

**As Reported by the House Judiciary Committee**

**136th General Assembly**

**Regular Session**

**2025-2026**

**Sub. H. B. No. 446**

**Representatives Mathews, A., Stewart**

**Cosponsor: Representative Odioso**



To amend sections 1336.04, 1336.05, 1336.09, 1  
1337.34, 1337.36, 1337.42, 1337.52, 2109.21, 2  
2113.06, 2117.02, 5301.071, 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, 5818.33, 12  
5818.34, 5818.35, 5818.36, and 5818.37; and to 13  
repeal section 5808.08 of the Revised Code to 14  
modify trust and probate laws. 15

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

**Section 1.** That sections 1336.04, 1336.05, 1336.09, 16  
1337.34, 1337.36, 1337.42, 1337.52, 2109.21, 2113.06, 2117.02, 17  
5301.071, 5701.11, 5801.04, 5801.07, 5806.02, 5806.03, 5808.19, 18  
5810.08, 5812.43, 5815.25, and 5816.11 be amended and sections 19  
5808.161, 5818.01, 5818.011, 5818.02, 5818.03, 5818.04, 5818.05, 20

5818.06, 5818.07, 5818.08, 5818.09, 5818.10, 5818.11, 5818.12, 21  
5818.13, 5818.14, 5818.15, 5818.16, 5818.17, 5818.18, 5818.19, 22  
5818.20, 5818.21, 5818.22, 5818.23, 5818.24, 5818.25, 5818.26, 23  
5818.27, 5818.28, 5818.29, 5818.30, 5818.31, 5818.32, 5818.33, 24  
5818.34, 5818.35, 5818.36, and 5818.37 of the Revised Code be 25  
enacted to read as follows: 26

**Sec. 1336.04.** (A) ~~A~~ Subject to division (C) of this 27  
section, a transfer made or an obligation incurred by a debtor 28  
is fraudulent as to a creditor, whether the claim of the 29  
creditor arose before, or within a reasonable time not to exceed 30  
four years after, the transfer was made or the obligation was 31  
incurred, if the debtor made the transfer or incurred the 32  
obligation in either of the following ways: 33

(1) With actual intent to hinder, delay, or defraud any 34  
creditor of the debtor; 35

(2) Without receiving a reasonably equivalent value in 36  
exchange for the transfer or obligation, and if either of the 37  
following applies: 38

(a) The debtor was engaged or was about to engage in a 39  
business or a transaction for which the remaining assets of the 40  
debtor were unreasonably small in relation to the business or 41  
transaction; 42

(b) The debtor intended to incur, or believed or 43  
reasonably should have believed that the debtor would incur, 44  
debts beyond the debtor's ability to pay as they became due. 45

(B) In determining actual intent under division (A) (1) of 46  
this section, consideration may be given to all relevant 47  
factors, including, but not limited to, the following: 48

(1) Whether the transfer or obligation was to an insider; 49

(2) Whether the debtor retained possession or control of the property transferred after the transfer;	50 51
(3) Whether the transfer or obligation was disclosed or concealed;	52 53
(4) Whether before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit;	54 55
(5) Whether the transfer was of substantially all of the assets of the debtor;	56 57
(6) Whether the debtor absconded;	58
(7) Whether the debtor removed or concealed assets;	59
(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;	60 61 62
(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;	63 64 65
(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred;	66 67
(11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.	68 69 70
<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>	71 72 73
<b>Sec. 1336.05.</b> (A) <u>A-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</u>	74 75 76

transfer was made or the obligation was incurred if the debtor 77  
made the transfer or incurred the obligation without receiving a 78  
reasonably equivalent value in exchange for the transfer or 79  
obligation and the debtor was insolvent at that time or the 80  
debtor became insolvent as a result of the transfer or 81  
obligation. 82

(B) A-Subject to division (C) of this section, a transfer 83  
made or an obligation incurred by a debtor is fraudulent as to a 84  
creditor whose claim arose before the transfer was made or the 85  
obligation was incurred if the transfer was made to or the 86  
obligation was incurred with respect to an insider for an 87  
antecedent debt, the debtor was insolvent at that time, and the 88  
insider had reasonable cause to believe that the debtor was 89  
insolvent. 90

(C) No transfer made or obligation incurred by a debtor 91  
due to or as a result of the debtor's death is actionable under 92  
this section. 93

**Sec. 1336.09.** A-(A) Subject to division (B) of this 94  
section, a claim for relief with respect to a transfer or an 95  
obligation that is fraudulent under section 1336.04 or 1336.05 96  
of the Revised Code is extinguished unless an action is brought 97  
in accordance with one of the following: 98

~~(A)~~ (1) If the transfer or obligation is fraudulent under 99  
division (A) (1) of section 1336.04 of the Revised Code, within 100  
four years after the transfer was made or the obligation was 101  
incurred or, if later, within one year after the transfer or 102  
obligation was or reasonably could have been discovered by the 103  
claimant; 104

~~(B)~~ (2) If the transfer or obligation is fraudulent under 105

division (A) (2) of section 1336.04 or division (A) of section 106  
1336.05 of the Revised Code, within four years after the 107  
transfer was made or the obligation was incurred; 108

~~(C)~~(3) If the transfer or obligation is fraudulent under 109  
division (B) of section 1336.05 of the Revised Code, within one 110  
year after the transfer was made or the obligation was incurred. 111

(B) Notwithstanding division (A) of this section, any 112  
claim for relief based on a transfer made or obligation incurred 113  
by a debtor due to or as a result of the debtor's death is 114  
extinguished unless an action is brought within six months after 115  
the debtor's death. 116

**Sec. 1337.34.** (A) Notwithstanding provisions in the power 117  
of attorney, an agent that has accepted appointment shall ~~do all~~ 118  
~~of the following~~act in accordance with all of the following 119  
mandatory duties, none of which can be waived: 120

(1) Act in accordance with the principal's reasonable 121  
expectations to the extent actually known by the agent and, 122  
otherwise, in the principal's best interest; 123

(2) Act in good faith; 124

(3) Act only within the scope of authority granted in the 125  
power of attorney; 126

(4) Attempt to preserve the principal's estate plan to the 127  
extent actually known by the agent if preserving the plan is 128  
consistent with the principal's best interest based on all 129  
relevant factors, including all of the following: 130

(a) The value and nature of the principal's property; 131

(b) The principal's foreseeable obligations and need for 132  
maintenance; 133

(c) Minimization of taxes, including income, estate,	134
inheritance, generation-skipping transfer, and gift taxes;	135
(d) Eligibility for a benefit, a program, or assistance	136
under a statute or regulation.	137
(B) Except as otherwise provided in the power of attorney,	138
an agent that has accepted appointment shall do all of the	139
following:	140
(1) Act loyally for the principal's benefit;	141
(2) Act so as not to create a conflict of interest that	142
impairs the agent's ability to act impartially in the	143
principal's best interest;	144
(3) Act with the care, competence, and diligence	145
ordinarily exercised by agents in similar circumstances;	146
(4) Keep a record of all receipts, disbursements, and	147
transactions made on behalf of the principal;	148
(5) Cooperate with a person that has authority to make	149
health-care decisions for the principal to carry out the	150
principal's reasonable expectations to the extent actually known	151
by the agent and, otherwise, act in the principal's best	152
interest.	153
(C) An agent that acts in good faith is not liable to any	154
beneficiary of the principal's estate plan for failure to	155
preserve the plan.	156
(D) An agent that acts with care, competence, and	157
diligence for the best interest of the principal is not liable	158
solely because the agent also benefits from the act or has an	159
individual or conflicting interest in relation to the property	160
or affairs of the principal.	161

(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;	191
(2) A guardian, conservator, or other fiduciary acting for the principal, including an executor or administrator of the estate of a deceased principal;	192 193 194
(3) A person authorized to make health-care decisions for the principal;	195 196
(4) The principal's spouse, parent, or descendant;	197
(5) An individual who would qualify as a presumptive heir of the principal;	198 199
(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;	200 201 202 203
(7) A governmental agency having regulatory authority to protect the welfare of the principal;	204 205
(8) The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare;	206 207
(9) A person asked to accept the power of attorney.	208
(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.	209 210 211 212
<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>	213 214 215 216 217

**Sec. 1337.42.** (A) An agent under a power of attorney may 218  
do any of the following on behalf of the principal or with the 219  
principal's property only if the power of attorney expressly 220  
grants the agent the authority and if exercise of the authority 221  
is not otherwise prohibited by another agreement or instrument 222  
to which the authority or property is subject, and, with respect 223  
to a revocable trust of which the principal was the settlor, if 224  
the trust agreement also expressly authorizes the agent to 225  
exercise the principal's powers with respect to the revocation, 226  
amendment, or ~~distribution~~ withdrawal of trust property, or the 227  
ability to direct the distribution of trust property: 228

(1) Create, amend, revoke, or terminate an inter vivos 229  
trust to the extent permitted by section 5801.05 of the Revised 230  
Code or any other provision of Title LVIII of the Revised Code; 231

(2) Make a gift; 232

(3) Create or change rights of survivorship; 233

(4) Create or change a beneficiary designation; 234

(5) Delegate authority granted under the power of 235  
attorney; 236

(6) Waive the principal's right to be a beneficiary of a 237  
joint and survivor annuity, including a survivor benefit under a 238  
retirement plan; 239

(7) Exercise fiduciary powers that the principal has 240  
authority to delegate. 241

(B) Notwithstanding a grant of authority to do an act 242  
described in division (A) of this section, unless the power of 243  
attorney otherwise provides, an agent that is not an ancestor, 244  
spouse, or descendant of the principal may not exercise 245

authority under a power of attorney to create in the agent, or 246  
in an individual to whom the agent owes a legal obligation of 247  
support, an interest in the principal's property, whether by 248  
gift, right of survivorship, beneficiary designation, 249  
disclaimer, or otherwise. 250

(C) Subject to divisions (A), (B), (D), and (E) of this 251  
section, if a power of attorney grants to an agent authority to 252  
do all acts that a principal could do, the agent has the general 253  
authority described in sections 1337.45 to 1337.57 of the 254  
Revised Code. 255

(D) Unless the power of attorney otherwise provides, a 256  
grant of authority to make a gift is subject to section 1337.58 257  
of the Revised Code. 258

(E) Subject to divisions (A), (B), and (D) of this 259  
section, if the subjects over which authority is granted in a 260  
power of attorney are similar or overlap, the broadest authority 261  
controls. 262

(F) Authority granted in a power of attorney is 263  
exercisable with respect to property that the principal has when 264  
the power of attorney is executed or acquires later, whether or 265  
not the property is located in this state and whether or not the 266  
authority is exercised or the power of attorney is executed in 267  
this state. 268

(G) An act performed by an agent pursuant to a power of 269  
attorney has the same effect and inures to the benefit of and 270  
binds the principal and the principal's successors in interest 271  
as if the principal had performed the act. 272

(H) Notwithstanding a grant of authority to perform any of 273  
the acts enumerated in division (A) of this section, an agent is 274

bound by the mandatory fiduciary duties set forth in division 275  
(A) of section 1337.34 of the Revised Code, including the duty 276  
to attempt to preserve the principal's estate plan, as well as 277  
the default duties set forth in division (B) of section 1337.34 278  
of the Revised Code that the principal has not modified. 279

**Sec. 1337.52.** (A) As used in this section, "estate, trust, 280  
or other beneficial interest" means a trust, probate estate, 281  
guardianship, conservatorship, escrow, or custodianship or a 282  
fund from which the principal is, may become, or claims to be 283  
entitled to a share or payment. 284

(B) ~~Unless~~ Subject to division (E) of section 5806.02 and 285  
division (A) of section 1337.42 of the Revised Code, unless the 286  
power of attorney otherwise provides, language in a power of 287  
attorney granting general authority with respect to estates, 288  
trusts, and other beneficial interests authorizes the agent to 289  
do all of the following: 290

