

As Introduced

136th General Assembly

Regular Session

2025-2026

H. B. No. 446

Representatives Mathews, A., Stewart

To amend sections 1336.04, 1336.05, 1336.09, 1
1337.34, 1337.36, 1337.42, 1337.52, 2117.02, 2
5701.11, 5801.04, 5801.07, 5806.02, 5806.03, 3
5808.19, 5810.08, 5812.43, 5815.25, and 5816.11; 4
to enact sections 5808.161, 5818.01, 5818.011, 5
5818.02, 5818.03, 5818.04, 5818.05, 5818.06, 6
5818.07, 5818.08, 5818.09, 5818.10, 5818.11, 7
5818.12, 5818.13, 5818.14, 5818.15, 5818.16, 8
5818.17, 5818.18, 5818.19, 5818.20, 5818.21, 9
5818.22, 5818.23, 5818.24, 5818.25, 5818.26, 10
5818.27, 5818.28, 5818.29, 5818.30, 5818.31, 11
5818.32, and 5818.33; and to repeal section 12
5808.08 of the Revised Code to modify trust and 13
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, 2117.02, 5701.11, 5801.04, 16
5801.07, 5806.02, 5806.03, 5808.19, 5810.08, 5812.43, 5815.25, 17
and 5816.11 be amended and sections 5808.161, 5818.01, 5818.011, 18
5818.02, 5818.03, 5818.04, 5818.05, 5818.06, 5818.07, 5818.08, 19
5818.09, 5818.10, 5818.11, 5818.12, 5818.13, 5818.14, 5818.15, 20
5818.16, 5818.17, 5818.18, 5818.19, 5818.20, 5818.21, 5818.22, 21

5818.23, 5818.24, 5818.25, 5818.26, 5818.27, 5818.28, 5818.29, 22
5818.30, 5818.31, 5818.32, and 5818.33 of the Revised Code be 23
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
Sec. 1336.05. (A) <u>A-Subject to division (C) of this</u> <u>section, a transfer made or an obligation incurred by a debtor</u> is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a	72 73 74 75 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 160
special skills or expertise possessed by the agent or in 161
reliance on the agent's representation that the agent has 162
special skills or expertise, the special skills or expertise 163
must be considered in determining whether the agent has acted 164
with care, competence, and diligence under the circumstances. 165

(F) Absent a breach of duty to the principal, an agent is 166
not liable if the value of the principal's property declines. 167

(G) An agent that exercises authority to delegate to 168
another person the authority granted by the principal or that 169
engages another person on behalf of the principal is not liable 170
for an act, error of judgment, or default of that person if the 171
agent exercises care, competence, and diligence in selecting and 172
monitoring the person. 173

(H) Except as otherwise provided in the power of attorney, 174
an agent is not required to disclose receipts, disbursements, or 175
transactions conducted on behalf of the principal unless ordered 176
by a court or requested by the principal, a guardian, a 177
conservator, another fiduciary acting for the principal, a 178
governmental agency having authority to protect the welfare of 179
the principal, or, upon the death of the principal, by the 180
personal representative or successor in interest of the 181
principal's estate. If so requested, within thirty days the 182
agent shall comply with the request or provide a writing or 183
other record substantiating why additional time is needed and 184
shall comply with the request within an additional thirty days. 185

Sec. 1337.36. (A) Any of the following persons may 186
petition a court to construe a power of attorney or review the 187
agent's conduct and grant appropriate relief: 188

(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</u> <u>the administration of a power of attorney, including actions</u> <u>under this section, the court, as justice may require, may award</u> <u>costs and expenses, including reasonable attorney's fees, to any</u> <u>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

Sec. 2117.02. An executor or administrator within three 323
months after the date of appointment, and before the expiration 324
of the period prescribed for the claim by section 2117.06 of the 325
Revised Code, shall present any claim the executor or 326
administrator has against the estate to the probate court for 327
allowance. The claim shall not be paid unless allowed by the 328
court. When an executor or administrator presents a claim 329
amounting to five hundred dollars or more, the court shall fix a 330

day not less than four nor more than six weeks from its 331
presentation, when the testimony touching it shall be heard. The 332
court shall issue an order directed to the executor or 333
administrator requiring the executor or administrator to give 334
notice in writing to all the heirs, legatees, or devisees of the 335
decedent interested in the estate, and to the creditors named in 336
the order. The notice shall contain a statement of the amount 337
claimed, designate the time fixed for hearing the testimony, and 338
be served upon the persons named in the order at least twenty 339
days before the time for hearing. If any persons mentioned in 340
the order are not residents of the county, service of notice may 341
be made upon them by publication for three consecutive weeks in 342
a newspaper published or circulating in the county, or as the 343
court may direct. All persons named in the order shall be 344
parties to the proceeding, and any other person having an 345
interest in the estate may be made a party. 346

Sec. 5701.11. The effective date to which this section 347
refers is the effective date of this section as amended by H.B. 348
14 of the 136th general assembly. 349

(A) (1) Except as provided under division (A) (2) or (B) of 350
this section, any reference in Title LVII or section 149.311, 351
3123.90, 3770.07, 3770.071, 3770.072, 3770.073, 3772.37, ~~or~~ 352
3775.16, or 5812.43 of the Revised Code to the Internal Revenue 353
Code, to the Internal Revenue Code "as amended," to other laws 354
of the United States, or to other laws of the United States, "as 355
amended," means the Internal Revenue Code or other laws of the 356
United States as they exist on the effective date. 357

(2) This section does not apply to any reference in Title 358
LVII of the Revised Code to the Internal Revenue Code as of a 359
date certain specifying the day, month, and year, or to other 360

laws of the United States as of a date certain specifying the 361
day, month, and year. 362

(B) (1) For purposes of applying section 5733.04, 5745.01, 363
or 5747.01 of the Revised Code to a taxpayer's taxable year 364
ending after March 15, 2023, and before the effective date, a 365
taxpayer may irrevocably elect to incorporate the provisions of 366
the Internal Revenue Code or other laws of the United States 367
that are in effect for federal income tax purposes for that 368
taxable year if those provisions differ from the provisions 369
that, under division (A) of this section, would otherwise apply. 370
The filing by the taxpayer for that taxable year of a report or 371
return that incorporates the provisions of the Internal Revenue 372
Code or other laws of the United States applicable for federal 373
income tax purposes for that taxable year, and that does not 374
include any adjustments to reverse the effects of any 375
differences between those provisions and the provisions that 376
would otherwise apply, constitutes the making of an irrevocable 377
election under this division for that taxable year. 378

(2) Elections under prior versions of division (B) (1) of 379
this section remain in effect for the taxable years to which 380
they apply. 381

Sec. 5801.04. (A) Except as otherwise provided in the 382
terms of the trust, Chapters 5801. to 5811. of the Revised Code 383
govern the duties and powers of a trustee, relations among 384
trustees, and the rights and interests of a beneficiary. 385

(B) The terms of a trust prevail over any provision of 386
Chapters 5801. to 5811. of the Revised Code except the 387
following: 388

(1) The requirements for creating a trust; 389

- (2) ~~The Subject to Chapter 5818. of the Revised Code, the~~ 390
duty of a trustee to act in good faith and in accordance with 391
the purposes of the trust; 392
- (3) The requirement that the trust have a purpose that is 393
lawful, not contrary to public policy, and possible to achieve; 394
- (4) The power of the court to modify or terminate a trust 395
under sections 5804.10 to 5804.16 of the Revised Code; 396
- (5) The effect of a spendthrift provision and the rights 397
of certain creditors and assignees to reach a trust as provided 398
in Chapter 5805. of the Revised Code; 399
- (6) The power of the court under section 5807.02 of the 400
Revised Code to require, dispense with, or modify or terminate a 401
bond; 402
- (7) The power of the court under division (B) of section 403
5807.08 of the Revised Code to adjust a trustee's compensation 404
specified in the terms of the trust which is unreasonably low or 405
high; 406
- (8) Subject to division (C) of this section, the duty 407
under divisions (B) (2) and (3) of section 5808.13 of the Revised 408
Code to notify current beneficiaries of an irrevocable trust who 409
have attained twenty-five years of age of the existence of the 410
trust, of the identity of the trustee, and of their right to 411
request trustee's reports; 412
- (9) Subject to division (C) of this section, the duty 413
under division (A) of section 5808.13 of the Revised Code to 414
respond to the request of a current beneficiary of an 415
irrevocable trust for trustee's reports and other information 416
reasonably related to the administration of a trust; 417

