. 1477  
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(C) The rule of the common law that statutes in derogation 1480

of common law are to be strictly construed does not apply to 1481  
this chapter. 1482

Sec. 5818.18. Except as otherwise provided by section 1483  
5818.19 of the Revised Code or the terms of a trust, protectors 1484  
and trustees have all of the following limited duties: 1485

(A) (1) A trustee shall provide information to a protector 1486  
to the extent that the information is reasonably related to the 1487  
powers and duties of the protector. 1488

(2) A protector shall provide information to a trustee to 1489  
the extent the information is reasonably related to the powers 1490  
or duties of the trustee. 1491

(B) (1) Subject to division (B) (2) of this section, a 1492  
protector, referred to in division (B) of this section as a 1493  
"first protector," shall provide information to another 1494  
protector, referred to in division (B) of this section as an 1495  
"other protector," to the extent the information is reasonably 1496  
related to the powers or duties of the other protector. 1497

(2) Subject to division (B) (3) of this section, the first 1498  
protector need not provide the other protector with information 1499  
related to either of the following: 1500

(a) Any power to direct that may be exercised by the other 1501  
protector without the consent or approval of the first 1502  
protector; 1503

(b) Any duty that the first protector does not share with 1504  
the other protector. 1505

(3) Division (B) (2) of this section does not apply if the 1506  
first protector's failure to provide the information to the 1507  
other protector would constitute willful misconduct by the first 1508

<u>protector.</u>	1509
<u>Sec. 5818.19. Except as otherwise provided by the terms of</u>	1510
<u>a trust:</u>	1511
<u>(A) A trustee does not have a duty to do any of the</u>	1512
<u>following:</u>	1513
<u>(1) Monitor or supervise a protector;</u>	1514
<u>(2) Inform a protector of the trustee's communications</u>	1515
<u>with beneficiaries regarding a protector's performance in or</u>	1516
<u>suitability for trust office;</u>	1517
<u>(3) Inform a protector of matters that were communicated</u>	1518
<u>in confidence to the trustee by a beneficiary, or that the</u>	1519
<u>trustee reasonably believes were communicated in confidence to</u>	1520
<u>the trustee by a beneficiary;</u>	1521
<u>(4) Inform or give advice to a settlor, beneficiary,</u>	1522
<u>trustee, or protector regarding any instance in which the</u>	1523
<u>trustee might have acted differently than a protector.</u>	1524
<u>(B) A protector, referred to in this division as a "first</u>	1525
<u>protector," does not have a duty to do any of the following:</u>	1526
<u>(1) Monitor a trustee or another protector;</u>	1527
<u>(2) Inform a trustee of the first protector's</u>	1528
<u>communications with beneficiaries regarding a trustee's</u>	1529
<u>performance in or suitability for trust office;</u>	1530
<u>(3) Inform another protector of the first protector's</u>	1531
<u>communications with beneficiaries regarding the other</u>	1532
<u>protector's performance in or suitability for trust office;</u>	1533
<u>(4) Inform a trustee or another protector of matters that</u>	1534
<u>were communicated in confidence to the first protector, or that</u>	1535

the first protector reasonably believes were communicated in 1536  
confidence to the first protector, by a beneficiary; 1537

(5) Inform or give advice to a settlor, beneficiary, 1538  
trustee, or another protector regarding any instance in which 1539  
the first protector might have acted differently than a trustee 1540  
or another protector. 1541

(C) (1) Subject to division (C) (2) of this section, no act, 1542  
omission, or course of conduct undertaken by a trustee or 1543  
protector impairs, limits, restricts, or waives divisions (A) 1544  
and (B) of this section. 1545

(2) A trustee may wholly or partially assume any duty 1546  
referred to or described in division (A) of this section, and a 1547  
protector may wholly or partially assume any duty referred to or 1548  
described in division (B) of this section, by means of an 1549  
express, written, and signed agreement to wholly or partially 1550  
assume that duty. 1551

**Sec. 5818.20.** (A) A protector, referred to in this 1552  
division as a "first protector," that acts in reliance on 1553  
information provided by a trustee or another protector is not 1554  
liable for any damage or loss directly or indirectly caused by 1555  
such reliance, except to the extent that the reliance 1556  
constitutes willful misconduct by the first protector. 1557

(B) A trustee that acts in reliance on information 1558  
provided by a protector is not liable for any damage or loss 1559  
directly or indirectly caused by such reliance, except to the 1560  
extent to that the reliance constitutes willful misconduct by 1561  
the trustee. 1562

(C) The terms of a trust may expressly impose on trustees 1563  
and protectors duties and liabilities greater than those imposed 1564

by divisions (A) and (B) of this section. 1565

Sec. 5818.21. This chapter does not apply to any exercise 1566  
or nonexercise of a power or authority by either of the 1567  
following: 1568

(A) A settlor, if the power or authority is conferred on 1569  
or retained by the settlor, in the capacity of a settlor, 1570  
pursuant to the terms of a trust; 1571