(1) Accept, receive, receipt for, sell, assign, pledge, or 291  
exchange a share in or payment from an estate, trust, or other 292  
beneficial interest; 293

~~(2)~~ (2) (a) Demand or obtain money or another thing of value 294  
to which the principal is, may become, or claims to be entitled 295  
by reason of an estate, trust, or other beneficial interest, by 296  
litigation or otherwise; 297

(b) With respect to a revocable trust of which the 298  
principal is the settlor, an agent shall not exercise a right 299  
reserved by the principal to withdraw, or to direct the 300  
distribution of, trust property unless specifically permitted by 301  
the trust instrument. 302

(3) Exercise for the benefit of the principal a presently 303

exercisable general power of appointment held by the principal;	304
(4) Initiate, participate in, submit to alternative	305
dispute resolution, settle, oppose, or propose or accept a	306
compromise with respect to litigation to ascertain the meaning,	307
validity, or effect of a deed, will, declaration of trust, or	308
other instrument or transaction affecting the interest of the	309
principal;	310
(5) Initiate, participate in, submit to alternative	311
dispute resolution, settle, oppose, or propose or accept a	312
compromise with respect to litigation to remove, substitute, or	313
surcharge a fiduciary;	314
(6) Conserve, invest, disburse, or use anything received	315
for an authorized purpose;	316
(7) Transfer an interest of the principal in real	317
property, stocks and bonds, accounts with financial institutions	318
or securities intermediaries, insurance, annuities, and other	319
property to the trustee of a revocable trust created by the	320
principal as settlor;	321
(8) Reject, renounce, disclaim, release, or consent to a	322
reduction in or modification of a share in or payment from an	323
estate, trust, or other beneficial interest.	324
<b>Sec. 2109.21.</b> <del>(A) An</del> <u>(A) (1) (a) Except as provided in</u>	325
<u>division (A) (1) (b) of this section, an administrator, special</u>	326
<u>administrator, administrator de bonis non, or administrator with</u>	327
<u>the will annexed shall be a resident of this state</u> <del>and shall be</del>	328
<del>removed on proof that the administrator is no longer a resident</del>	329
<del>of this state.</del>	330
<u>(b) An administrator, special administrator, administrator</u>	331
<u>de bonis non, or administrator with the will annexed may be a</u>	332

nonresident of this state if the administrator, special 333  
administrator, administrator de bonis non, or administrator with 334  
the will annexed is related to the decedent by consanguinity or 335  
affinity. 336

(2) An administrator, special administrator, administrator 337  
de bonis non, or administrator with the will annexed under 338  
division (A)(1) of this section shall not be refused appointment 339  
or be removed solely because the administrator, special 340  
administrator, administrator de bonis non, or administrator with 341  
the will annexed is not a resident of this state. 342

(3) The court may require that a nonresident 343  
administrator, special administrator, administrator de bonis 344  
non, or administrator with the will annexed assure that all of 345  
the assets of the decedent that are in the county at the time of 346  
the death of the decedent will remain in the county until 347  
distribution or until the court determines that the assets may 348  
be removed from the county. 349

(B) (1) (a) To qualify for appointment as executor or 350  
trustee, an executor or a trustee named in a will or nominated 351  
in accordance with any power of nomination conferred in a will, 352  
may be a resident of this state or, as provided in this 353  
division, a nonresident of this state. To qualify for 354  
appointment, a nonresident executor or trustee named in, or 355  
nominated pursuant to, a will shall be one of the following: 356

(i) An individual who is related to the testator by 357  
consanguinity or affinity; 358

(ii) A private trust company or family trust company 359  
organized under the laws of any state; 360

(iii) A person who resides in a state that has statutes or 361

rules that authorize the appointment of a nonresident person who 362  
is not related to the testator by consanguinity or affinity, as 363  
an executor or trustee when named in, or nominated pursuant to, 364  
a will. 365

(b) No executor or trustee under division (B) (1) (a) of 366  
this section shall be refused appointment or removed solely 367  
because the executor or trustee is not a resident of this state. 368

(c) The court may require that a nonresident executor or 369  
trustee named in, or nominated pursuant to, a will assure that 370  
all of the assets of the decedent that are in the county at the 371  
time of the death of the decedent will remain in the county 372  
until distribution or until the court determines that the assets 373  
may be removed from the county. 374

(d) The court may require a nonresident private trust 375  
company or family trust company appointed under division (B) (1) 376  
(a) (ii) of this section to appoint a resident agent to accept 377  
service of process, notices, and other documents. 378

(2) (a) In accordance with this division and section 379  
2129.08 of the Revised Code, the court shall appoint as an 380  
ancillary administrator a person who is named in the will of a 381  
nonresident decedent, or who is nominated in accordance with any 382  
power of nomination conferred in the will of a nonresident 383  
decedent, as a general executor of the decedent's estate or as 384  
executor of the portion of the decedent's estate located in this 385  
state, whether or not the person so named or nominated is a 386  
resident of this state. 387

To qualify for appointment as an ancillary administrator, 388  
a person who is not a resident of this state and who is named or 389  
nominated as described in this division, shall be one of the 390

following:	391
(i) An individual who is related to the testator by consanguinity or affinity;	392 393
(ii) A private trust company or family trust company organized under the laws of any state;	394 395
(iii) A person who resides in a state that has statutes or rules that authorize the appointment of a nonresident of that state who is not related to the testator by consanguinity or affinity, as an ancillary administrator when the nonresident is named in a will or nominated in accordance with any power of nomination conferred in a will.	396 397 398 399 400 401
(b) If a person who is not a resident of this state and who is named or nominated as described in division (B) (2) (a) of this section so qualifies for appointment as an ancillary administrator and if the provisions of section 2129.08 of the Revised Code are satisfied, the court shall not refuse to appoint the person, and shall not remove the person, as ancillary administrator solely because the person is not a resident of this state.	402 403 404 405 406 407 408 409
(c) 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, assure that all of the assets of the decedent that are in the county at the time of the death of the decedent will remain in the county until distribution or until the court determines that the assets may be removed from the county.	410 411 412 413 414 415 416
(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	417 418 419

service of process, notices, and other documents.	420
(C) (1) A guardian of the estate shall be a resident of	421
this state, except that the court may appoint a nonresident of	422
this state as a guardian of the estate if any of the following	423
applies:	424
(a) The nonresident is named in a will by a parent of a	425
minor.	426
(b) The nonresident is selected by a minor over the age of	427
fourteen years as provided by section 2111.12 of the Revised	428
Code.	429
(c) The nonresident is nominated in or pursuant to a	430
durable power of attorney under section 1337.24 of the Revised	431
Code or a writing as described in division (A) of section	432
2111.121 of the Revised Code.	433
(2) A guardian of the estate, other than a guardian named	434
in a will by a parent of a minor, selected by a minor over the	435
age of fourteen years, or nominated in or pursuant to a durable	436
power of attorney or writing described in division (C) (1) (c) of	437
this section, may be removed on proof that the guardian of the	438
estate is no longer a resident of this state.	439
(3) The court may appoint a resident or nonresident of	440
this state as a guardian of the person.	441
(D) Any fiduciary, whose residence qualifications are not	442
defined in this section, shall be a resident of this state, and	443
shall be removed on proof that the fiduciary is no longer a	444
resident of this state.	445
(E) Any fiduciary, in order to assist in the carrying out	446
of the fiduciary's fiduciary duties, may employ agents who are	447

not residents of the county or of this state. 448

(F) Every fiduciary shall sign and file with the court a 449  
statement of permanent address and shall notify the court of any 450  
change of address. A court may remove a fiduciary if the 451  
fiduciary fails to comply with this division. 452

**Sec. 2113.06.** (A) Administration of the estate of an 453  
intestate shall be granted to persons mentioned in this 454  
division, in the following order: 455

(1) To the surviving spouse of the deceased, if resident 456  
of the state; 457

(2) To one of the next of kin of the deceased, if resident 458  
of the state. 459

(B) If the persons entitled to administer the estate under 460  
division (A) of this section fail to take or renounce 461  
administration voluntarily, the matter shall be set for hearing 462  
and notice given to the persons. 463

(C) If there are no persons entitled to administration, if 464  
they are for any reason unsuitable for the discharge of the 465  
trust, or if without sufficient cause they neglect to apply 466  
within a reasonable time for the administration of the estate, 467  
their right to priority shall be lost, and the court shall 468  
commit the administration to some suitable person who ~~is a~~ 469  
resident of the state fulfills the residency requirements under 470  
section 2109.21 of the Revised Code, or to the attorney general 471  
or the attorney general's designee, if the department of 472  
medicaid is seeking to recover the costs of medicaid services 473  
from the deceased pursuant to section 5162.21 or 5162.211 of the 474  
Revised Code. The person granted administration may be a 475  
creditor of the estate. 476

(D) This section applies to the appointment of an administrator de bonis non. 477  
478

**Sec. 2117.02.** An executor or administrator within three 479  
months after the date of appointment, and before the expiration 480  
of the period prescribed for the claim by section 2117.06 of the 481  
Revised Code, shall present any claim the executor or 482  
administrator has against the estate to the probate court for 483  
allowance. The claim shall not be paid unless allowed by the 484  
court. When an executor or administrator presents a claim 485  
amounting to five hundred dollars or more, the court shall fix a 486  
day not less than four nor more than six weeks from its 487  
presentation, when the testimony touching it shall be heard. The 488  
court shall issue an order directed to the executor or 489  
administrator requiring the executor or administrator to give 490  
notice in writing to all the heirs, legatees, or devisees of the 491  
decedent interested in the estate, and to the creditors named in 492  
the order. The notice shall contain a statement of the amount 493  
claimed, designate the time fixed for hearing the testimony, and 494  
be served upon the persons named in the order at least twenty 495  
days before the time for hearing. If any persons mentioned in 496  
the order are not residents of the county, service of notice may 497  
be made upon them by publication for three consecutive weeks in 498  
a newspaper published or circulating in the county, or as the 499  
court may direct. All persons named in the order shall be 500  
parties to the proceeding, and any other person having an 501  
interest in the estate may be made a party. 502

**Sec. 5301.071.** No instrument conveying real property, or 503  
any interest in real property, and of record in the office of 504  
the county recorder of the county within this state in which 505  
that real property is situated shall be considered defective nor 506  
shall the validity of that conveyance be affected because of any 507

of the following:	508
(A) The dower interest of the spouse of any grantor was	509
not specifically released, but that spouse executed the	510
instrument in the manner provided in section 5301.01 of the	511
Revised Code.	512
(B) The officer taking the acknowledgment of the	513
instrument having an official seal did not affix that seal to	514
the certificate of acknowledgment.	515
(C) The certificate of acknowledgment is not on the same	516
sheet of paper as the instrument.	517
(D) The executor, administrator, guardian, assignee,	518
attorney in fact, or trustee making the instrument signed or	519
acknowledged the same individually instead of in a	520
representative or official capacity.	521
(E) (1) The grantor or grantee of the instrument is a trust	522
rather than the trustee or trustees of the trust if the trust	523
named as grantor or grantee has been duly created under the laws	524
of the state of its existence at the time of the conveyance and	525
a memorandum of trust that complies with section 5301.255 of the	526
Revised Code and contains a description of the real property	527
conveyed by that instrument is recorded in the office of the	528
county recorder in which the instrument of conveyance is	529
recorded. Upon compliance with division (E) (1) of this section,	530
a conveyance to or from a trust shall be considered to be a	531
conveyance to or from the trustee or trustees of the trust in	532
furtherance of the manifest intention of the parties.	533
(2) Except as otherwise provided in division (E) (2) of	534
this section, division (E) (1) of this section shall be given	535
retroactive effect to the fullest extent permitted under section	536