(10) The effect of an exculpatory term under section 418
5810.08 of the Revised Code; 419

(11) The rights under sections 5810.10 to 5810.13 of the 420
Revised Code of a person other than a trustee or beneficiary; 421

(12) Periods of limitation for commencing a judicial 422
proceeding; 423

(13) The power of the court to take any action and 424
exercise any jurisdiction that may be necessary in the interests 425
of justice; 426

(14) The subject-matter jurisdiction of the court for 427
commencing a proceeding as provided in section 5802.03 of the 428
Revised Code. 429

(C) With respect to one or more of the current 430
beneficiaries, the settlor, in the trust instrument, may waive 431
or modify the duties of the trustee described in divisions (B) 432
(8) and (9) of this section. The waiver or modification may be 433
made only by the settlor designating in the trust instrument one 434
or more beneficiary surrogates to receive any notices, 435
information, or reports otherwise required under those divisions 436
to be provided to the current beneficiaries. If the settlor 437
makes a waiver or modification pursuant to this division, the 438
trustee shall provide the notices, information, and reports to 439
the beneficiary surrogate or surrogates in lieu of providing 440
them to the current beneficiaries. The beneficiary surrogate or 441
surrogates shall act in good faith to protect the interests of 442
the current beneficiaries for whom the notices, information, or 443
reports are received. A waiver or modification made under this 444
division shall be effective for so long as the beneficiary 445
surrogate or surrogates, or their successor or successors 446

designated in accordance with the terms of the trust instrument, 447
act in that capacity. 448

(D) Except as provided under divisions (B) and (C) of this 449
section, it is the policy of this state to give maximum effect 450
to the principle of freedom of disposition and to the 451
enforceability of governing instruments. 452

Sec. 5801.07. (A) Without precluding other means for 453
establishing a sufficient connection with the designated 454
jurisdiction, the terms of a trust designating the principal 455
place of administration of the trust are valid and controlling 456
if a trustee's principal place of business is located in or a 457
trustee is a resident of the designated jurisdiction or if all 458
or part of the administration occurs in the designated 459
jurisdiction. 460

(B) A trustee is under a continuing duty to administer the 461
trust at a place appropriate to its purposes, its 462
administration, and the interests of the beneficiaries. If there 463
is more than one place reasonably appropriate for administration 464
of a trust, the trustee may administer the trust at any of those 465
places. The original place of administration selected by the 466
settlor remains an appropriate place of administration. 467

(C) Without precluding the right of the court to order, 468
approve, or disapprove a transfer, the trustee, in furtherance 469
of the duty prescribed by division (B) of this section, may 470
transfer the trust's principal place of administration to 471
another state or to a jurisdiction outside of the United States. 472

(D) The trustee shall notify the current beneficiaries of 473
a proposed transfer of a trust's principal place of 474
administration not less than sixty days before initiating the 475

transfer. The notice of a proposed transfer shall include all of 476
the following: 477

(1) The name of the jurisdiction to which the principal 478
place of administration is to be transferred; 479

(2) The address and telephone number at the new location 480
at which the trustee can be contacted; 481

(3) An explanation of the reasons for the proposed 482
transfer; 483

(4) The date on which the trustee expects the proposed 484
transfer to occur. 485

(E) In connection with a transfer of the trust's principal 486
place of administration, the trustee may transfer some or all of 487
the trust property to a successor trustee designated in the 488
terms of the trust or appointed pursuant to section 5807.04 of 489
the Revised Code. 490

Sec. 5806.02. (A) Unless the terms of a trust expressly 491
provide that the trust is irrevocable, the settlor may revoke or 492
amend the trust. This division does not apply to a trust created 493
under an instrument executed before January 1, 2007. 494

(B) If a revocable trust is created or funded by more than 495
one settlor, all of the following apply: 496

(1) To the extent the trust consists of community 497
property, either spouse acting alone may revoke the trust, but 498
the trust may be amended only by joint action of both spouses. 499

(2) To the extent the trust consists of property other 500
than community property, each settlor may revoke or amend the 501
trust with regard to the portion of the trust property 502
attributable to that settlor's contribution. 503

(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.

(G) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions

taken on the assumption that the trust had not been amended or 533
revoked. 534

Sec. 5806.03. (A) During the lifetime of the settlor of a 535
revocable trust, whether or not the settlor has capacity to 536
revoke the trust, the rights of the beneficiaries are subject to 537
the control of the settlor, and the duties of the trustee, 538
including the duties to inform and report under section 5808.13 539
of the Revised Code, are owed exclusively to the settlor. If the 540
trustee breaches its duty during the lifetime of the settlor, 541
any recovery obtained from the trustee after the settlor becomes 542
incapacitated or dies shall be apportioned by the court. If the 543
settlor is living when the recovery is obtained, the court shall 544
apportion the recovery between the settlor and the trust, or 545
allocate the entire recovery to the settlor or the trust, as it 546
determines to be equitable under the circumstances. If the 547
settlor is not living when the recovery is obtained, the court 548
shall apportion the recovery between the settlor's estate and 549
the trust, or allocate the entire recovery to the settlor's 550
estate or the trust, as it determines to be equitable under the 551
circumstances. 552

(B) During the period the power may be exercised, the 553
holder of a power of withdrawal has the rights of a settlor of a 554
revocable trust under this section to the extent of the property 555
subject to the power. 556

(C) While a trust is revocable, the trustee may follow a 557
direction of the settlor that is contrary to the terms of the 558
trust. 559

Sec. 5808.161. (A) As used in this section: 560

(1) "Protector" has the same meaning as in section 5818.01 561

of the Revised Code. 562

(2) "Internal Revenue Code" has the same meaning as in 563
section 5747.01 of the Revised Code. 564

(B) With respect to any trust, or portion thereof, that is 565
treated as being owned by a person under sections 671 to 679 of 566
the Internal Revenue Code or any similar federal, state, or 567
other tax law, the trustee, in the trustee's sole discretion, 568
may pay to the appropriate taxing authority or may reimburse the 569
person being treated as the owner any amount of the person's 570
income tax liability attributable to the inclusion of the 571
trust's income, capital gains, deductions, or credits in the 572
calculation of the person's taxable income. In the trustee's 573
sole discretion, the trustee may pay such tax reimbursement 574
amount to the person directly or to the appropriate taxing 575
authority. 576

(C) This section applies to all trusts, whether created 577
on, before, or after the effective date of this section, unless 578
any of the following apply: 579

(1) Applying this section would reduce or prevent a 580
contribution to the trust from qualifying for a federal tax 581
benefit, including a federal tax exclusion or deduction, which 582
was originally claimed or could have been claimed for the 583
contribution; 584

(2) The trust is a grantor retained annuity trust or 585
grantor retained unitrust during a term interest under paragraph 586
(c) (3) of section 2702 of the Internal Revenue Code; 587

(3) Applying this section would be the only trigger that 588
would result in any trust, or portion thereof, as treated as 589
being owned by a person under sections 671 to 679 of the 590

Internal Revenue Code or any similar federal, state, or other 591
tax law. This division does not prohibit reimbursement in a 592
subsequent year provided that the reimbursement relates to a 593
year in which the person was treated as an owner under sections 594
671 to 679 of the Internal Revenue Code. 595

(D) A trustee who acts in good faith in exercising or not 596
exercising the power granted by this section is rebuttably 597
presumed to have acted in accordance with the terms and purposes 598
of the trust and the interests of the beneficiaries, and no 599
inference of impropriety shall arise as a result of a trustee 600
exercising or not exercising the power. 601