(B) A beneficiary, if the power or authority is conferred 1572  
on the beneficiary, in the capacity of a beneficiary, pursuant 1573  
to the terms of a trust. 1574

Sec. 5818.22. (A) A court shall consider both of the 1575  
following factors in determining whether a person is acting in 1576  
that person's capacity as a settlor, beneficiary, or protector: 1577

(1) The terms of a trust; 1578

(2) Any documents or communications regarding the person's 1579  
exercise or nonexercise of a power or authority. 1580

(B) A court shall presume that the capacity asserted or 1581  
identified by the person in a document is correctly asserted or 1582  
identified when both of the following conditions are met: 1583

(1) The person executes a document specifying the capacity 1584  
in which a person acts. 1585

(2) The terms of a trust grant the person the capacity 1586  
specified in the document. 1587

(C) If a person's capacity as settlor, beneficiary, or 1588  
protector is unclear after applying the factors provided in 1589  
divisions (A) and (B) of this section, then a court may consider 1590  
any other facts or circumstances that may be relevant to 1591



determining the capacity in which the person is acting. 1592

Sec. 5818.23. In addition to any other rights conferred 1593  
upon a trust officeholder by this chapter or by the terms of a 1594  
trust, a trust officeholder may ask a person that issues a 1595  
communication or instruction to clarify whether that 1596  
communication or instruction was issued in that person's 1597  
capacity as a settlor, beneficiary, or trust officeholder. If a 1598  
person purports to issue a communication or instruction in that 1599  
person's capacity as a trust officeholder, then any other trust 1600  
officeholder receiving the communication or instruction may ask 1601  
the issuer to specify the official capacity in which the issuer 1602  
is acting. 1603

Sec. 5818.24. To the maximum extent allowed by state and 1604  
federal law, the courts of this state have personal jurisdiction 1605  
over a person who accepts an appointment to serve as a protector 1606  
of a trust subject to this chapter. 1607

Sec. 5818.25. (A) No beneficiary shall commence a 1608  
proceeding against a protector for breach of trust, based on 1609  
acts or omissions undertaken by the protector in a fiduciary 1610  
capacity, more than two years after the date that a beneficiary, 1611  
a representative of a beneficiary, or a beneficiary surrogate is 1612  
sent a report or accounting that adequately discloses the 1613  
existence of a potential claim for breach of trust and informs 1614  
the beneficiary, representative, or surrogate of the time 1615  
allowed for commencing a proceeding against the protector. 1616

(B) If a claim is brought against a protector regarding 1617  
acts or omissions undertaken by the protector in a nonfiduciary 1618  
capacity, or for causes of action other than breach of trust, 1619  
then the action must be commenced within the same limitation 1620  
period that would otherwise apply to that claim. 1621

Sec. 5818.26. Nothing in this chapter requires a trust to 1622  
have a protector, and the terms of a trust may omit any 1623  
requirement for or reference to a protector. 1624

Sec. 5818.27. (A) The terms of a trust may set forth 1625  
reasonable procedures for the issuance or delivery of a trust 1626  
directive, or any other document related to or arising out of 1627  
any of the following: 1628

(1) The implementation of a trust directive; 1629

(2) A protector's exercise or nonexercise of the 1630  
protector's rights, powers, authority, or discretion; 1631

(3) Any other matter related to or arising out of such 1632  
protector's duties, liabilities, or service as protector. 1633

(B) The terms of a trust concerning the issuance or 1634  
delivery of any item described in division (A) of this section 1635  
are presumed to be both reasonable and the exclusive means for 1636  
such issuance or delivery. The presumptions set forth in this 1637  
division may be rebutted only by clear and convincing evidence. 1638  
Nothing in this division shall be construed to impair, limit, or 1639  
restrict a trust officeholder's rights to do any of the 1640  
following: 1641

(1) Seek clarification of a trust directive from a 1642  
protector or request that the protector put the trust directive 1643  
in writing pursuant to section 5818.15 of the Revised Code; 1644

(2) Seek judicial instructions pursuant to section 5818.16 1645  
of the Revised Code; 1646

(3) Ask a person to clarify the capacity that such person 1647  
is acting pursuant to section 5818.23 of the Revised Code. 1648

(C) If the terms of a trust do not set forth reasonable 1649

procedures for the issuance or delivery of any item described in 1650  
division (A) of this section, or if the terms of a trust provide 1651  
that those reasonable procedures are nonexhaustive, then any 1652  
such item may be issued or delivered by any method that is 1653  
consistent with section 5801.08 of the Revised Code. 1654

**Sec. 5818.28.** (A) Subject to division (C) of this section, 1655  
a person designated as a protector accepts such designation by 1656  
complying with a method of acceptance provided in the terms of 1657  
the trust or, if the terms of the trust do not provide a method 1658  
or the method provided in the terms is not expressly made 1659  
exclusive, by accepting delivery of the trust property, 1660  
exercising powers or performing duties as protector, or 1661  
otherwise indicating acceptance. 1662