28 of Article II, Ohio Constitution. Division (E) of this 537  
section shall not be given retroactive or curative effect if to 538  
do so would invalidate or supersede any instrument that conveys 539  
real property, or any interest in the real property, recorded in 540  
the office of the county recorder in which that real property is 541  
situated prior to the date of recording of a curative memorandum 542  
of trust or March 22, 2012, whichever event occurs later. 543

(F) A memorandum of ~~understanding~~ trust or other 544  
instrument complying with division (A) of section 5301.255 of 545  
the Revised Code is not recorded as required by that section, so 546  
long as the instrument from a trustee or trust as grantor, 547  
conveying or encumbering any interest in the real property has 548  
been of record for more than four years. 549

**Sec. 5701.11.** The effective date to which this section 550  
refers is the effective date of this section as amended by H.B. 551  
14 of the 136th general assembly. 552

(A) (1) Except as provided under division (A) (2) or (B) of 553  
this section, any reference in Title LVII or section 149.311, 554  
3123.90, 3770.07, 3770.071, 3770.072, 3770.073, 3772.37, ~~or~~ 555  
3775.16, or 5812.43 of the Revised Code to the Internal Revenue 556  
Code, to the Internal Revenue Code "as amended," to other laws 557  
of the United States, or to other laws of the United States, "as 558  
amended," means the Internal Revenue Code or other laws of the 559  
United States as they exist on the effective date. 560

(2) This section does not apply to any reference in Title 561  
LVII of the Revised Code to the Internal Revenue Code as of a 562  
date certain specifying the day, month, and year, or to other 563  
laws of the United States as of a date certain specifying the 564  
day, month, and year. 565

(B) (1) For purposes of applying section 5733.04, 5745.01, 566  
or 5747.01 of the Revised Code to a taxpayer's taxable year 567  
ending after March 15, 2023, and before the effective date, a 568  
taxpayer may irrevocably elect to incorporate the provisions of 569  
the Internal Revenue Code or other laws of the United States 570  
that are in effect for federal income tax purposes for that 571  
taxable year if those provisions differ from the provisions 572  
that, under division (A) of this section, would otherwise apply. 573  
The filing by the taxpayer for that taxable year of a report or 574  
return that incorporates the provisions of the Internal Revenue 575  
Code or other laws of the United States applicable for federal 576  
income tax purposes for that taxable year, and that does not 577  
include any adjustments to reverse the effects of any 578  
differences between those provisions and the provisions that 579  
would otherwise apply, constitutes the making of an irrevocable 580  
election under this division for that taxable year. 581

(2) Elections under prior versions of division (B) (1) of 582  
this section remain in effect for the taxable years to which 583  
they apply. 584

**Sec. 5801.04.** (A) Except as otherwise provided in the 585  
terms of the trust, Chapters 5801. to 5811. of the Revised Code 586  
govern the duties and powers of a trustee, relations among 587  
trustees, and the rights and interests of a beneficiary. 588

(B) The terms of a trust prevail over any provision of 589  
Chapters 5801. to 5811. of the Revised Code except the 590  
following: 591

(1) The requirements for creating a trust; 592

(2) ~~The~~ Subject to Chapter 5818. of the Revised Code, the 593  
duty of a trustee to act in good faith and in accordance with 594

the purposes of the trust;	595
(3) The requirement that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;	596 597
(4) The power of the court to modify or terminate a trust under sections 5804.10 to 5804.16 of the Revised Code;	598 599
(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Chapter 5805. of the Revised Code;	600 601 602
(6) The power of the court under section 5807.02 of the Revised Code to require, dispense with, or modify or terminate a bond;	603 604 605
(7) The power of the court under division (B) of section 5807.08 of the Revised Code to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;	606 607 608 609
(8) Subject to division (C) of this section, the duty under divisions (B) (2) and (3) of section 5808.13 of the Revised Code to notify current beneficiaries of an irrevocable trust who have attained twenty-five years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports;	610 611 612 613 614 615
(9) Subject to division (C) of this section, the duty under division (A) of section 5808.13 of the Revised Code to respond to the request of a current beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;	616 617 618 619 620
(10) The effect of an exculpatory term under section 5810.08 of the Revised Code;	621 622

(11) The rights under sections 5810.10 to 5810.13 of the Revised Code of a person other than a trustee or beneficiary;	623 624
(12) Periods of limitation for commencing a judicial proceeding;	625 626
(13) The power of the court to take any action and exercise any jurisdiction that may be necessary in the interests of justice;	627 628 629
(14) The subject-matter jurisdiction of the court for commencing a proceeding as provided in section 5802.03 of the Revised Code.	630 631 632
(C) With respect to one or more of the current beneficiaries, the settlor, in the trust instrument, may waive or modify the duties of the trustee described in divisions (B) (8) and (9) of this section. The waiver or modification may be made only by the settlor designating in the trust instrument one or more beneficiary surrogates to receive any notices, information, or reports otherwise required under those divisions to be provided to the current beneficiaries. If the settlor makes a waiver or modification pursuant to this division, the trustee shall provide the notices, information, and reports to the beneficiary surrogate or surrogates in lieu of providing them to the current beneficiaries. The beneficiary surrogate or surrogates shall act in good faith to protect the interests of the current beneficiaries for whom the notices, information, or reports are received. A waiver or modification made under this division shall be effective for so long as the beneficiary surrogate or surrogates, or their successor or successors designated in accordance with the terms of the trust instrument, act in that capacity.	633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651

(D) Except as provided under divisions (B) and (C) of this 652  
section, it is the policy of this state to give maximum effect 653  
to the principle of freedom of disposition and to the 654  
enforceability of governing instruments. 655

**Sec. 5801.07.** (A) Without precluding other means for 656  
establishing a sufficient connection with the designated 657  
jurisdiction, the terms of a trust designating the principal 658  
place of administration of the trust are valid and controlling 659  
if a trustee's principal place of business is located in or a 660  
trustee is a resident of the designated jurisdiction or if all 661  
or part of the administration occurs in the designated 662  
jurisdiction. 663

(B) A trustee is under a continuing duty to administer the 664  
trust at a place appropriate to its purposes, its 665  
administration, and the interests of the beneficiaries. If there 666  
is more than one place reasonably appropriate for administration 667  
of a trust, the trustee may administer the trust at any of those 668  
places. The original place of administration selected by the 669  
settlor remains an appropriate place of administration. 670

(C) Without precluding the right of the court to order, 671  
approve, or disapprove a transfer, the trustee, in furtherance 672  
of the duty prescribed by division (B) of this section, may 673  
transfer the trust's principal place of administration to 674  
another state or to a jurisdiction outside of the United States. 675

(D) The trustee shall notify the current beneficiaries of 676  
a proposed transfer of a trust's principal place of 677  
administration not less than sixty days before initiating the 678  
transfer. The notice of a proposed transfer shall include all of 679  
the following: 680

(1) The name of the jurisdiction to which the principal 681  
place of administration is to be transferred; 682

(2) The address and telephone number at the new location 683  
at which the trustee can be contacted; 684

(3) An explanation of the reasons for the proposed 685  
transfer; 686

(4) The date on which the trustee expects the proposed 687  
transfer to occur. 688

(E) In connection with a transfer of the trust's principal 689  
place of administration, the trustee may transfer some or all of 690  
the trust property to a successor trustee designated in the 691  
terms of the trust or appointed pursuant to section 5807.04 of 692  
the Revised Code. 693

**Sec. 5806.02.** (A) Unless the terms of a trust expressly 694  
provide that the trust is irrevocable, the settlor may revoke or 695  
amend the trust. This division does not apply to a trust created 696  
under an instrument executed before January 1, 2007. 697

(B) If a revocable trust is created or funded by more than 698  
one settlor, all of the following apply: 699

(1) To the extent the trust consists of community 700  
property, either spouse acting alone may revoke the trust, but 701  
the trust may be amended only by joint action of both spouses. 702

(2) To the extent the trust consists of property other 703  
than community property, each settlor may revoke or amend the 704  
trust with regard to the portion of the trust property 705  
attributable to that settlor's contribution. 706

(3) Upon the revocation or amendment of the trust by less 707  
than all of the settlors, the trustee shall promptly notify the 708

other settlors of the revocation or amendment. 709

(C) The settlor may revoke or amend a revocable trust by 710  
substantial compliance with a method provided in the terms of 711  
the trust or, if the terms of the trust do not provide a method, 712  
by any method manifesting clear and convincing evidence of the 713  
settlor's intent, provided that a revocable trust may not be 714  
revoked or amended by a will or codicil, regardless of whether 715  
it refers to the trust or specifically devises property that 716  
would otherwise have passed according to the terms of the trust 717  
unless the terms of the trust expressly allow it to be revoked 718  
or amended by a will or codicil. 719

(D) Upon revocation of a revocable trust, the trustee 720  
shall deliver the trust property as the settlor directs. 721

(E) An agent under a power of attorney may exercise a 722  
settlor's powers with respect to revocation, amendment, 723  
withdrawal of trust property, or the ability to direct the 724  
distribution of trust property only to the extent expressly 725  
authorized by both the terms of the trust and the power. 726

(F) A guardian of the estate of the settlor or, if no 727  
guardian of the estate has been appointed, a guardian of the 728  
person of the settlor may exercise a settlor's powers with 729  
respect to revocation, amendment, or distribution of trust 730  
property only with the approval of the court supervising the 731  
guardianship. 732

(G) A trustee who does not know that a trust has been 733  
revoked or amended is not liable to the settlor or settlor's 734  
successors in interest for distributions made and other actions 735  
taken on the assumption that the trust had not been amended or 736  
revoked. 737

**Sec. 5806.03.** (A) During the lifetime of the settlor of a 738  
revocable trust, whether or not the settlor has capacity to 739  
revoke the trust, the rights of the beneficiaries are subject to 740  
the control of the settlor, and the duties of the trustee, 741  
including the duties to inform and report under section 5808.13 742  
of the Revised Code, are owed exclusively to the settlor. If the 743  
trustee breaches its duty during the lifetime of the settlor, 744  
any recovery obtained from the trustee after the settlor becomes 745  
incapacitated or dies shall be apportioned by the court. If the 746  
settlor is living when the recovery is obtained, the court shall 747  
apportion the recovery between the settlor and the trust, or 748  
allocate the entire recovery to the settlor or the trust, as it 749  
determines to be equitable under the circumstances. If the 750  
settlor is not living when the recovery is obtained, the court 751  
shall apportion the recovery between the settlor's estate and 752  
the trust, or allocate the entire recovery to the settlor's 753  
estate or the trust, as it determines to be equitable under the 754  
circumstances. 755

(B) During the period the power may be exercised, the 756  
holder of a power of withdrawal has the rights of a settlor of a 757  
revocable trust under this section to the extent of the property 758  
subject to the power. 759

(C) While a trust is revocable, the trustee may follow a 760  
direction of the settlor that is contrary to the terms of the 761  
trust. 762

**Sec. 5808.161.** (A) As used in this section: 763

(1) "Protector" has the same meaning as in section 5818.01 764  
of the Revised Code. 765

(2) "Internal Revenue Code" has the same meaning as in 766

section 5747.01 of the Revised Code. 767

(B) With respect to any trust, or portion thereof, that is 768  
treated as being owned by a person under sections 671 to 679 of 769  
the Internal Revenue Code or any similar federal, state, or 770  
other tax law, the trustee, in the trustee's sole discretion, 771  
may pay to the appropriate taxing authority or may reimburse the 772  
person being treated as the owner any amount of the person's 773  
income tax liability attributable to the inclusion of the 774  
trust's income, capital gains, deductions, or credits in the 775  
calculation of the person's taxable income. In the trustee's 776  
sole discretion, the trustee may pay such tax reimbursement 777  
amount to the person directly or to the appropriate taxing 778  
authority. 779