(E) (1) If the terms of a trust require the trustee to act 602
at the direction or with the consent of a protector or that the 603
decisions governed by this section be made directly by a 604
protector, the powers granted by this section to the trustee 605
shall instead or also be granted, pursuant to the terms of the 606
trust, to the protector. 607

(2) If a protector is granted powers under division (E) (1) 608
of this section, that person is subject to the limitations 609
described in this section, which shall be applied as if the 610
protector were a trustee. 611

(F) A person shall not be considered a beneficiary of a 612
trust solely by reason of the application of this section or the 613
application of a similar provision in the trust instrument. 614

Sec. 5808.19. (A) As used in this section, unless 615
otherwise provided in any other provision in this section: 616

~~(1)~~ (1) (a) "Beneficiary" ~~means~~ includes the beneficiary of 617
a primary gift, the beneficiary of a future interest, and 618
~~includes~~ a class member if the future interest is in the form of 619

a class gift. 620

(b) Except as otherwise provided in this division, the 621
amendment to division (A) (1) (a) of this section in this act 622
shall be given retroactive effect to the fullest extent 623
permitted under Ohio Constitution, Article II, Section 28. The 624
amendment shall not be given retroactive effect in those 625
instances where doing so would invalidate or supersede any 626
instrument that conveys real property or any interest in the 627
real property, recorded in the office of the county recorder in 628
which that real property is situated. 629

(2) "Class member" means an individual who fails to 630
survive the distribution date by at least one hundred twenty 631
hours but who would have taken under a future interest in the 632
form of a class gift had the individual survived the 633
distribution date by at least one hundred twenty hours. 634

(3) "Descendant of a grandparent of the transferor" means 635
an individual who would qualify as a descendant of a grandparent 636
of the transferor under the rules of construction that would 637
apply to a class gift under the transferor's will to the 638
descendants of the transferor's grandparent. 639

(4) "Distribution date," with respect to a future 640
interest, means the time when the future interest is to take 641
effect in possession or enjoyment. The distribution date need 642
not occur at the beginning or end of a calendar day but may 643
occur at a time during the course of a day. 644

(5) "Future interest" means an alternative future interest 645
or a future interest in the form of a class gift. 646

(6) "Future interest under the terms of a trust" means a 647
future interest that was created by a transfer creating a trust 648

or a transfer to an existing trust, or by an exercise of a power 649
of appointment to an existing trust, that directs the 650
continuance of an existing trust, designates a beneficiary of an 651
existing trust, or creates a trust. 652

(7) "Per stirpes" means that the shares of the descendants 653
of a beneficiary who does not survive the distribution date by 654
at least one hundred twenty hours are determined in the same way 655
they would have been determined under division (A) of section 656
2105.06 of the Revised Code if the beneficiary had died 657
intestate and unmarried on the distribution date. 658

(8) "Revocable trust" means a trust that was revocable 659
immediately before the settlor's death by the settlor alone or 660
by the settlor with the consent of any person other than a 661
person holding an adverse interest. A trust's characterization 662
as revocable is not affected by the settlor's lack of capacity 663
to exercise the power of revocation, regardless of whether an 664
agent of the settlor under a power of attorney, or a guardian of 665
the person or estate of the settlor, was serving. 666

(9) "Stepchild" means a child of the surviving, deceased, 667
or former spouse of the transferor and not of the transferor. 668

(10) "Transferor" means any of the following: 669

(a) The donor and donee of a power of appointment, if the 670
future interest was in property as a result of the exercise of a 671
power of appointment; 672

(b) The testator, if the future interest was devised by 673
will; 674

(c) The settlor, if the future interest was conveyed by 675
inter vivos trust. 676

(B) (1) (a) As used in "surviving descendants" in divisions 677
(B) (2) (b) (i) and (ii) of this section, "descendants" means the 678
descendants of a deceased beneficiary or class member who would 679
take under a class gift created in the trust. 680

(b) As used in divisions (B) (2) (b) (i) and (ii) of this 681
section, "surviving beneficiaries" or "surviving descendants" 682
means beneficiaries or descendants, whichever is applicable, who 683
survive the distribution date by at least one hundred twenty 684
hours. 685

(2) Unless a contrary intent appears in the instrument 686
creating a future interest under the terms of a trust, each of 687
the following applies: 688

(a) A future interest under the terms of a trust is 689
contingent on the beneficiary's surviving the distribution date 690
by at least one hundred twenty hours. 691

(b) If a beneficiary of a future interest under the terms 692
of a trust does not survive the distribution date by at least 693
one hundred twenty hours and if the beneficiary is a grandparent 694
of the transferor, a descendant of a grandparent of the 695
transferor, or a stepchild of the transferor, either of the 696
following applies: 697

(i) If the future interest is not in the form of a class 698
gift and the deceased beneficiary leaves surviving descendants, 699
a substitute gift is created in the beneficiary's surviving 700
descendants. The surviving descendants take, per stirpes, the 701
property to which the beneficiary would have been entitled had 702
the beneficiary survived the distribution date by at least one 703
hundred twenty hours. 704

(ii) If the future interest is in the form of a class 705

gift, other than a future interest to "issue," "descendants," 706
"heirs of the body," "heirs," "next of kin," "relatives," or 707
"family," or a class described by language of similar import 708
that includes more than one generation, a substitute gift is 709
created in the surviving descendants of the deceased beneficiary 710
or beneficiaries. The property to which the beneficiaries would 711
have been entitled had all of them survived the distribution 712
date by at least one hundred twenty hours passes to the 713
surviving beneficiaries and the surviving descendants of the 714
deceased beneficiaries. Each surviving beneficiary takes the 715
share to which the surviving beneficiary would have been 716
entitled had the deceased beneficiaries survived the 717
distribution date by at least one hundred twenty hours. Each 718
deceased beneficiary's surviving descendants who are substituted 719
for the deceased beneficiary take, per stirpes, the share to 720
which the deceased beneficiary would have been entitled had the 721
deceased beneficiary survived the distribution date by at least 722
one hundred twenty hours. For purposes of division (B) (2) (b) (ii) 723
of this section, "deceased beneficiary" means a class member who 724
failed to survive the distribution date by at least one hundred 725
twenty hours and left one or more surviving descendants. 726

(C) For purposes of this section, each of the following 727
applies: 728

(1) Describing a class of beneficiaries as "surviving" or 729
"living," without specifying when the beneficiaries must be 730
surviving or living, such as a gift "for my spouse for life, 731
then to my surviving (or living) children," is not, in the 732
absence of other language in the trust instrument or other 733
evidence to the contrary, a sufficient indication of an intent 734
to negate the application of division (B) (2) (b) of this section. 735

(2) Subject to division (C) (1) of this section, attaching 736
words of survivorship to a future interest under the terms of a 737
trust, such as "for my spouse for life, then to my children who 738
survive my spouse" or "for my spouse for life, then to my then- 739
living children" is, in the absence of other language in the 740
trust instrument or other evidence to the contrary, a sufficient 741
indication of an intent to negate the application of division 742
(B) (2) (b) of this section. Words of survivorship under division 743
(C) (2) of this section include words of survivorship that relate 744
to the distribution date or to an earlier or an unspecified 745
time, whether those words of survivorship are expressed as 746
condition-precedent, condition-subsequent, or in any other form. 747

(3) A residuary clause in a will is not a sufficient 748
indication of an intent that is contrary to the application of 749
this section, whether or not the will specifically provides that 750
lapsed or failed devises are to pass under the residuary clause. 751
A residuary clause in a revocable trust instrument is not a 752
sufficient indication of an intent that is contrary to the 753
application of this section unless the distribution date is the 754
date of the settlor's death and the revocable trust instrument 755
specifically provides that upon lapse or failure the 756
nonresiduary devise, or nonresiduary devises in general, pass 757
under the residuary clause. 758

(D) If, after the application of divisions (B) and (C) of 759
this section there is no surviving taker of the property, and a 760
contrary intent does not appear in the instrument creating the 761
future interest, the property passes in the following order: 762