(B) A person designated as a protector who has not yet 1663  
accepted may reject the designation. A designated protector who 1664  
does not accept within a reasonable time after knowing of the 1665  
designation is deemed to have rejected the designation. 1666

(C) Except as otherwise provided under the terms of the 1667  
trust, a person designated as a protector, without accepting the 1668  
designation, may do either or both of the following: 1669

(1) Act to preserve the trust property if, within a 1670  
reasonable time after acting, the person sends a rejection of 1671  
the designation to the settlor or, if the settlor is dead or 1672  
lacks capacity, to a qualified beneficiary; 1673

(2) Inspect or investigate trust property to determine 1674  
potential liability under environmental or other law or for any 1675  
other purpose. 1676

**Sec. 5818.29.** (A) A protector shall give bond to secure 1677  
performance of the protector's duties only if the court finds 1678

that a bond is needed to protect the interests of the 1679  
beneficiaries or is required by the terms of the trust and the 1680  
court has not dispensed with the requirement. 1681

(B) The court may specify the amount of a bond, its 1682  
liabilities, and whether sureties are necessary. The court may 1683  
modify or terminate a bond at any time. 1684

(C) A regulated financial-service institution qualified to 1685  
do trust business in this state need not give bond, even if 1686  
required by the terms of the trust. 1687

**Sec. 5818.30.** Except as otherwise provided under the terms 1688  
of the trust, a vacancy in a protector position occurs under any 1689  
of the following circumstances: 1690

(A) A person designated as a protector rejects the 1691  
designation. 1692

(B) A person designated as a protector cannot be 1693  
identified or does not exist. 1694

(C) A protector resigns. 1695

(D) A protector is disqualified or removed. 1696

(E) A protector dies. 1697

(F) A guardian of the estate or person is appointed for an 1698  
individual serving as a protector. 1699

**Sec. 5818.31.** (A) Except as otherwise provided under the 1700  
terms of the trust, a protector may resign upon at least thirty 1701  
days' notice to the qualified beneficiaries, the settlor, if 1702  
living, and all trustees, or with the approval of the court. 1703

(B) In approving a resignation of a protector, the court 1704  
may issue orders and impose conditions reasonably necessary for 1705

the protection of the trust property. 1706

(C) Any liability of a resigning protector or of any 1707  
sureties on the protector's bond for acts or omissions of the 1708  
protector is not discharged or affected by the protector's 1709  
resignation. 1710

**Sec. 5818.32.** (A) The settlor, a trustee, or a beneficiary 1711  
may request the court to remove a protector, or the court may 1712  
remove a protector on its own initiative. 1713

(B) The court may remove a protector for any of the 1714  
following reasons: 1715

(1) The protector has committed a serious breach of trust. 1716

(2) Lack of cooperation among protectors substantially 1717  
impairs the administration of the trust. 1718

(3) Because of unfitness, unwillingness, or persistent 1719  
failure of the protector to administer the trust effectively, 1720  
the court determines that removal of the protector best serves 1721  
the interests of the beneficiaries. 1722

(C) Pending a final decision on a request to remove a 1723  
protector, or in lieu of or in addition to removing a protector, 1724  
the court may do any of the following, as necessary to protect 1725  
the trust property or the interests of the beneficiaries: 1726

(1) Compel the protector to perform the protector's 1727  
duties; 1728

(2) Enjoin the protector from committing a breach of 1729  
trust; 1730

(3) Compel the protector to redress a breach of trust by 1731  
paying money, restoring property, or other means; 1732

<u>(4) Order a protector to account;</u>	1733
<u>(5) Appoint a special fiduciary to take possession of the trust property and administer the trust;</u>	1734
	1735
<u>(6) Suspend the protector;</u>	1736
<u>(7) Reduce or deny compensation to the protector;</u>	1737
<u>(8) Void an act of the protector, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds;</u>	1738
	1739
	1740
<u>(9) Order any other appropriate relief.</u>	1741
<b>Sec. 5818.33.</b> <u>(A) If the terms of a trust do not specify the protector's compensation, a protector is entitled to compensation that is reasonable under the circumstances.</u>	1742
	1743
	1744
<u>(B) If the terms of a trust specify the protector's compensation, the protector is entitled to be compensated as specified, but the court may allow more or less compensation if the duties of the protector are substantially different from those contemplated when the trust was created or the compensation specified by the terms of the trust would be unreasonably low or high.</u>	1745
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<b>Section 2.</b> That existing sections 1336.04, 1336.05, 1336.09, 1337.34, 1337.36, 1337.42, 1337.52, 2109.21, 2109.25, 2117.02, 2129.08, 5701.11, 5801.04, 5801.07, 5806.02, 5806.03, 5808.19, 5810.08, 5812.43, 5815.25, and 5816.11 of the Revised Code are hereby repealed.	1752
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<b>Section 3.</b> That section 5808.08 of the Revised Code is hereby repealed.	1757
	1758