(C) This section applies to all trusts, whether created 780  
on, before, or after the effective date of this section, unless 781  
any of the following apply: 782

(1) Applying this section would reduce or prevent a 783  
contribution to the trust from qualifying for a federal tax 784  
benefit, including a federal tax exclusion or deduction, which 785  
was originally claimed or could have been claimed for the 786  
contribution; 787

(2) The trust is a grantor retained annuity trust or 788  
grantor retained unitrust during a term interest under paragraph 789  
(c) (3) of section 2702 of the Internal Revenue Code; 790

(3) Applying this section would be the only trigger that 791  
would result in any trust, or portion thereof, as treated as 792  
being owned by a person under sections 671 to 679 of the 793  
Internal Revenue Code or any similar federal, state, or other 794  
tax law. This division does not prohibit reimbursement in a 795

subsequent year provided that the reimbursement relates to a 796  
year in which the person was treated as an owner under sections 797  
671 to 679 of the Internal Revenue Code. 798

(D) A trustee who acts in good faith in exercising or not 799  
exercising the power granted by this section is rebuttably 800  
presumed to have acted in accordance with the terms and purposes 801  
of the trust and the interests of the beneficiaries, and no 802  
inference of impropriety shall arise as a result of a trustee 803  
exercising or not exercising the power. 804

(E) (1) If the terms of a trust require the trustee to act 805  
at the direction or with the consent of a protector or that the 806  
decisions governed by this section be made directly by a 807  
protector, the powers granted by this section to the trustee 808  
shall instead or also be granted, pursuant to the terms of the 809  
trust, to the protector. 810

(2) If a protector is granted powers under division (E) (1) 811  
of this section, that person is subject to the limitations 812  
described in this section, which shall be applied as if the 813  
protector were a trustee. 814

(F) A person shall not be considered a beneficiary of a 815  
trust solely by reason of the application of this section or the 816  
application of a similar provision in the trust instrument. 817

**Sec. 5808.19.** (A) As used in this section, unless 818  
otherwise provided in any other provision in this section: 819

~~(1)~~ (1) (a) "Beneficiary" means includes the beneficiary of 820  
a primary gift, the beneficiary of a future interest, and 821  
~~includes~~ a class member if the future interest is in the form of 822  
a class gift. 823

(b) Except as otherwise provided in this division, the 824

amendment to division (A) (1) (a) of this section in this act 825  
shall be given retroactive effect to the fullest extent 826  
permitted under Ohio Constitution, Article II, Section 28. The 827  
amendment shall not be given retroactive effect in those 828  
instances where doing so would invalidate or supersede any 829  
instrument that conveys real property or any interest in the 830  
real property, recorded in the office of the county recorder in 831  
which that real property is situated. 832

(2) "Class member" means an individual who fails to 833  
survive the distribution date by at least one hundred twenty 834  
hours but who would have taken under a future interest in the 835  
form of a class gift had the individual survived the 836  
distribution date by at least one hundred twenty hours. 837

(3) "Descendant of a grandparent of the transferor" means 838  
an individual who would qualify as a descendant of a grandparent 839  
of the transferor under the rules of construction that would 840  
apply to a class gift under the transferor's will to the 841  
descendants of the transferor's grandparent. 842

(4) "Distribution date," with respect to a future 843  
interest, means the time when the future interest is to take 844  
effect in possession or enjoyment. The distribution date need 845  
not occur at the beginning or end of a calendar day but may 846  
occur at a time during the course of a day. 847

(5) "Future interest" means an alternative future interest 848  
or a future interest in the form of a class gift. 849

(6) "Future interest under the terms of a trust" means a 850  
future interest that was created by a transfer creating a trust 851  
or a transfer to an existing trust, or by an exercise of a power 852  
of appointment to an existing trust, that directs the 853

continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust. 854  
855

(7) "Per stirpes" means that the shares of the descendants of a beneficiary who does not survive the distribution date by at least one hundred twenty hours are determined in the same way they would have been determined under division (A) of section 2105.06 of the Revised Code if the beneficiary had died intestate and unmarried on the distribution date. 856  
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(8) "Revocable trust" means a trust that was revocable immediately before the settlor's death by the settlor alone or by the settlor with the consent of any person other than a person holding an adverse interest. A trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a power of attorney, or a guardian of the person or estate of the settlor, was serving. 862  
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(9) "Stepchild" means a child of the surviving, deceased, or former spouse of the transferor and not of the transferor. 870  
871

(10) "Transferor" means any of the following: 872

(a) The donor and donee of a power of appointment, if the future interest was in property as a result of the exercise of a power of appointment; 873  
874  
875

(b) The testator, if the future interest was devised by will; 876  
877

(c) The settlor, if the future interest was conveyed by inter vivos trust. 878  
879

(B) (1) (a) As used in "surviving descendants" in divisions 880

(B) (2) (b) (i) and (ii) of this section, "descendants" means the 881

descendants of a deceased beneficiary or class member who would 882  
take under a class gift created in the trust. 883

(b) As used in divisions (B) (2) (b) (i) and (ii) of this 884  
section, "surviving beneficiaries" or "surviving descendants" 885  
means beneficiaries or descendants, whichever is applicable, who 886  
survive the distribution date by at least one hundred twenty 887  
hours. 888

(2) Unless a contrary intent appears in the instrument 889  
creating a future interest under the terms of a trust, each of 890  
the following applies: 891

(a) A future interest under the terms of a trust is 892  
contingent on the beneficiary's surviving the distribution date 893  
by at least one hundred twenty hours. 894

(b) If a beneficiary of a future interest under the terms 895  
of a trust does not survive the distribution date by at least 896  
one hundred twenty hours and if the beneficiary is a grandparent 897  
of the transferor, a descendant of a grandparent of the 898  
transferor, or a stepchild of the transferor, either of the 899  
following applies: 900

(i) If the future interest is not in the form of a class 901  
gift and the deceased beneficiary leaves surviving descendants, 902  
a substitute gift is created in the beneficiary's surviving 903  
descendants. The surviving descendants take, per stirpes, the 904  
property to which the beneficiary would have been entitled had 905  
the beneficiary survived the distribution date by at least one 906  
hundred twenty hours. 907

(ii) If the future interest is in the form of a class 908  
gift, other than a future interest to "issue," "descendants," 909  
"heirs of the body," "heirs," "next of kin," "relatives," or 910

"family," or a class described by language of similar import 911  
that includes more than one generation, a substitute gift is 912  
created in the surviving descendants of the deceased beneficiary 913  
or beneficiaries. The property to which the beneficiaries would 914  
have been entitled had all of them survived the distribution 915  
date by at least one hundred twenty hours passes to the 916  
surviving beneficiaries and the surviving descendants of the 917  
deceased beneficiaries. Each surviving beneficiary takes the 918  
share to which the surviving beneficiary would have been 919  
entitled had the deceased beneficiaries survived the 920  
distribution date by at least one hundred twenty hours. Each 921  
deceased beneficiary's surviving descendants who are substituted 922  
for the deceased beneficiary take, per stirpes, the share to 923  
which the deceased beneficiary would have been entitled had the 924  
deceased beneficiary survived the distribution date by at least 925  
one hundred twenty hours. For purposes of division (B) (2) (b) (ii) 926  
of this section, "deceased beneficiary" means a class member who 927  
failed to survive the distribution date by at least one hundred 928  
twenty hours and left one or more surviving descendants. 929

(C) For purposes of this section, each of the following 930  
applies: 931

(1) Describing a class of beneficiaries as "surviving" or 932  
"living," without specifying when the beneficiaries must be 933  
surviving or living, such as a gift "for my spouse for life, 934  
then to my surviving (or living) children," is not, in the 935  
absence of other language in the trust instrument or other 936  
evidence to the contrary, a sufficient indication of an intent 937  
to negate the application of division (B) (2) (b) of this section. 938

(2) Subject to division (C) (1) of this section, attaching 939  
words of survivorship to a future interest under the terms of a 940

trust, such as "for my spouse for life, then to my children who 941  
survive my spouse" or "for my spouse for life, then to my then- 942  
living children" is, in the absence of other language in the 943  
trust instrument or other evidence to the contrary, a sufficient 944  
indication of an intent to negate the application of division 945  
(B) (2) (b) of this section. Words of survivorship under division 946  
(C) (2) of this section include words of survivorship that relate 947  
to the distribution date or to an earlier or an unspecified 948  
time, whether those words of survivorship are expressed as 949  
condition-precedent, condition-subsequent, or in any other form. 950

(3) A residuary clause in a will is not a sufficient 951  
indication of an intent that is contrary to the application of 952  
this section, whether or not the will specifically provides that 953  
lapsed or failed devises are to pass under the residuary clause. 954  
A residuary clause in a revocable trust instrument is not a 955  
sufficient indication of an intent that is contrary to the 956  
application of this section unless the distribution date is the 957  
date of the settlor's death and the revocable trust instrument 958  
specifically provides that upon lapse or failure the 959  
nonresiduary devise, or nonresiduary devises in general, pass 960  
under the residuary clause. 961

(D) If, after the application of divisions (B) and (C) of 962  
this section there is no surviving taker of the property, and a 963  
contrary intent does not appear in the instrument creating the 964  
future interest, the property passes in the following order: 965

(1) If the future interest was created by the exercise of 966  
a power of appointment, the property passes under the donor's 967  
gift-in-default clause, if any, which clause is treated as 968  
creating a future interest under the terms of a trust. 969

(2) If no taker is produced under division (D) (1) of this 970

section and the trust was created in a nonresiduary devise in 971  
the transferor's will or in a codicil to the transferor's will, 972  
the property passes under the residuary clause in the 973  
transferor's will. For purposes of division (D) (2) of this 974  
section, the residuary clause is treated as creating a future 975  
interest under the terms of a trust. 976

(3) If no taker is produced under divisions (D) (1) and (2) 977  
of this section, the transferor is deceased, and the trust was 978  
created in a nonresiduary gift under the terms of a revocable 979  
trust of the transferor, the property passes under the residuary 980  
clause in the transferor's revocable trust instrument. For 981  
purposes of division (D) (3) of this section, the residuary 982  
clause in the transferor's revocable trust instrument is treated 983  
as creating a future interest under the terms of a trust. 984

(4) If no taker is produced under divisions (D) (1), (2), 985  
and (3) of this section, the property passes to those persons 986  
who would succeed to the transferor's intestate estate and in 987  
the shares as provided in the intestate succession law of the 988  
transferor's domicile if the transferor died on the distribution 989  
date. Notwithstanding division (A) (10) of this section, for 990  
purposes of division (D) (4) of this section, if the future 991  
interest was created by the exercise of a power of appointment, 992  
"transferor" means the donor if the power is a nongeneral power, 993  
or the donee if the power is a general power. 994

(E) This section applies to all trusts that become 995  
irrevocable on or after March 22, 2012. This section does not 996  
apply to any trust that was irrevocable before March 22, 2012, 997  
even if property was added to the trust on or after March 22, 998  
2012. 999

**Sec. 5810.08. A—(A) As used in this section, "trust** 1000

directive" has the same meaning as in section 5818.01 of the 1001  
Revised Code. 1002

(B) Except as provided in division (C) of this section, a 1003  
term of a trust relieving a trustee of liability for breach of 1004  
trust is unenforceable to the extent that ~~it~~ either of the 1005  
following apply: 1006

(1) The term relieves the trustee of liability for breach 1007  
of trust committed in bad faith or with reckless indifference to 1008  
the purposes of the trust or the interests of the beneficiaries- 1009  
~~or~~; 1010

(2) The term was inserted as the result of an abuse by the 1011  
trustee of a fiduciary or confidential relationship ~~to~~ with the 1012  
settlor. 1013