(1) If the future interest was created by the exercise of 763
a power of appointment, the property passes under the donor's 764
gift-in-default clause, if any, which clause is treated as 765

creating a future interest under the terms of a trust. 766

(2) If no taker is produced under division (D) (1) of this 767
section and the trust was created in a nonresiduary devise in 768
the transferor's will or in a codicil to the transferor's will, 769
the property passes under the residuary clause in the 770
transferor's will. For purposes of division (D) (2) of this 771
section, the residuary clause is treated as creating a future 772
interest under the terms of a trust. 773

(3) If no taker is produced under divisions (D) (1) and (2) 774
of this section, the transferor is deceased, and the trust was 775
created in a nonresiduary gift under the terms of a revocable 776
trust of the transferor, the property passes under the residuary 777
clause in the transferor's revocable trust instrument. For 778
purposes of division (D) (3) of this section, the residuary 779
clause in the transferor's revocable trust instrument is treated 780
as creating a future interest under the terms of a trust. 781

(4) If no taker is produced under divisions (D) (1), (2), 782
and (3) of this section, the property passes to those persons 783
who would succeed to the transferor's intestate estate and in 784
the shares as provided in the intestate succession law of the 785
transferor's domicile if the transferor died on the distribution 786
date. Notwithstanding division (A) (10) of this section, for 787
purposes of division (D) (4) of this section, if the future 788
interest was created by the exercise of a power of appointment, 789
"transferor" means the donor if the power is a nongeneral power, 790
or the donee if the power is a general power. 791

(E) This section applies to all trusts that become 792
irrevocable on or after March 22, 2012. This section does not 793
apply to any trust that was irrevocable before March 22, 2012, 794
even if property was added to the trust on or after March 22, 795

2012. 796

Sec. 5810.08. ~~A—~~(A) As used in this section, "trust 797
directive" has the same meaning as in section 5818.01 of the 798
Revised Code. 799

(B) Except as provided in division (C) of this section, a 800
term of a trust relieving a trustee of liability for breach of 801
trust is unenforceable to the extent that ~~it~~ either of the 802
following apply: 803

(1) The term relieves the trustee of liability for breach 804
of trust committed in bad faith or with reckless indifference to 805
the purposes of the trust or the interests of the beneficiaries— 806
~~or;~~ 807

(2) The term was inserted as the result of an abuse by the 808
trustee of a fiduciary or confidential relationship ~~to~~ with the 809
settlor. 810

(C) A trustee may be relieved from liability for 811
implementing or complying with a trust directive to the extent 812
that the relief meets any of the following criteria: 813

(1) The relief is permitted or allowed by Chapter 5818. of 814
the Revised Code. 815

(2) The relief is authorized by any term of a trust that 816
is permitted or allowed by Chapter 5818. of the Revised Code. 817

(3) The relief is otherwise allowed by the Ohio Trust 818
Code. 819

Sec. 5812.43. (A) A trustee shall make all of the 820
following disbursements from principal: 821

(1) The remaining one-half of the disbursements described 822

in divisions (A) and (B) of section 5812.42 of the Revised Code; 823

(2) All of the trustee's compensation calculated on 824
principal as a fee for acceptance, distribution, or termination, 825
and disbursements made to prepare property for sale; 826

(3) Payments on the principal of a trust debt; 827

(4) Expenses of a proceeding that concerns primarily 828
principal, including a proceeding to construe the trust or to 829
protect the trust or its property; 830

(5) Premiums paid on a policy of insurance not described 831
in division (D) of section 5812.42 of the Revised Code of which 832
the trust is the owner and beneficiary; 833

(6) Estate, inheritance, and other transfer taxes, 834
including penalties, apportioned to the trust; 835

(7) Disbursements related to environmental matters, 836
including reclamation, assessing environmental conditions, 837
remedying and removing environmental contamination, monitoring 838
remedial activities and the release of substances, preventing 839
future releases of substances, collecting amounts from persons 840
liable or potentially liable for the costs of those activities, 841
penalties imposed under environmental laws or regulations and 842
other payments made to comply with those laws or regulations, 843
statutory or common law claims by third parties, and defending 844
claims based on environmental matters; 845

(8) Disbursements related to payments to a taxing 846
authority or reimbursement to a person being treated as the 847
owner under sections 671 to 679 of the Internal Revenue Code, as 848
defined in section 5747.01 of the Revised Code, or any similar 849
federal, state, or other tax law, for any amount of the person's 850
income tax liability attributable to the inclusion of the 851

trust's income, capital gains, deductions, or credits in the 852
calculation of the person's taxable income. 853

(B) If a principal asset is encumbered with an obligation 854
that requires income from that asset to be paid directly to the 855
creditor, the trustee shall transfer from principal to income an 856
amount equal to the income paid to the creditor in reduction of 857
the principal balance of the obligation. 858

Sec. 5815.25. (A) As used in this section, "fiduciary" 859
means a trustee under any testamentary, inter vivos, or other 860
trust, an executor or administrator, or any other person who is 861
acting in a fiduciary capacity for any person, trust, or estate. 862

(B) If an instrument or other applicable written agreement 863
describes, appoints, or directs a fiduciary to handle only the 864
administrative duties and responsibilities of a trust, that 865
administrative fiduciary shall not have any duties, 866
responsibilities, or liabilities to the trust beneficiaries or 867
to other persons interested in a trust except for those 868
administrative duties and responsibilities specifically 869
described in the instrument or written agreement. The 870
administrative duties and responsibilities of a trust under this 871
division may include any of the following: 872

(1) Opening and maintaining bank, brokerage, financial, or 873
other custodial accounts to receive trust income or 874
contributions and from which trust expenditures, bills, and 875
distributions may be disbursed; 876

(2) Maintaining and handling trust records, reports, 877
correspondence, or communications; 878

(3) Maintaining an office for trust business; 879

(4) Filing any trust tax returns; 880

(5) Employing agents in connection with the fiduciary's 881
administrative duties; 882

(6) Taking custody of or storing trust property; 883

(7) Any other similar administrative duties for the trust. 884

~~(C) If an instrument under which a fiduciary acts reserves 885
to the grantor, or vests in an advisory or investment committee 886
or in one or more other persons, including one or more 887
fiduciaries, to the exclusion of the fiduciary or of one or more 888
of several fiduciaries, any power, including, but not limited 889
to, the authority to direct the acquisition, disposition, or 890
retention of any investment or the power to authorize any act 891
that an excluded fiduciary may propose, any excluded fiduciary 892
is not liable, either individually or as a fiduciary, for either 893
of the following: 894~~

~~(1) Any loss that results from compliance with an 895
authorized direction of the grantor, committee, person, or 896
persons; 897~~

~~(2) Any loss that results from a failure to take any 898
action proposed by an excluded fiduciary that requires a prior 899
authorization of the grantor, committee, person, or persons if 900
that excluded fiduciary timely sought but failed to obtain that 901
authorization. 902~~

~~(D) Any administrative fiduciary as described in division 903
(B) of this section or any excluded fiduciary as described in 904
division (C) of this section is relieved from any obligation to 905
perform investment reviews and make recommendations with respect 906
to any investments to the extent the grantor settlor, an advisory 907
or investment committee, or one or more other persons have 908
authority to direct the acquisition, disposition, or retention 909~~

of any investment. 910

~~(E)~~ (D) This section does not apply to the extent that the 911
instrument under which an administrative fiduciary as described 912
in division (B) of this section ~~or an excluded fiduciary as~~ 913
~~described in division (C) of this section~~ contains provisions 914
that are inconsistent with this section. 915

Sec. 5816.11. (A) Any person may serve as an advisor of a 916
legacy trust, except that as follows: 917

(1) A transferor may act as an advisor only in connection 918
with investment decisions. 919

(2) No person shall concurrently serve as a trustee and 920
advisor of a legacy trust. 921

(B) If a person concurrently serves or purports to 922
concurrently serve as trustee and advisor of a legacy trust in 923
violation of division (A) (2) of this section, then the effects, 924
consequences, and time period of that concurrent service are 925
subject to section 5818.06 of the Revised Code. 926

(C) An advisor shall be considered a fiduciary unless the 927
terms of a legacy trust instrument expressly provide otherwise. 928

Sec. 5818.01. As used in this chapter: 929

(A) (1) "Breach of trust" means a breach of a fiduciary 930
duty imposed on a protector by this chapter, any other 931
applicable laws of this state, or the terms of a trust. 932

(2) "Breach of trust" includes only acts or omissions 933
undertaken by a protector while acting in a fiduciary capacity, 934
and does not include any act or omission undertaken by a 935
protector in a nonfiduciary capacity. 936

(3) "Breach of trust" does not encompass or include any 937
act or omission of a protector if the act or omission is allowed 938
by either of the following: 939

(a) The terms of a trust, except where those terms are 940
expressly prohibited by this chapter or other applicable laws of 941
this state; 942

(b) This chapter, except if the trust expressly prohibits 943
the act or omission. 944

(B) "Directed trust" means a trust that includes terms 945
granting a power of direction to a protector. 946

(C) "Legacy trust" has the same meaning as in section 947
5816.02 of the Revised Code. 948

(D) "Ohio legacy trust act" means Chapter 5816. of the 949
Revised Code. 950

(E) "Person" has the same meaning as in section 5801.01 of 951
the Revised Code. 952

(F) "Power of direction" means a power vested in a 953
protector by the terms of a trust that allows a protector to do 954
any of the following: 955

(1) Issue binding trust directives to another trust 956
officeholder, including trust directives that direct, order, 957
mandate, require, veto, bar, prohibit, or prevent any actual or 958
proposed decisions or actions by a trust officeholder regarding 959
the trust or trust estate, including decisions or actions 960
regarding trust investments, trust administration, or 961
distributions to or for trust beneficiaries; 962

(2) Remove another trust officeholder from a trust office, 963
or appoint another person to a trust office; 964

<u>(3) Modify or amend the trust instrument, including</u>	965
<u>amendments that do any of the following:</u>	966
<u>(a) Achieve favorable tax treatment;</u>	967
<u>(b) Respond to or take advantage of any changes in any</u>	968
<u>federal, state, local, or other tax laws that affect or might</u>	969
<u>affect a trust, the trust settlor, any of the trust</u>	970
<u>beneficiaries, or the administration of the trust;</u>	971
<u>(c) Respond to or take advantage of any changes in the</u>	972
<u>circumstances of any beneficiary.</u>	973
<u>(4) Increase or decrease the interests of any</u>	974
<u>beneficiaries to the trust;</u>	975
<u>(5) Modify the terms of any power of appointment granted</u>	976
<u>by the trust, provided that, except to the extent the terms of a</u>	977
<u>trust expressly allow otherwise, such a modification shall not</u>	978
<u>allow appointments to any person or class of persons who are not</u>	979
<u>beneficiaries of the trust;</u>	980
<u>(6) Terminate a trust;</u>	981
<u>(7) Change the situs or the governing law of a trust;</u>	982
<u>(8) Make binding interpretations of the terms of a trust;</u>	983
<u>(9) Require a trustee to consult with the protector</u>	984
<u>regarding specified matters;</u>	985
<u>(10) Add or remove persons as beneficiaries of a trust;</u>	986
<u>(11) Add or remove powers and discretion granted under the</u>	987
<u>terms of a trust;</u>	988
<u>(12) Otherwise direct the administration of a trust or the</u>	989
<u>conduct of a trust officeholder.</u>	990

(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 person holding a power of direction as a "protector," "adviser," "director," or some other name or title.

(H) "Settlor," "state," "terms of a trust," "trustee," and "trust instrument" have the same meanings as in section 5801.01 of the Revised Code.

(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.

(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:

(a) The management, administration, or supervision of the trust or the trust estate;

(b) The investment of trust property.

(2) Without limiting the generality of division (J) (1) of this section, "trust office" includes the offices of trustee, protector, advisor, and investment advisor.

(3) "Trust office" does not include the position or role of settlor or beneficiary.

(4) "Trust office" does not include the position or role

of beneficiary surrogate, as defined in section 5801.01 of the 1019
Revised Code, unless the trust instrument expressly provides 1020
otherwise. 1021

(K) "Trust officeholder" means any person who holds a 1022
trust office. 1023

(L) "Willful misconduct" means intentional wrongdoing. 1024
"Willful misconduct" does not include negligence, gross 1025
negligence, or recklessness. 1026

(M) "Wrongdoing" means malicious conduct or conduct 1027
designed to defraud or seek an unconscionable advantage. 1028

Sec. 5818.011. This chapter may be cited as the Ohio trust 1029
protector and directed trust act. 1030

Sec. 5818.02. (A) This chapter governs the rights, powers, 1031
discretion, duties, and liabilities of a protector in connection 1032
with the protector's exercise or nonexercise of a power of 1033
direction. Where permitted by this chapter, the terms of a trust 1034
prevail over this chapter and may modify, supplement, limit, 1035
eliminate, waive, or restrict the application of this chapter. 1036

(B) (1) Except as otherwise provided by the terms of a 1037
trust or section 5518.03 of the Revised Code, and to the maximum 1038
extent allowed by the Ohio Constitution and the United States 1039
Constitution, this chapter applies to any trust, whenever 1040
created, that is wholly or partially administered in this state 1041
or that is wholly or partially governed by the laws of this 1042
state. 1043

(2) The terms of a trust may provide that the laws of this 1044
state wholly or partially govern some of the rights, powers, 1045
discretion, duties, or liabilities of a protector while the laws 1046
of one or more jurisdictions other than this state govern all 1047

other rights, powers, discretion, duties, or liabilities of a 1048
protector. 1049

Sec. 5818.03. Any person who is, within the meaning of the 1050
Ohio legacy trust act, an "advisor" is considered a protector in 1051
connection with the legacy trust for the purposes of this 1052
chapter. This chapter applies to any legacy trust that provides 1053
for, permits, allows, or includes such an advisor, except that 1054
the Ohio legacy trust act governs and controls in the event of 1055
any conflict between the Ohio legacy trust act and this chapter. 1056

Sec. 5818.04. A protector is a fiduciary unless the terms 1057
of a trust expressly provide otherwise. 1058

Sec. 5818.05. (A) Except as otherwise provided by this 1059
section, any person who is not at the time in question a trustee 1060
of a trust may serve as a protector of that trust. No person 1061
shall concurrently serve as trustee and protector of the same 1062
trust. 1063

(B) The terms of a trust may further restrict or limit the 1064
eligibility of a person to serve as a protector of the trust. 1065

(C) If a trust instrument creates more than one trust, a 1066
person may serve as protector of any such trust for which the 1067
person is not concurrently serving as trustee. 1068

(D) The terms of a trust may provide that any rights, 1069
powers, or authority granted to a protector may vest in and be 1070
exercised by a trustee during any time the protector's office is 1071
vacant or upon the occurrence of a stated contingency, but the 1072
trustee shall be treated as holding and exercising those vested 1073
rights, powers, and authorities in the trustee's capacity as a 1074
trustee and fiduciary. 1075

(E) A person that is a transferor to a legacy trust, 1076

within the meaning of the Ohio legacy trust act, may serve as an 1077
advisor to that legacy trust only to the extent authorized by 1078
division (A) of section 5816.11 of the Revised Code. 1079

Sec. 5818.06. If a person attempts or purports to 1080
concurrently serve as a trustee and protector of the same trust, 1081
both of the following apply: 1082

(A) The person shall be treated as having acted as a 1083
trustee rather than as a protector during the time of the 1084
attempted or purported concurrent service. 1085

(B) (1) The terms of a trust may provide rules and 1086
procedures that permit a subsequent protector to wholly or 1087
partially ratify, assume, affirm, reject, invalidate, or disavow 1088
any trust directives issued by the person during the time of the 1089
person's attempted or purported concurrent service as trustee 1090
and protector. 1091

(2) Except to the extent otherwise provided by or decided 1092
pursuant to the terms of a trust, a subsequent protector is 1093
presumed to have ratified and affirmed all trust directives 1094
issued by the person during the person's time of attempted or 1095
purported concurrent service. 1096