(C) A trustee may be relieved from liability for 1014  
implementing or complying with a trust directive to the extent 1015  
that the relief meets any of the following criteria: 1016

(1) The relief is permitted or allowed by Chapter 5818. of 1017  
the Revised Code. 1018

(2) The relief is authorized by any term of a trust that 1019  
is permitted or allowed by Chapter 5818. of the Revised Code. 1020

(3) The relief is otherwise allowed by the Ohio Trust 1021  
Code. 1022

**Sec. 5812.43.** (A) A trustee shall make all of the 1023  
following disbursements from principal: 1024

(1) The remaining one-half of the disbursements described 1025  
in divisions (A) and (B) of section 5812.42 of the Revised Code; 1026

(2) All of the trustee's compensation calculated on 1027

principal as a fee for acceptance, distribution, or termination,	1028
and disbursements made to prepare property for sale;	1029
(3) Payments on the principal of a trust debt;	1030
(4) Expenses of a proceeding that concerns primarily	1031
principal, including a proceeding to construe the trust or to	1032
protect the trust or its property;	1033
(5) Premiums paid on a policy of insurance not described	1034
in division (D) of section 5812.42 of the Revised Code of which	1035
the trust is the owner and beneficiary;	1036
(6) Estate, inheritance, and other transfer taxes,	1037
including penalties, apportioned to the trust;	1038
(7) Disbursements related to environmental matters,	1039
including reclamation, assessing environmental conditions,	1040
remedying and removing environmental contamination, monitoring	1041
remedial activities and the release of substances, preventing	1042
future releases of substances, collecting amounts from persons	1043
liable or potentially liable for the costs of those activities,	1044
penalties imposed under environmental laws or regulations and	1045
other payments made to comply with those laws or regulations,	1046
statutory or common law claims by third parties, and defending	1047
claims based on environmental matters;	1048
<u>(8) Disbursements related to payments to a taxing</u>	1049
<u>authority or reimbursement to a person being treated as the</u>	1050
<u>owner under sections 671 to 679 of the Internal Revenue Code, as</u>	1051
<u>defined in section 5747.01 of the Revised Code, or any similar</u>	1052
<u>federal, state, or other tax law, for any amount of the person's</u>	1053
<u>income tax liability attributable to the inclusion of the</u>	1054
<u>trust's income, capital gains, deductions, or credits in the</u>	1055
<u>calculation of the person's taxable income.</u>	1056

(B) If a principal asset is encumbered with an obligation 1057  
that requires income from that asset to be paid directly to the 1058  
creditor, the trustee shall transfer from principal to income an 1059  
amount equal to the income paid to the creditor in reduction of 1060  
the principal balance of the obligation. 1061

**Sec. 5815.25.** (A) As used in this section, "fiduciary" 1062  
means a trustee under any testamentary, inter vivos, or other 1063  
trust, an executor or administrator, or any other person who is 1064  
acting in a fiduciary capacity for any person, trust, or estate. 1065

(B) If an instrument or other applicable written agreement 1066  
describes, appoints, or directs a fiduciary to handle only the 1067  
administrative duties and responsibilities of a trust, that 1068  
administrative fiduciary shall not have any duties, 1069  
responsibilities, or liabilities to the trust beneficiaries or 1070  
to other persons interested in a trust except for those 1071  
administrative duties and responsibilities specifically 1072  
described in the instrument or written agreement. The 1073  
administrative duties and responsibilities of a trust under this 1074  
division may include any of the following: 1075

(1) Opening and maintaining bank, brokerage, financial, or 1076  
other custodial accounts to receive trust income or 1077  
contributions and from which trust expenditures, bills, and 1078  
distributions may be disbursed; 1079

(2) Maintaining and handling trust records, reports, 1080  
correspondence, or communications; 1081

(3) Maintaining an office for trust business; 1082

(4) Filing any trust tax returns; 1083

(5) Employing agents in connection with the fiduciary's 1084  
administrative duties; 1085

(6) Taking custody of or storing trust property;	1086
(7) Any other similar administrative duties for the trust.	1087
(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>	1088 1089 1090 1091 1092 1093 1094 1095 1096 1097
<del>(1) Any loss that results from compliance with an authorized direction of the grantor, committee, person, or persons;</del>	1098 1099 1100
<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>	1101 1102 1103 1104 1105
<del>(D) Any administrative fiduciary as described in division (B) of this section or any excluded fiduciary as described in division (C) of this section is relieved from any obligation to perform investment reviews and make recommendations with respect to any investments to the extent the grantor, settlor, an advisory or investment committee, or one or more other persons have authority to direct the acquisition, disposition, or retention of any investment.</del>	1106 1107 1108 1109 1110 1111 1112 1113
<del>(E) (D) This section does not apply to the extent that the</del>	1114

instrument under which an administrative fiduciary as described 1115  
in division (B) of this section ~~or an excluded fiduciary as~~ 1116  
~~described in division (C) of this section~~ contains provisions 1117  
that are inconsistent with this section. 1118

**Sec. 5816.11.** (A) Any person may serve as an advisor of a 1119  
legacy trust, except that as follows: 1120

(1) A transferor may act as an advisor only in connection 1121  
with investment decisions. 1122

(2) No person shall concurrently serve as a trustee and 1123  
advisor of a legacy trust. 1124

(B) If a person concurrently serves or purports to 1125  
concurrently serve as trustee and advisor of a legacy trust in 1126  
violation of division (A)(2) of this section, then the effects, 1127  
consequences, and time period of that concurrent service are 1128  
subject to section 5818.06 of the Revised Code. 1129

(C) An advisor shall be considered a fiduciary unless the 1130  
terms of a legacy trust instrument expressly provide otherwise. 1131

**Sec. 5818.01.** As used in this chapter: 1132

(A) (1) "Breach of trust" means a breach of a fiduciary 1133  
duty imposed on a protector by this chapter, any other 1134  
applicable laws of this state, or the terms of a trust. 1135

(2) "Breach of trust" includes only acts or omissions 1136  
undertaken by a protector while acting in a fiduciary capacity, 1137  
and does not include any act or omission undertaken by a 1138  
protector in a nonfiduciary capacity. 1139

(3) "Breach of trust" does not encompass or include any 1140  
act or omission of a protector if the act or omission is allowed 1141  
by either of the following: 1142

(a) The terms of a trust, except where those terms are 1143  
expressly prohibited by this chapter or other applicable laws of 1144  
this state; 1145

(b) This chapter, except if the trust expressly prohibits 1146  
the act or omission. 1147

(B) "Directed trust" means a trust that includes terms 1148  
granting a power of direction to a protector. 1149

(C) "Legacy trust" has the same meaning as in section 1150  
5816.02 of the Revised Code. 1151

(D) "Ohio legacy trust act" means Chapter 5816. of the 1152  
Revised Code. 1153

(E) "Person" has the same meaning as in section 5801.01 of 1154  
the Revised Code. 1155

(F) "Power of direction" means a power vested in a 1156  
protector by the terms of a trust that allows a protector to do 1157  
any of the following: 1158

(1) Issue binding trust directives to another trust 1159  
officeholder, including trust directives that direct, order, 1160  
mandate, require, veto, bar, prohibit, or prevent any actual or 1161  
proposed decisions or actions by a trust officeholder regarding 1162  
the trust or trust estate, including decisions or actions 1163  
regarding trust investments, trust administration, or 1164  
distributions to or for trust beneficiaries; 1165

(2) Subject to section 5818.36 of the Revised Code, remove 1166  
another trust officeholder from a trust office, or appoint 1167  
another person to a trust office; 1168

(3) Modify or amend the trust instrument, including 1169  
amendments that do any of the following: 1170

<u>(a) Achieve favorable tax treatment;</u>	1171
<u>(b) Respond to or take advantage of any changes in any federal, state, local, or other tax laws that affect or might affect a trust, the trust settlor, any of the trust beneficiaries, or the administration of the trust;</u>	1172 1173 1174 1175
<u>(c) Respond to or take advantage of any changes in the circumstances of any beneficiary.</u>	1176 1177
<u>(4) Increase or decrease the interests of any beneficiaries to the trust;</u>	1178 1179
<u>(5) Modify the terms of any power of appointment granted by the trust, provided that, except to the extent the terms of a trust expressly allow otherwise, such a modification shall not allow appointments to any person or class of persons who are not beneficiaries of the trust;</u>	1180 1181 1182 1183 1184
<u>(6) Terminate a trust;</u>	1185
<u>(7) Change the situs or the governing law of a trust;</u>	1186
<u>(8) Make binding interpretations of the terms of a trust;</u>	1187
<u>(9) Require a trustee to consult with the protector regarding specified matters;</u>	1188 1189
<u>(10) Add or remove persons as beneficiaries of a trust;</u>	1190
<u>(11) Add or remove powers and discretion granted under the terms of a trust;</u>	1191 1192
<u>(12) Otherwise direct the administration of a trust or the conduct of a trust officeholder.</u>	1193 1194
<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</u>	1195 1196 1197

the person holding a power of direction as a "protector," 1198  
"adviser," "director," or some other name or title. 1199

(H) "Settlor," "state," "terms of a trust," "trustee," and 1200  
"trust instrument" have the same meanings as in section 5801.01 1201  
of the Revised Code. 1202

(I) "Trust directive" means a verbal, written, or other 1203  
directive, order, or instruction issued by a protector to 1204  
another trust officeholder whereby the protector, as part of the 1205  
protector's exercise or nonexercise of a power of direction, 1206  
requires the trust officeholder to implement, comply with, or 1207  
otherwise act in a manner consistent with the directive, order, 1208  
or instruction. 1209

(J) (1) "Trust office" means any office, position, or role 1210  
created by the terms of a trust whereby the person holding or 1211  
occupying such office is wholly or partially responsible for 1212  
either of the following: 1213

(a) The management, administration, or supervision of the 1214  
trust or the trust estate; 1215

(b) The investment of trust property. 1216

(2) Without limiting the generality of division (J) (1) of 1217  
this section, "trust office" includes the offices of trustee, 1218  
protector, advisor, and investment advisor. 1219

(3) "Trust office" does not include the position or role 1220  
of settlor or beneficiary. 1221

(4) "Trust office" does not include the position or role 1222  
of beneficiary surrogate, as defined in section 5801.01 of the 1223  
Revised Code, unless the trust instrument expressly provides 1224  
otherwise. 1225

<u>(K) "Trust officeholder" means any person who holds a</u>	1226
<u>trust office.</u>	1227
<u>(L) "Willful misconduct" means intentional wrongdoing.</u>	1228
<u>"Willful misconduct" does not include negligence, gross</u>	1229
<u>negligence, or recklessness.</u>	1230
<u>(M) "Wrongdoing" means malicious conduct or conduct</u>	1231
<u>designed to defraud or seek an unconscionable advantage.</u>	1232
<u>Sec. 5818.011. This chapter may be cited as the Ohio trust</u>	1233
<u>protector and directed trust act.</u>	1234
<u>Sec. 5818.02. (A) This chapter governs the rights, powers,</u>	1235
<u>discretion, duties, and liabilities of a protector in connection</u>	1236
<u>with the protector's exercise or nonexercise of a power of</u>	1237
<u>direction. Where permitted by this chapter, the terms of a trust</u>	1238
<u>prevail over this chapter and may modify, supplement, limit,</u>	1239
<u>eliminate, waive, or restrict the application of this chapter.</u>	1240
<u>(B) (1) Except as otherwise provided by the terms of a</u>	1241
<u>trust or section 5518.03 of the Revised Code, and to the maximum</u>	1242
<u>extent allowed by the Ohio Constitution and the United States</u>	1243
<u>Constitution, this chapter applies to any trust, whenever</u>	1244
<u>created, that is wholly or partially administered in this state</u>	1245
<u>or that is wholly or partially governed by the laws of this</u>	1246
<u>state.</u>	1247
<u>(2) The terms of a trust may provide that the laws of this</u>	1248
<u>state wholly or partially govern some of the rights, powers,</u>	1249
<u>discretion, duties, or liabilities of a protector while the laws</u>	1250
<u>of one or more jurisdictions other than this state govern all</u>	1251
<u>other rights, powers, discretion, duties, or liabilities of a</u>	1252
<u>protector.</u>	1253
<u>Sec. 5818.03. Any person who is, within the meaning of the</u>	1254