(3) Any actions taken or treated as having been taken by 1097
the person in the capacity of trustee during the person's time 1098
of attempted or purported concurrent service shall be treated as 1099
valid and effective to the same extent, and in the same fashion, 1100
that the trustee actions would be if the office of protector was 1101
vacant during the time of concurrent service. 1102

Sec. 5818.07. Subject to section 5818.13 of the Revised 1103
Code, the rights, powers, discretion, duties, and liabilities of 1104
a protector may be varied, allocated, and limited among one or 1105

more protectors as follows: 1106

(A) The terms of a trust may do either or both of the 1107
following: 1108

(1) Provide that a protector is a fiduciary in connection 1109
with some matters and not a fiduciary in connection with other 1110
matters; 1111

(2) Impose different duties and liabilities on a protector 1112
regarding different matters. 1113

(B) If a trust has more than one protector, the terms of 1114
the trust may do either or both of the following: 1115

(1) Allocate different rights, powers, duties, discretion, 1116
and authority to different protectors; 1117

(2) Provide different standards of liability for different 1118
protectors. 1119

(C) Protectors with jointly held powers shall act by a 1120
majority decision, except to the extent the terms of a trust 1121
provide otherwise. 1122

Sec. 5818.08. Except to the extent otherwise provided by 1123
the terms of a trust, a protector may take additional, 1124
supplemental, or ancillary steps that the protector reasonably 1125
deems to be necessary or appropriate to exercise or refrain from 1126
exercising a power of direction. 1127

Sec. 5818.09. Subject to sections 5818.10, 5818.11, 1128
5818.12, and 5818.13 of the Revised Code, all of the following 1129
apply to the scope of a protector's discretion: 1130

(A) If a protector is acting in a fiduciary capacity, then 1131
the protector may exercise any power of direction to the same 1132

extent as, and subject to the same fiduciary obligations and 1133
limitations applicable to, a trustee of the trust if the trustee 1134
is authorized to exercise the same power. 1135

(B) If a protector is not acting in a fiduciary capacity, 1136
then, except as otherwise provided by the terms of the trust, 1137
the protector may exercise any protector's power in the 1138
protector's sole and absolute discretion. 1139

(C) Nothing in this section limits or impairs any power or 1140
discretion that a person serving as protector might hold in such 1141
person's capacity as a settlor or beneficiary. 1142

Sec. 5818.10. Except to the extent that the terms of a 1143
trust expressly provide otherwise, a person serving as protector 1144
shall not exercise a protector's power of direction to require 1145
or compel a distribution to or for the benefit of such person. 1146

Sec. 5818.11. Notwithstanding the terms of a trust, a 1147
protector shall not use a power of direction to do either of the 1148
following: 1149

(A) Require another person to release a trust officeholder 1150
from liability for the willful misconduct of that trust 1151
officeholder; 1152

(B) Alter the terms of a trust in ways that exculpate a 1153
trust officeholder from liability for the willful misconduct of 1154
that trust officeholder. 1155

Sec. 5818.12. (A) (1) If a protector holds a power of 1156
direction in a fiduciary capacity, then the protector may be 1157
found liable for breach of trust due to the protector's exercise 1158
or nonexercise of that power of direction whenever the protector 1159
has committed such a breach. 1160

(2) If a protector is found liable for breach of trust, 1161
then the protector's liability shall be the same that would 1162
attach under the following circumstances: 1163

(a) To a sole trustee holding the same power in a 1164
fiduciary capacity, if the protector is the only protector 1165
holding that power; 1166

(b) To a co-trustee holding the same power in a fiduciary 1167
capacity with another co-trustee, if the protector holds that 1168
power with one or more other protectors. 1169

(3) Nothing in division (A) of this section precludes a 1170
protector from being found liable for wrongful acts or omissions 1171
other than, or in addition to, breach of trust. 1172

(B) (1) If a protector holds a power of direction in a 1173
nonfiduciary capacity, then the protector is not liable for 1174
breach of trust or other breach of fiduciary duty due to a 1175
protector's exercise or nonexercise of that power of direction. 1176

(2) Nothing in division (B) of this section precludes a 1177
protector from being found liable for wrongful acts or omissions 1178
other than breach of trust or breach of fiduciary duty. 1179

(C) If a protector is licensed, certified, or otherwise 1180
authorized by law to provide health care in the ordinary course 1181
of the protector's business or practice of a profession, then, 1182
to the extent the protector acts in the capacity of a health 1183
care provider, the protector has no duty or liability under this 1184
chapter. 1185

(D) The terms of a trust may impose duties or liabilities 1186
on a protector in addition to the duties and liabilities imposed 1187
by this chapter. 1188

Sec. 5818.13. (A) Whenever a protector is not acting as a 1189
fiduciary, the terms of a trust may vary, limit, restrict, or 1190
eliminate the duties or liability of a protector, except that 1191
the terms of a trust shall not do either of the following: 1192

(1) Eliminate a protector's liability for acts or 1193
omissions that constitute willful misconduct by the protector; 1194

(2) Preclude a court of competent jurisdiction from 1195
removing a protector on account of the protector's willful 1196
misconduct. 1197

(B) Whenever a protector is acting as a fiduciary, a term 1198
of a trust relieving the protector of liability for breach of 1199
trust is unenforceable if either of the following apply: 1200

(1) The term relieves the protector of liability for a 1201
breach of trust committed in bad faith or with reckless 1202
indifference to the purposes of the trust or the interests of 1203
the beneficiaries; 1204

(2) The term is added to the trust as the result of an 1205
abuse by the protector of a fiduciary or confidential 1206
relationship with the settlor. 1207

(C) Notwithstanding any other provision of this chapter, a 1208
protector is always liable for any act or omission that 1209
constitutes willful misconduct by the protector. 1210

(D) In the event of any conflict between this section and 1211
any other provision of this chapter, this section governs and 1212
controls. 1213

Sec. 5818.14. (A) In any action against a protector, the 1214
protector may assert any defense available at law or equity, 1215
including any defense available under this chapter or under the 1216

terms of a trust. 1217

(B) If a protector is a fiduciary, then, in connection 1218
with any claim for breach of trust asserted against that 1219
protector, the protector may also assert any defense that would 1220
be available to a trustee in that position and under similar 1221
circumstances regarding an action for breach of trust against 1222
the trustee. 1223

(C) A protector who undertakes acts or omissions in a 1224
nonfiduciary capacity is not liable for breach of trust based on 1225
such acts or omissions. 1226

Sec. 5818.15. (A) (1) Upon receipt of a trust directive, a 1227
trust officeholder shall take reasonable steps to implement or 1228
comply with the trust directive. 1229

(2) A trust officeholder has no duty to implement or 1230
comply with a trust directive until the trust directive is 1231
actually received by the trust officeholder. 1232

(B) Except to the extent that a trust officeholder's 1233
conduct constitutes willful misconduct, all of the following 1234
apply: 1235

(1) A trust officeholder may presume that a trust 1236
directive is valid and appropriate. 1237

(2) A trust officeholder may rely upon information 1238
provided by a protector in connection with a trust directive. 1239

(3) A trust officeholder may ask a protector to clarify a 1240
trust directive. 1241

(4) A trust officeholder may require a protector to place 1242
a verbal trust directive in writing before the trust 1243
officeholder implements or complies with the trust directive. 1244

(5) A trust officeholder has no liability to any person 1245
for implementing or complying with a trust directive. 1246

(C) A trust officeholder shall not do any of the following 1247
to the extent that such acts would constitute willful misconduct 1248
by the trust officeholder: 1249

(1) Presume that a trust directive is valid or 1250
appropriate; 1251

(2) Implement or comply with a trust directive; 1252

(3) Rely upon information provided by a protector in 1253
connection with a trust directive. 1254

(D) Any person who claims that a trust officeholder 1255
engaged in willful misconduct when implementing or complying 1256
with a trust directive bears the burden of proving that 1257
misconduct. 1258

(E) The terms of a trust may impose duties or liabilities 1259
on a trust officeholder in addition to the duties and 1260
liabilities imposed by divisions (A) to (D) of this section. 1261

(F) Notwithstanding any contrary provision of this 1262
chapter, a trust officeholder that has actually received a trust 1263
directive is always liable for any act or omission undertaken by 1264
the trust officeholder in connection with such trust directive 1265
that constitutes willful misconduct by the trust officeholder. 1266

(G) In the event of any conflict between this section and 1267
any other provision of this chapter, this section governs and 1268
controls. 1269

Sec. 5818.16. A trust officeholder may petition a court of 1270
competent jurisdiction for instructions regarding the trust 1271
officeholder's duties under section 5818.15 of the Revised Code. 1272

The right conferred by this section is in addition to the 1273
trust officeholder's rights under section 5818.15 of the Revised 1274
Code to seek clarification of a trust directive from a protector 1275
and require a trust directive to be in writing, and the trust 1276
officeholder's right under section 5818.23 of the Revised Code 1277
to ask a person to clarify the capacity in which that person is 1278
acting. 1279

A trust officeholder may exercise the rights granted by 1280
sections 5818.15 and 5818.23 of the Revised Code in addition to 1281
or instead of petitioning for judicial instructions under this 1282
section. 1283

Sec. 5818.17. The following rules of construction apply in 1284
connection with all protectors, directed trusts, and trust 1285
directives: 1286

(A) Courts shall give effect to this state's policy of 1287
maximizing a settlor's freedom of disposition as set forth in 1288
division (D) of section 5801.04 of the Revised Code. 1289

(B) Courts shall liberally interpret, construe, and apply 1290
this chapter in ways and means that do all of the following: 1291

(1) (a) Recognize and allow directed trusts; 1292

(b) Uphold the rights, powers, discretion, and authority 1293
of a protector; 1294

(c) Uphold the validity and enforceability of trust 1295
directives. 1296

(2) Without limiting the generality of the foregoing, the 1297
term "power of direction" shall be liberally and broadly 1298
interpreted, construed, and applied. 1299

(C) The rule of the common law that statutes in derogation 1300

of common law are to be strictly construed does not apply to 1301
this chapter. 1302

Sec. 5818.18. Except as otherwise provided by section 1303
5818.19 of the Revised Code or the terms of a trust, protectors 1304
and trustees have all of the following limited duties: 1305

(A) (1) A trustee shall provide information to a protector 1306
to the extent that the information is reasonably related to the 1307
powers and duties of the protector. 1308

(2) A protector shall provide information to a trustee to 1309
the extent the information is reasonably related to the powers 1310
or duties of the trustee. 1311

(B) (1) Subject to division (B) (2) of this section, a 1312
protector, referred to in division (B) of this section as a 1313
"first protector," shall provide information to another 1314
protector, referred to in division (B) of this section as an 1315
"other protector," to the extent the information is reasonably 1316
related to the powers or duties of the other protector. 1317

(2) Subject to division (B) (3) of this section, the first 1318
protector need not provide the other protector with information 1319
related to either of the following: 1320

(a) Any power to direct that may be exercised by the other 1321
protector without the consent or approval of the first 1322
protector; 1323

(b) Any duty that the first protector does not share with 1324
the other protector. 1325

(3) Division (B) (2) of this section does not apply if the 1326
first protector's failure to provide the information to the 1327
other protector would constitute willful misconduct by the first 1328

protector. 1329

Sec. 5818.19. Except as otherwise provided by the terms of 1330
a trust: 1331

(A) A trustee does not have a duty to do any of the 1332
following: 1333

(1) Monitor or supervise a protector; 1334

(2) Inform a protector of the trustee's communications 1335
with beneficiaries regarding a protector's performance in or 1336
suitability for trust office; 1337

(3) Inform a protector of matters that were communicated 1338
in confidence to the trustee by a beneficiary, or that the 1339
trustee reasonably believes were communicated in confidence to 1340
the trustee by a beneficiary; 1341

(4) Inform or give advice to a settlor, beneficiary, 1342
trustee, or protector regarding any instance in which the 1343
trustee might have acted differently than a protector. 1344

(B) A protector, referred to in this division as a "first 1345
protector," does not have a duty to do any of the following: 1346

(1) Monitor a trustee or another protector; 1347

(2) Inform a trustee of the first protector's 1348
communications with beneficiaries regarding a trustee's 1349
performance in or suitability for trust office; 1350

(3) Inform another protector of the first protector's 1351
communications with beneficiaries regarding the other 1352
protector's performance in or suitability for trust office; 1353

(4) Inform a trustee or another protector of matters that 1354
were communicated in confidence to the first protector, or that 1355

the first protector reasonably believes were communicated in 1356
confidence to the first protector, by a beneficiary; 1357

(5) Inform or give advice to a settlor, beneficiary, 1358
trustee, or another protector regarding any instance in which 1359
the first protector might have acted differently than a trustee 1360
or another protector. 1361

(C) (1) Subject to division (C) (2) of this section, no act, 1362
omission, or course of conduct undertaken by a trustee or 1363
protector impairs, limits, restricts, or waives divisions (A) 1364
and (B) of this section. 1365

(2) A trustee may wholly or partially assume any duty 1366
referred to or described in division (A) of this section, and a 1367
protector may wholly or partially assume any duty referred to or 1368
described in division (B) of this section, by means of an 1369
express, written, and signed agreement to wholly or partially 1370
assume that duty. 1371

Sec. 5818.20. (A) A protector, referred to in this 1372
division as a "first protector," that acts in reliance on 1373
information provided by a trustee or another protector is not 1374
liable for any damage or loss directly or indirectly caused by 1375
such reliance, except to the extent that the reliance 1376
constitutes willful misconduct by the first protector. 1377

(B) A trustee that acts in reliance on information 1378
provided by a protector is not liable for any damage or loss 1379
directly or indirectly caused by such reliance, except to the 1380
extent to that the reliance constitutes willful misconduct by 1381
the trustee. 1382

(C) The terms of a trust may expressly impose on trustees 1383
and protectors duties and liabilities greater than those imposed 1384

by divisions (A) and (B) of this section. 1385

Sec. 5818.21. This chapter does not apply to any exercise 1386
or nonexercise of a power or authority by either of the 1387
following: 1388

(A) A settlor, if the power or authority is conferred on 1389
or retained by the settlor, in the capacity of a settlor, 1390
pursuant to the terms of a trust; 1391

(B) A beneficiary, if the power or authority is conferred 1392
on the beneficiary, in the capacity of a beneficiary, pursuant 1393
to the terms of a trust. 1394

Sec. 5818.22. (A) A court shall consider both of the 1395
following factors in determining whether a person is acting in 1396
that person's capacity as a settlor, beneficiary, or protector: 1397

(1) The terms of a trust; 1398

(2) Any documents or communications regarding the person's 1399
exercise or nonexercise of a power or authority. 1400

(B) A court shall presume that the capacity asserted or 1401
identified by the person in a document is correctly asserted or 1402
identified when all of the following conditions are met: 1403

(1) The person executes the document. 1404

(2) The document specifies the capacity in which a person 1405
acts. 1406

(3) The terms of a trust grant the person the capacity 1407
specified in the document. 1408

(C) If a person's capacity as settlor, beneficiary, or 1409
protector is unclear after applying the factors provided in 1410
divisions (A) and (B) of this section, then a court may consider 1411

any other facts or circumstances that may be relevant to 1412
determining the capacity in which the person is acting. 1413

Sec. 5818.23. In addition to any other rights conferred 1414
upon a trust officeholder by this chapter or by the terms of a 1415
trust, a trust officeholder may ask a person that issues a 1416
communication or instruction to clarify whether that 1417
communication or instruction was issued in that person's 1418
capacity as a settlor, beneficiary, or trust officeholder. If a 1419
person purports to issue a communication or instruction in that 1420
person's capacity as a trust officeholder, then any other trust 1421
officeholder receiving the communication or instruction may ask 1422
the issuer to specify the official capacity in which the issuer 1423
is acting. 1424