Ohio legacy trust act, an "advisor" is considered a protector in 1255  
connection with the legacy trust for the purposes of this 1256  
chapter. This chapter applies to any legacy trust that provides 1257  
for, permits, allows, or includes such an advisor, except that 1258  
the Ohio legacy trust act governs and controls in the event of 1259  
any conflict between the Ohio legacy trust act and this chapter. 1260

Sec. 5818.04. A protector is a fiduciary unless the terms 1261  
of a trust expressly provide otherwise. 1262

Sec. 5818.05. (A) Except as otherwise provided by this 1263  
section, any person who is not at the time in question a trustee 1264  
of a trust may serve as a protector of that trust. No person 1265  
shall concurrently serve as trustee and protector of the same 1266  
trust. 1267

(B) The terms of a trust may further restrict or limit the 1268  
eligibility of a person to serve as a protector of the trust. 1269

(C) If a trust instrument creates more than one trust, a 1270  
person may serve as protector of any such trust for which the 1271  
person is not concurrently serving as trustee. 1272

(D) The terms of a trust may provide that any rights, 1273  
powers, or authority granted to a protector may vest in and be 1274  
exercised by a trustee during any time the protector's office is 1275  
vacant or upon the occurrence of a stated contingency, but the 1276  
trustee shall be treated as holding and exercising those vested 1277  
rights, powers, and authorities in the trustee's capacity as a 1278  
trustee and fiduciary. 1279

(E) A person that is a transferor to a legacy trust, 1280  
within the meaning of the Ohio legacy trust act, may serve as an 1281  
advisor to that legacy trust only to the extent authorized by 1282  
division (A) of section 5816.11 of the Revised Code. 1283

Sec. 5818.06. If a person attempts or purports to 1284  
concurrently serve as a trustee and protector of the same trust, 1285  
both of the following apply: 1286

(A) The person shall be treated as having acted as a 1287  
trustee rather than as a protector during the time of the 1288  
attempted or purported concurrent service. 1289

(B) (1) The terms of a trust may provide rules and 1290  
procedures that permit a subsequent protector to wholly or 1291  
partially ratify, assume, affirm, reject, invalidate, or disavow 1292  
any trust directives issued by the person during the time of the 1293  
person's attempted or purported concurrent service as trustee 1294  
and protector. 1295

(2) Except to the extent otherwise provided by or decided 1296  
pursuant to the terms of a trust, a subsequent protector is 1297  
presumed to have ratified and affirmed all trust directives 1298  
issued by the person during the person's time of attempted or 1299  
purported concurrent service. 1300

(3) Any actions taken or treated as having been taken by 1301  
the person in the capacity of trustee during the person's time 1302  
of attempted or purported concurrent service shall be treated as 1303  
valid and effective to the same extent, and in the same fashion, 1304  
that the trustee actions would be if the office of protector was 1305  
vacant during the time of concurrent service. 1306

Sec. 5818.07. Subject to section 5818.13 of the Revised 1307  
Code, the rights, powers, discretion, duties, and liabilities of 1308  
a protector may be varied, allocated, and limited among one or 1309  
more protectors as follows: 1310

(A) The terms of a trust may do either or both of the 1311  
following: 1312

(1) Provide that a protector is a fiduciary in connection with some matters and not a fiduciary in connection with other matters; 1313  
1314  
1315

(2) Impose different duties and liabilities on a protector regarding different matters. 1316  
1317

(B) If a trust has more than one protector, the terms of the trust may do either or both of the following: 1318  
1319

(1) Allocate different rights, powers, duties, discretion, and authority to different protectors; 1320  
1321

(2) Provide different standards of liability for different protectors. 1322  
1323

(C) Protectors with jointly held powers shall act by a majority decision, except to the extent the terms of a trust provide otherwise. 1324  
1325  
1326

**Sec. 5818.08.** Except to the extent otherwise provided by the terms of a trust, a protector may take additional, supplemental, or ancillary steps that the protector reasonably deems to be necessary or appropriate to exercise or refrain from exercising a power of direction. 1327  
1328  
1329  
1330  
1331

**Sec. 5818.09.** Subject to sections 5818.10, 5818.11, 5818.12, and 5818.13 of the Revised Code, all of the following apply to the scope of a protector's discretion: 1332  
1333  
1334

(A) If a protector is acting in a fiduciary capacity, then the protector may exercise any power of direction to the same extent as, and subject to the same fiduciary obligations and limitations applicable to, a trustee of the trust if the trustee is authorized to exercise the same power. 1335  
1336  
1337  
1338  
1339

(B) If a protector is not acting in a fiduciary capacity, 1340

then, except as otherwise provided by the terms of the trust, 1341  
the protector may exercise any protector's power in the 1342  
protector's sole and absolute discretion. 1343

(C) Nothing in this section limits or impairs any power or 1344  
discretion that a person serving as protector might hold in such 1345  
person's capacity as a settlor or beneficiary. 1346

**Sec. 5818.10.** Except to the extent that the terms of a 1347  
trust expressly provide otherwise, a person serving as protector 1348  
shall not exercise a protector's power of direction to require 1349  
or compel a distribution to or for the benefit of such person. 1350

**Sec. 5818.11.** Notwithstanding the terms of a trust, a 1351  
protector shall not use a power of direction to do any of the 1352  
following: 1353

(A) Require another person to release a trust officeholder 1354  
from liability for the willful misconduct of that trust 1355  
officeholder; 1356

(B) Alter the terms of a trust in ways that exculpate a 1357  
trust officeholder from liability for the willful misconduct of 1358  
that trust officeholder; 1359

(C) Engage in self-dealing; 1360

(D) Except as provided by section 5818.33 of the Revised 1361  
Code, solely benefit the protector. 1362

**Sec. 5818.12.** (A) (1) If a protector holds a power of 1363  
direction in a fiduciary capacity, then the protector may be 1364  
found liable for breach of trust due to the protector's exercise 1365  
or nonexercise of that power of direction whenever the protector 1366  
has committed such a breach. 1367

(2) If a protector is found liable for breach of trust, 1368

then the protector's liability shall be the same that would 1369  
attach under the following circumstances: 1370

(a) To a sole trustee holding the same power in a 1371  
fiduciary capacity, if the protector is the only protector 1372  
holding that power; 1373

(b) To a co-trustee holding the same power in a fiduciary 1374  
capacity with another co-trustee, if the protector holds that 1375  
power with one or more other protectors. 1376

(3) Nothing in division (A) of this section precludes a 1377  
protector from being found liable for wrongful acts or omissions 1378  
other than, or in addition to, breach of trust. 1379

(B) (1) If a protector holds a power of direction in a 1380  
nonfiduciary capacity, then the protector is not liable for 1381  
breach of trust or other breach of fiduciary duty due to a 1382  
protector's exercise or nonexercise of that power of direction. 1383

(2) Nothing in division (B) of this section precludes a 1384  
protector from being found liable for wrongful acts or omissions 1385  
other than breach of trust or breach of fiduciary duty. 1386

(C) If a protector is licensed, certified, or otherwise 1387  
authorized by law to provide health care in the ordinary course 1388  
of the protector's business or practice of a profession, then, 1389  
to the extent the protector acts in the capacity of a health 1390  
care provider, the protector has no duty or liability under this 1391  
chapter. 1392

(D) The terms of a trust may impose duties or liabilities 1393  
on a protector in addition to the duties and liabilities imposed 1394  
by this chapter. 1395

**Sec. 5818.13.** (A) Whenever a protector is not acting as a 1396

fiduciary, the terms of a trust may vary, limit, restrict, or 1397  
eliminate the duties or liability of a protector, except that 1398  
the terms of a trust shall not do either of the following: 1399

(1) Eliminate a protector's liability for acts or 1400  
omissions that constitute self-dealing or willful misconduct by 1401  
the protector; 1402

(2) Preclude a court of competent jurisdiction from 1403  
removing a protector on account of the protector's self-dealing 1404  
or willful misconduct. 1405

(B) Whenever a protector is acting as a fiduciary, a term 1406  
of a trust relieving the protector of liability for breach of 1407  
trust is unenforceable if either of the following apply: 1408

(1) The term relieves the protector of liability for a 1409  
breach of trust committed through self-dealing, in bad faith, or 1410  
with reckless indifference to the purposes of the trust or the 1411  
interests of the beneficiaries; 1412

(2) The term is added to the trust as the result of an 1413  
abuse by the protector of a fiduciary or confidential 1414  
relationship with the settlor. 1415

(C) Notwithstanding any other provision of this chapter, a 1416  
protector is always liable for any act or omission that 1417  
constitutes willful misconduct or self-dealing by the protector. 1418

(D) In the event of any conflict between this section and 1419  
any other provision of this chapter, this section governs and 1420  
controls. 1421

**Sec. 5818.14.** (A) In any action against a protector, the 1422  
protector may assert any defense available at law or equity, 1423  
including any defense available under this chapter or under the 1424

terms of a trust. 1425

(B) If a protector is a fiduciary, then, in connection 1426  
with any claim for breach of trust asserted against that 1427  
protector, the protector may also assert any defense that would 1428  
be available to a trustee in that position and under similar 1429  
circumstances regarding an action for breach of trust against 1430  
the trustee. 1431

(C) A protector who undertakes acts or omissions in a 1432  
nonfiduciary capacity is not liable for breach of trust based on 1433  
such acts or omissions. 1434

**Sec. 5818.15.** (A) (1) Upon receipt of a trust directive, a 1435  
trust officeholder shall take reasonable steps to implement or 1436  
comply with the trust directive. 1437

(2) A trust officeholder has no duty to implement or 1438  
comply with a trust directive until the trust directive is 1439  
actually received by the trust officeholder. 1440

(B) Except to the extent that a trust officeholder's 1441  
conduct constitutes willful misconduct, all of the following 1442  
apply: 1443

(1) A trust officeholder may presume that a trust 1444  
directive is valid and appropriate. 1445

(2) A trust officeholder may rely upon information 1446  
provided by a protector in connection with a trust directive. 1447

(3) A trust officeholder may ask a protector to clarify a 1448  
trust directive. 1449

(4) A trust officeholder may require a protector to place 1450  
a verbal trust directive in writing before the trust 1451  
officeholder implements or complies with the trust directive. 1452

<u>(5) A trust officeholder has no liability to any person</u>	1453
<u>for implementing or complying with a trust directive.</u>	1454
<u>(C) A trust officeholder shall not do any of the following</u>	1455
<u>to the extent that such acts would constitute willful misconduct</u>	1456
<u>by the trust officeholder:</u>	1457
<u>(1) Presume that a trust directive is valid or</u>	1458
<u>appropriate;</u>	1459
<u>(2) Implement or comply with a trust directive;</u>	1460
<u>(3) Rely upon information provided by a protector in</u>	1461
<u>connection with a trust directive.</u>	1462
<u>(D) Any person who claims that a trust officeholder</u>	1463
<u>engaged in willful misconduct when implementing or complying</u>	1464
<u>with a trust directive bears the burden of proving that</u>	1465
<u>misconduct.</u>	1466
<u>(E) The terms of a trust may impose duties or liabilities</u>	1467
<u>on a trust officeholder in addition to the duties and</u>	1468
<u>liabilities imposed by divisions (A) to (D) of this section.</u>	1469
<u>(F) Notwithstanding any contrary provision of this</u>	1470
<u>chapter, a trust officeholder that has actually received a trust</u>	1471
<u>directive is always liable for any act or omission undertaken by</u>	1472
<u>the trust officeholder in connection with such trust directive</u>	1473
<u>that constitutes willful misconduct by the trust officeholder.</u>	1474
<u>(G) In the event of any conflict between this section and</u>	1475
<u>any other provision of this chapter, this section governs and</u>	1476
<u>controls.</u>	1477
<u>Sec. 5818.16. A trust officeholder may petition a court of</u>	1478
<u>competent jurisdiction for instructions regarding the trust</u>	1479
<u>officeholder's duties under section 5818.15 of the Revised Code.</u>	1480

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. 1481  
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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. 1488  
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**Sec. 5818.17.** The following rules of construction apply in connection with all protectors, directed trusts, and trust directives: 1492  
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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. 1495  
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(B) Courts shall liberally interpret, construe, and apply this chapter in ways and means that do all of the following: 1498  
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(1) (a) Recognize and allow directed trusts; 1500

(b) Uphold the rights, powers, discretion, and authority of a protector; 1501  
1502

(c) Uphold the validity and enforceability of trust directives. 1503  
1504

(2) Without limiting the generality of the foregoing, the term "power of direction" shall be liberally and broadly interpreted, construed, and applied. 1505  
1506  
1507

(C) The rule of the common law that statutes in derogation 1508

of common law are to be strictly construed does not apply to 1509  
this chapter. 1510

Sec. 5818.18. Except as otherwise provided by section 1511  
5818.19 of the Revised Code or the terms of a trust, protectors 1512  
and trustees have all of the following limited duties: 1513

(A) (1) A trustee shall provide information to a protector 1514  
to the extent that the information is reasonably related to the 1515  
powers and duties of the protector. 1516

(2) A protector shall provide information to a trustee to 1517  
the extent the information is reasonably related to the powers 1518  
or duties of the trustee. 1519

(B) (1) Subject to division (B) (2) of this section, a 1520  
protector, referred to in division (B) of this section as a 1521  
"first protector," shall provide information to another 1522  
protector, referred to in division (B) of this section as an 1523  
"other protector," to the extent the information is reasonably 1524  
related to the powers or duties of the other protector. 1525

(2) Subject to division (B) (3) of this section, the first 1526  
protector need not provide the other protector with information 1527  
related to either of the following: 1528

(a) Any power to direct that may be exercised by the other 1529  
protector without the consent or approval of the first 1530  
protector; 1531

(b) Any duty that the first protector does not share with 1532  
the other protector. 1533

(3) Division (B) (2) of this section does not apply if the 1534  
first protector's failure to provide the information to the 1535  
other protector would constitute willful misconduct by the first 1536

<u>protector.</u>	1537
<u>Sec. 5818.19. Except as otherwise provided by the terms of</u>	1538
<u>a trust:</u>	1539
<u>(A) A trustee does not have a duty to do any of the</u>	1540
<u>following:</u>	1541
<u>(1) Monitor or supervise a protector;</u>	1542
<u>(2) Inform a protector of the trustee's communications</u>	1543
<u>with beneficiaries regarding a protector's performance in or</u>	1544
<u>suitability for trust office;</u>	1545
<u>(3) Inform a protector of matters that were communicated</u>	1546
<u>in confidence to the trustee by a beneficiary, or that the</u>	1547
<u>trustee reasonably believes were communicated in confidence to</u>	1548
<u>the trustee by a beneficiary;</u>	1549
<u>(4) Inform or give advice to a settlor, beneficiary,</u>	1550
<u>trustee, or protector regarding any instance in which the</u>	1551
<u>trustee might have acted differently than a protector.</u>	1552
<u>(B) A protector, referred to in this division as a "first</u>	1553
<u>protector," does not have a duty to do any of the following:</u>	1554
<u>(1) Monitor a trustee or another protector;</u>	1555
<u>(2) Inform a trustee of the first protector's</u>	1556
<u>communications with beneficiaries regarding a trustee's</u>	1557
<u>performance in or suitability for trust office;</u>	1558
<u>(3) Inform another protector of the first protector's</u>	1559
<u>communications with beneficiaries regarding the other</u>	1560
<u>protector's performance in or suitability for trust office;</u>	1561
<u>(4) Inform a trustee or another protector of matters that</u>	1562
<u>were communicated in confidence to the first protector, or that</u>	1563

the first protector reasonably believes were communicated in 1564  
confidence to the first protector, by a beneficiary; 1565

(5) Inform or give advice to a settlor, beneficiary, 1566  
trustee, or another protector regarding any instance in which 1567  
the first protector might have acted differently than a trustee 1568  
or another protector. 1569

(C) (1) Subject to division (C) (2) of this section, no act, 1570  
omission, or course of conduct undertaken by a trustee or 1571  
protector impairs, limits, restricts, or waives divisions (A) 1572  
and (B) of this section. 1573

(2) A trustee may wholly or partially assume any duty 1574  
referred to or described in division (A) of this section, and a 1575  
protector may wholly or partially assume any duty referred to or 1576  
described in division (B) of this section, by means of an 1577  
express, written, and signed agreement to wholly or partially 1578  
assume that duty. 1579

**Sec. 5818.20.** (A) A protector, referred to in this 1580  
division as a "first protector," that acts in reliance on 1581  
information provided by a trustee or another protector is not 1582  
liable for any damage or loss directly or indirectly caused by 1583  
such reliance, except to the extent that the reliance 1584  
constitutes willful misconduct by the first protector. 1585

(B) A trustee that acts in reliance on information 1586  
provided by a protector is not liable for any damage or loss 1587  
directly or indirectly caused by such reliance, except to the 1588  
extent to that the reliance constitutes willful misconduct by 1589  
the trustee. 1590

(C) The terms of a trust may expressly impose on trustees 1591  
and protectors duties and liabilities greater than those imposed 1592

by divisions (A) and (B) of this section. 1593

Sec. 5818.21. This chapter does not apply to any exercise 1594  
or nonexercise of a power or authority by either of the 1595  
following: 1596

(A) A settlor, if the power or authority is conferred on 1597  
or retained by the settlor, in the capacity of a settlor, 1598  
pursuant to the terms of a trust; 1599

(B) A beneficiary, if the power or authority is conferred 1600  
on the beneficiary, in the capacity of a beneficiary, pursuant 1601  
to the terms of a trust. 1602

Sec. 5818.22. (A) A court shall consider both of the 1603  
following factors in determining whether a person is acting in 1604  
that person's capacity as a settlor, beneficiary, or protector: 1605

(1) The terms of a trust; 1606

(2) Any documents or communications regarding the person's 1607  
exercise or nonexercise of a power or authority. 1608

(B) A court shall presume that the capacity asserted or 1609  
identified by the person in a document is correctly asserted or 1610  
identified when all of the following conditions are met: 1611

(1) The person executes the document. 1612

(2) The document specifies the capacity in which a person 1613  
acts. 1614

(3) The terms of a trust grant the person the capacity 1615  
specified in the document. 1616

(C) If a person's capacity as settlor, beneficiary, or 1617  
protector is unclear after applying the factors provided in 1618  
divisions (A) and (B) of this section, then a court may consider 1619

any other facts or circumstances that may be relevant to 1620  
determining the capacity in which the person is acting. 1621

**Sec. 5818.23.** In addition to any other rights conferred 1622  
upon a trust officeholder by this chapter or by the terms of a 1623  
trust, a trust officeholder may ask a person that issues a 1624  
communication or instruction to clarify whether that 1625  
communication or instruction was issued in that person's 1626  
capacity as a settlor, beneficiary, or trust officeholder. If a 1627  
person purports to issue a communication or instruction in that 1628  
person's capacity as a trust officeholder, then any other trust 1629  
officeholder receiving the communication or instruction may ask 1630  
the issuer to specify the official capacity in which the issuer 1631  
is acting. 1632

**Sec. 5818.24.** To the maximum extent allowed by the Ohio 1633  
Constitution and the United States Constitution, the courts of 1634  
this state have personal jurisdiction over a person who accepts 1635  
an appointment to serve as a protector of a trust subject to 1636  
this chapter. 1637

**Sec. 5818.25.** (A) No beneficiary shall commence a 1638  
proceeding against a protector for breach of trust, based on 1639  
acts or omissions undertaken by the protector in a fiduciary 1640  
capacity, more than two years after the date that a beneficiary, 1641  
a representative of a beneficiary, or a beneficiary surrogate is 1642  
sent a report or accounting that adequately discloses the 1643  
existence of a potential claim for breach of trust and informs 1644  
the beneficiary, representative, or surrogate of the time 1645  
allowed for commencing a proceeding against the protector. 1646

(B) If a claim is brought against a protector regarding 1647  
acts or omissions undertaken by the protector in a nonfiduciary 1648  
capacity, or for causes of action other than breach of trust, 1649

then the action must be commenced within the same limitation 1650  
period that would otherwise apply to that claim. 1651

Sec. 5818.26. Nothing in this chapter requires a trust to 1652  
have a protector, and the terms of a trust may omit any 1653  
requirement for or reference to a protector. 1654

Sec. 5818.27. (A) The terms of a trust may set forth 1655  
reasonable procedures for the issuance or delivery of a trust 1656  
directive, or any other document related to or arising out of 1657  
any of the following: 1658

(1) The implementation of a trust directive; 1659

(2) A protector's exercise or nonexercise of the 1660  
protector's rights, powers, authority, or discretion; 1661

(3) Any other matter related to or arising out of such 1662  
protector's duties, liabilities, or service as protector. 1663

(B) The terms of a trust concerning the issuance or 1664  
delivery of any item described in division (A) of this section 1665  
are presumed to be both reasonable and the exclusive means for 1666  
such issuance or delivery. The presumptions set forth in this 1667  
division may be rebutted only by clear and convincing evidence. 1668  
Nothing in this division shall be construed to impair, limit, or 1669  
restrict a trust officeholder's rights to do any of the 1670  
following: 1671

(1) Seek clarification of a trust directive from a 1672  
protector or request that the protector put the trust directive 1673  
in writing pursuant to section 5818.15 of the Revised Code; 1674

(2) Seek judicial instructions pursuant to section 5818.16 1675  
of the Revised Code; 1676

(3) Ask a person to clarify the capacity in which such 1677

person is acting pursuant to section 5818.23 of the Revised 1678  
Code. 1679

(C) If the terms of a trust do not set forth reasonable 1680  
procedures for the issuance or delivery of any item described in 1681  
division (A) of this section, or if the terms of a trust provide 1682  
that those reasonable procedures are nonexhaustive, then any 1683  
such item may be issued or delivered by any method that is 1684  
consistent with section 5801.08 of the Revised Code. 1685

**Sec. 5818.28.** (A) A person designated as a protector of a 1686  
trust may accept such designation by complying with a method of 1687  
acceptance provided in the terms of the trust, exercising powers 1688  
or performing duties of the protector, or otherwise indicating 1689  
acceptance of the office and responsibilities of the protector. 1690

(B) A person designated as a protector who has not yet 1691  
accepted may reject the designation. A designated protector who 1692  
does not accept within a reasonable time after knowing of the 1693  
designation is deemed to have rejected the designation. 1694

**Sec. 5818.29.** All of the following apply to a trust except 1695  
to the extent that the terms of the trust provide otherwise: 1696

(A) A protector shall give bond to secure performance of 1697  
the protector's duties only if the court finds that a bond is 1698  
needed to protect the interests of the beneficiaries or is 1699  
required by the terms of the trust and the court has not 1700  
dispensed with the requirement. 1701

(B) The court may specify the amount of a bond, its 1702  
liabilities, and whether sureties are necessary. The court may 1703  
modify or terminate a bond at any time. 1704