Sec. 5818.24. To the maximum extent allowed by the Ohio 1425
Constitution and the United States Constitution, the courts of 1426
this state have personal jurisdiction over a person who accepts 1427
an appointment to serve as a protector of a trust subject to 1428
this chapter. 1429

Sec. 5818.25. (A) No beneficiary shall commence a 1430
proceeding against a protector for breach of trust, based on 1431
acts or omissions undertaken by the protector in a fiduciary 1432
capacity, more than two years after the date that a beneficiary, 1433
a representative of a beneficiary, or a beneficiary surrogate is 1434
sent a report or accounting that adequately discloses the 1435
existence of a potential claim for breach of trust and informs 1436
the beneficiary, representative, or surrogate of the time 1437
allowed for commencing a proceeding against the protector. 1438

(B) If a claim is brought against a protector regarding 1439
acts or omissions undertaken by the protector in a nonfiduciary 1440
capacity, or for causes of action other than breach of trust, 1441

then the action must be commenced within the same limitation 1442
period that would otherwise apply to that claim. 1443

Sec. 5818.26. Nothing in this chapter requires a trust to 1444
have a protector, and the terms of a trust may omit any 1445
requirement for or reference to a protector. 1446

Sec. 5818.27. (A) The terms of a trust may set forth 1447
reasonable procedures for the issuance or delivery of a trust 1448
directive, or any other document related to or arising out of 1449
any of the following: 1450

(1) The implementation of a trust directive; 1451

(2) A protector's exercise or nonexercise of the 1452
protector's rights, powers, authority, or discretion; 1453

(3) Any other matter related to or arising out of such 1454
protector's duties, liabilities, or service as protector. 1455

(B) The terms of a trust concerning the issuance or 1456
delivery of any item described in division (A) of this section 1457
are presumed to be both reasonable and the exclusive means for 1458
such issuance or delivery. The presumptions set forth in this 1459
division may be rebutted only by clear and convincing evidence. 1460
Nothing in this division shall be construed to impair, limit, or 1461
restrict a trust officeholder's rights to do any of the 1462
following: 1463

(1) Seek clarification of a trust directive from a 1464
protector or request that the protector put the trust directive 1465
in writing pursuant to section 5818.15 of the Revised Code; 1466

(2) Seek judicial instructions pursuant to section 5818.16 1467
of the Revised Code; 1468

(3) Ask a person to clarify the capacity in which such 1469

person is acting pursuant to section 5818.23 of the Revised 1470
Code. 1471

(C) If the terms of a trust do not set forth reasonable 1472
procedures for the issuance or delivery of any item described in 1473
division (A) of this section, or if the terms of a trust provide 1474
that those reasonable procedures are nonexhaustive, then any 1475
such item may be issued or delivered by any method that is 1476
consistent with section 5801.08 of the Revised Code. 1477

Sec. 5818.28. (A) A person designated as a protector of a 1478
trust may accept such designation by complying with a method of 1479
acceptance provided in the terms of the trust, exercising powers 1480
or performing duties of the protector, or otherwise indicating 1481
acceptance of the office and responsibilities of the protector. 1482

(B) A person designated as a protector who has not yet 1483
accepted may reject the designation. A designated protector who 1484
does not accept within a reasonable time after knowing of the 1485
designation is deemed to have rejected the designation. 1486

Sec. 5818.29. All of the following apply to a trust except 1487
to the extent that the terms of the trust provide otherwise: 1488

(A) A protector shall give bond to secure performance of 1489
the protector's duties only if the court finds that a bond is 1490
needed to protect the interests of the beneficiaries or is 1491
required by the terms of the trust and the court has not 1492
dispensed with the requirement. 1493

(B) The court may specify the amount of a bond, its 1494
liabilities, and whether sureties are necessary. The court may 1495
modify or terminate a bond at any time. 1496

(C) A regulated financial-service institution or licensed 1497
trust company qualified to do trust business in this state need 1498

not give bond. 1499

Sec. 5818.30. Except as otherwise provided under the terms 1500
of the trust, a vacancy in a protector position occurs under any 1501
of the following circumstances: 1502

(A) A person designated as a protector rejects the 1503
designation. 1504

(B) A person designated as a protector cannot be 1505
identified or does not exist. 1506

(C) A protector resigns. 1507

(D) A protector is disqualified or removed. 1508

(E) A protector dies. 1509

(F) A guardian of the estate or person is appointed for an 1510
individual serving as a protector. 1511

Sec. 5818.31. (A) Except as otherwise provided under the 1512
terms of the trust, a protector may resign upon at least thirty 1513
days' notice to any person who is a qualified beneficiary as 1514
defined by section 5801.01 of the Revised Code, the settlor, if 1515
living, and all trustees, or with the approval of the court. 1516

(B) In approving a resignation of a protector, the court 1517
may issue orders and impose conditions reasonably necessary for 1518
the protection of the trust property. 1519

(C) Any liability of a resigning protector or of any 1520
sureties on the protector's bond for acts or omissions of the 1521
protector is not discharged or affected by the protector's 1522
resignation. 1523

Sec. 5818.32. Subject to the terms of a trust instrument, 1524
all of the following apply: 1525

(A) The settlor, a trustee, or a beneficiary may request 1526
the court to remove a protector, or the court may remove a 1527
protector on its own initiative. 1528

(B) The court may remove a protector for any of the 1529
following reasons: 1530

(1) The protector has committed a serious breach of trust, 1531
but only if the protector is a fiduciary. 1532

(2) Lack of cooperation among protectors substantially 1533
impairs the administration of the trust. 1534

(3) Because of unfitness, willful misconduct, or 1535
unwillingness to serve as protector, the court determines that 1536
removal of the protector best serves the interests of the 1537
beneficiaries. 1538

(4) If the protector is a fiduciary, because of persistent 1539
failure of the protector to discharge the duties imposed on the 1540
protector by the trust instrument, the court determines that 1541
removal of the protector best serves the interests of the 1542
beneficiaries. 1543

(C) Pending a final decision on a request to remove a 1544
protector, or in lieu of or in addition to removing a protector, 1545
the court may do any of the following, as necessary to protect 1546
the trust property or the interests of the beneficiaries: 1547

(1) Compel the protector to perform the protector's 1548
duties; 1549

(2) Enjoin the protector from engaging in acts of willful 1550
misconduct; 1551

(3) If the protector is a fiduciary, enjoin the protector 1552
from committing a breach of trust; 1553

(4) If the protector is serving in a nonfiduciary 1554
capacity, compel the protector to redress an act of willful 1555
misconduct by paying money, restoring property, or other means; 1556

(5) If the protector is a fiduciary, compel the protector 1557
to redress a breach of trust by paying money, restoring 1558
property, or other means; 1559

(6) Order a protector to account; 1560

(7) Appoint a special fiduciary to take possession of any 1561
trust property held by the protector; 1562

(8) Suspend the protector; 1563

(9) Reduce or deny compensation to the protector; 1564

(10) Void an act of the protector, impose a lien or a 1565
constructive trust on any trust property held by the protector, 1566
or trace trust property wrongfully disposed of by the protector 1567
and recover the property or its proceeds; 1568

(11) Order any other appropriate relief. 1569

Sec. 5818.33. (A) If the terms of a trust do not specify 1570
the protector's compensation, a protector is entitled to 1571
compensation that is reasonable under the circumstances. 1572

(B) If the terms of a trust specify the protector's 1573
compensation, the protector is entitled to be compensated as 1574
specified, but the court may allow more or less compensation if 1575
the duties of the protector are substantially different from 1576
those contemplated when the trust was created or the 1577
compensation specified by the terms of the trust would be 1578
unreasonably low or high. 1579

Section 2. That existing sections 1336.04, 1336.05, 1580

1336.09, 1337.34, 1337.36, 1337.42, 1337.52, 2117.02, 5701.11, 1581
5801.04, 5801.07, 5806.02, 5806.03, 5808.19, 5810.08, 5812.43, 1582
5815.25, and 5816.11 of the Revised Code are hereby repealed. 1583

Section 3. That section 5808.08 of the Revised Code is 1584
hereby repealed. 1585