(C) A regulated financial-service institution or licensed 1705  
trust company qualified to do trust business in this state need 1706

not give bond. 1707

Sec. 5818.30. Except as otherwise provided under the terms 1708  
of the trust, a vacancy in a protector position occurs under any 1709  
of the following circumstances: 1710

(A) A person designated as a protector rejects the 1711  
designation. 1712

(B) A person designated as a protector cannot be 1713  
identified or does not exist. 1714

(C) A protector resigns. 1715

(D) A protector is disqualified or removed. 1716

(E) A protector dies. 1717

(F) A guardian of the estate or person is appointed for an 1718  
individual serving as a protector. 1719

Sec. 5818.31. (A) Except as otherwise provided under the 1720  
terms of the trust, a protector may resign upon at least thirty 1721  
days' notice to any person who is a qualified beneficiary as 1722  
defined by section 5801.01 of the Revised Code, the settlor, if 1723  
living, and all trustees, or with the approval of the court. 1724

(B) In approving a resignation of a protector, the court 1725  
may issue orders and impose conditions reasonably necessary for 1726  
the protection of the trust property. 1727

(C) Any liability of a resigning protector or of any 1728  
sureties on the protector's bond for acts or omissions of the 1729  
protector is not discharged or affected by the protector's 1730  
resignation. 1731

Sec. 5818.32. Subject to the terms of a trust instrument, 1732  
all of the following apply: 1733

(A) The settlor, a trustee, or a beneficiary may request 1734  
the court to remove a protector, or the court may remove a 1735  
protector on its own initiative. 1736

(B) The court may remove a protector for any of the 1737  
following reasons: 1738

(1) The protector has committed a serious breach of trust, 1739  
but only if the protector is a fiduciary. 1740

(2) Lack of cooperation among protectors substantially 1741  
impairs the administration of the trust. 1742

(3) Because of unfitness, willful misconduct, or 1743  
unwillingness to serve as protector, the court determines that 1744  
removal of the protector best serves the interests of the 1745  
beneficiaries. 1746

(4) If the protector is a fiduciary, because of persistent 1747  
failure of the protector to discharge the duties imposed on the 1748  
protector by the trust instrument, the court determines that 1749  
removal of the protector best serves the interests of the 1750  
beneficiaries. 1751

(5) The protector has engaged in self-dealing. 1752

(C) Pending a final decision on a request to remove a 1753  
protector, or in lieu of or in addition to removing a protector, 1754  
the court may do any of the following, as necessary to protect 1755  
the trust property or the interests of the beneficiaries: 1756

(1) Compel the protector to perform the protector's 1757  
duties; 1758

(2) Enjoin the protector from engaging in acts of willful 1759  
misconduct or self-dealing; 1760

<u>(3) If the protector is a fiduciary, enjoin the protector</u>	1761
<u>from committing a breach of trust;</u>	1762
<u>(4) If the protector is serving in a nonfiduciary</u>	1763
<u>capacity, compel the protector to redress an act of willful</u>	1764
<u>misconduct by paying money, restoring property, or other means;</u>	1765
<u>(5) If the protector is a fiduciary, compel the protector</u>	1766
<u>to redress a breach of trust by paying money, restoring</u>	1767
<u>property, or other means;</u>	1768
<u>(6) Order a protector to account;</u>	1769
<u>(7) Appoint a special fiduciary to take possession of any</u>	1770
<u>trust property held by the protector;</u>	1771
<u>(8) Suspend the protector;</u>	1772
<u>(9) Reduce or deny compensation to the protector;</u>	1773
<u>(10) Void an act of the protector, impose a lien or a</u>	1774
<u>constructive trust on any trust property held by the protector,</u>	1775
<u>or trace trust property wrongfully disposed of by the protector</u>	1776
<u>and recover the property or its proceeds;</u>	1777
<u>(11) Order any other appropriate relief.</u>	1778
<b><u>Sec. 5818.33. (A) Except as provided in division (A) of</u></b>	1779
<b><u>section 5818.34 of the Revised Code, if the terms of a trust do</u></b>	1780
<b><u>not specify the protector's compensation, a protector is</u></b>	1781
<b><u>entitled to compensation that is reasonable under the</u></b>	1782
<b><u>circumstances.</u></b>	1783
<u>(B) If the terms of a trust specify the protector's</u>	1784
<u>compensation, the protector is entitled to be compensated as</u>	1785
<u>specified, but the court may allow more or less compensation if</u>	1786
<u>the duties of the protector are substantially different from</u>	1787

those contemplated when the trust was created or the 1788  
compensation specified by the terms of the trust would be 1789  
unreasonably low or high. 1790

(C) Beneficiaries of a trust shall be notified in advance 1791  
of any change in the method or rate of the trust protector's 1792  
compensation. 1793

**Sec. 5818.34.** (A) Neither of the following shall serve, or 1794  
be compensated for serving, as a protector unless that person is 1795  
related to the settlor or the attorney described by division (A) 1796  
(1) of this section makes the disclosures required under 1797  
division (B) of this section: 1798

(1) An attorney that prepared, or supervised the execution 1799  
of, the trust instrument that appointed the attorney or a person 1800  
described in division (A) (2) of this section as a protector; 1801

(2) A person related to an attorney described by division 1802  
(A) (1) of this section. 1803

(B) An attorney that prepares, or supervises the execution 1804  
of, a trust instrument which appoints the attorney, or a person 1805  
related to the attorney, as a protector shall disclose all of 1806  
the following information to the settlor before the trust 1807  
instrument is executed: 1808

(1) Unless specifically disqualified by the terms of the 1809  
trust, any person, including a family member or friend, is 1810  
eligible to serve as a protector. 1811

(2) Any person, including an attorney, who serves as a 1812  
protector is entitled to receive reasonable compensation for 1813  
serving as protector. 1814

(3) Compensation payable to the protector is in addition 1815

to any attorney's fees payable to the attorney that prepared, or 1816  
supervised the execution of, the trust instrument, or to that 1817  
attorney's firm, for legal services rendered to the protector. 1818

(4) Should compensation for the protector change, 1819  
beneficiaries must be notified. 1820

(5) Subject to section 5818.36 of the Revised Code, a 1821  
protector may remove trust officeholders unless otherwise 1822  
restricted by the term of the trust. 1823

(C) For the purposes of sections 5818.34 to 5818.37 of the 1824  
Revised Code: 1825

(1) An attorney is deemed to have prepared, or supervised 1826  
the execution of, a trust instrument if the preparation, or 1827  
supervision of the execution, of the trust instrument was 1828  
performed by an employee or other attorney employed by the same 1829  
firm as the attorney at the time the trust instrument was 1830  
executed. 1831

(2) A person is related to an individual if, at the time 1832  
the attorney prepared, or supervised the execution of, the trust 1833  
instrument, the person is any of the following: 1834

(a) A spouse of the individual; 1835

(b) A lineal ascendant or descendant of the individual; 1836

(c) A sibling of the individual; 1837

(d) A person related to the individual or the individual's 1838  
spouse by consanguinity or affinity, with whom the individual 1839  
maintains a close, familial relationship; 1840

(e) A spouse of a person described in division (C) (2) (d) 1841  
of this section; 1842

<u>(f) A person who cohabitates with the individual;</u>	1843
<u>(g) An employee or attorney employed by the same firm as</u>	1844
<u>the individual at the time the trust instrument is executed.</u>	1845
<u>(3) An attorney that prepared, or supervised the execution</u>	1846
<u>of, the trust instrument, or a person related to that attorney,</u>	1847
<u>is deemed to have been appointed as protector in the trust</u>	1848
<u>instrument when any of the following apply:</u>	1849
<u>(a) The trust instrument vests the power of direction in</u>	1850
<u>the attorney or a person related to the attorney.</u>	1851
<u>(b) The trust instrument vests the power of direction in</u>	1852
<u>the attorney, or a person related to the attorney, in the event</u>	1853
<u>that another person designated as protector is unable or</u>	1854
<u>unwilling to accept the designation.</u>	1855
<u>(c) The trust instrument vests the attorney, or a person</u>	1856
<u>related to the attorney, with the power to appoint a protector,</u>	1857
<u>and the appointed protector vests the power of direction in the</u>	1858
<u>attorney or a person related to the attorney.</u>	1859
<b><u>Sec. 5818.35. (A) A settlor shall execute a written</u></b>	1860
<b><u>statement acknowledging that the disclosures required under</u></b>	1861
<b><u>section 5818.34 of the Revised Code were made prior to executing</u></b>	1862
<b><u>the trust instrument. The written statement shall be made in a</u></b>	1863
<b><u>separate writing from the trust instrument but may be annexed to</u></b>	1864
<b><u>the trust instrument. The written statement may be executed</u></b>	1865
<b><u>before or after the execution of the trust appointing the</u></b>	1866
<b><u>attorney that prepared, or supervised the execution of, the</u></b>	1867
<b><u>trust instrument, or a person related to that attorney.</u></b>	1868
<u>(B) The written statement executed under division (A) of</u>	1869
<u>this section must be in substantially the following form:</u>	1870

"I, \_\_\_\_\_, declare that: 1871

I have designated my attorney, an attorney employed in the 1872  
same law firm as my attorney, or a person related to my attorney 1873  
as a protector in my trust instrument dated \_\_\_\_\_ . 1874

Before executing the trust, I was informed of all of the 1875  
following: 1876

(1) Unless specifically disqualified by the terms of the 1877  
trust, any person, including a family member or friend, is 1878  
eligible to serve as a protector. 1879

(2) Any person, including an attorney, who serves as a 1880  
protector is entitled to receive reasonable compensation for 1881  
serving as protector. 1882

(3) Compensation payable to the protector is in addition 1883  
to any attorney's fees payable to the attorney that prepared, or 1884  
supervised the execution of, the trust instrument, or to that 1885  
attorney's firm, for legal services rendered to the protector. 1886

(4) Should compensation for the protector change, 1887  
beneficiaries must be notified; 1888

(5) Subject to section 5818.36 of the Revised Code, a 1889  
protector may remove trust officeholders unless otherwise 1890  
restricted by the term of the trust. 1891

Settlor signature: \_\_\_\_\_ 1892

Settlor name: \_\_\_\_\_ 1893

Date: \_\_\_\_\_ " 1894

(C) The failure to obtain a written statement under 1895  
division (B) of this section does not affect the validity of a 1896  
trust instrument. 1897

Sec. 5818.36. (A) An attorney that prepared, or supervised 1898  
the execution of, the trust instrument and is serving as 1899  
protector of that trust that seeks to remove a trustee of the 1900  
trust shall file a petition in a court of competent 1901  
jurisdiction. 1902

(B) Upon a finding by the court that the attorney has 1903  
shown good cause, an attorney subject to division (A) of this 1904  
section may remove the trustee. 1905

(C) An attorney subject to division (A) of this section 1906  
shall not remove any trustee of the trust if the court has not 1907  
issued a finding of good cause. 1908

Sec. 5818.37. Except as provided in division (A) of 1909  
section 5818.34 of the Revised Code, nothing in section 5818.34 1910  
or 5818.35 of the Revised Code shall be construed to limit any 1911  
rights or remedies that any interested person may have at law or 1912  
equity. 1913

**Section 2.** That existing sections 1336.04, 1336.05, 1914  
1336.09, 1337.34, 1337.36, 1337.42, 1337.52, 2109.21, 2113.06, 1915  
2117.02, 5301.071, 5701.11, 5801.04, 5801.07, 5806.02, 5806.03, 1916  
5808.19, 5810.08, 5812.43, 5815.25, and 5816.11 of the Revised 1917  
Code are hereby repealed. 1918

**Section 3.** That section 5808.08 of the Revised Code is 1919  
hereby repealed. 1920