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136th General Assembly

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Sub. H. B. No. 446

Representatives Mathews, A., Stewart

**Cosponsors: Representatives Odioso, Brennan, Dovilla, Hall, D., Hiner,
Piccolantonio, Ray, Sigrist, Somani, Synenberg, Williams, Young**

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
Sec. 1336.05. (A) <u>A-Subject to division (C) of this section, a transfer made or an obligation incurred by a debtor</u>	74 75

is fraudulent as to a creditor whose claim arose before the 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 162
special skills or expertise possessed by the agent or in 163
reliance on the agent's representation that the agent has 164
special skills or expertise, the special skills or expertise 165
must be considered in determining whether the agent has acted 166
with care, competence, and diligence under the circumstances. 167

(F) Absent a breach of duty to the principal, an agent is 168
not liable if the value of the principal's property declines. 169

(G) An agent that exercises authority to delegate to 170
another person the authority granted by the principal or that 171
engages another person on behalf of the principal is not liable 172
for an act, error of judgment, or default of that person if the 173
agent exercises care, competence, and diligence in selecting and 174
monitoring the person. 175

(H) Except as otherwise provided in the power of attorney, 176
an agent is not required to disclose receipts, disbursements, or 177
transactions conducted on behalf of the principal unless ordered 178
by a court or requested by the principal, a guardian, a 179
conservator, another fiduciary acting for the principal, a 180
governmental agency having authority to protect the welfare of 181
the principal, or, upon the death of the principal, by the 182
personal representative or successor in interest of the 183
principal's estate. If so requested, within thirty days the 184
agent shall comply with the request or provide a writing or 185
other record substantiating why additional time is needed and 186
shall comply with the request within an additional thirty days. 187

Sec. 1337.36. (A) Any of the following persons may 188

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

costs and expenses, including reasonable attorney's fees, to any 216
party, to be paid by another party. 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

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

(b) An administrator, special administrator, administrator de bonis non, or administrator with the will annexed may be a nonresident of this state if the administrator, special administrator, administrator de bonis non, or administrator with the will annexed is related to the decedent by consanguinity or affinity. 331-336

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

(3) The court may require that a nonresident administrator, special administrator, administrator de bonis non, or administrator with the will annexed 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. 343-349

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

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

(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 392
consanguinity or affinity; 393

(ii) A private trust company or family trust company 394
organized under the laws of any state; 395

(iii) A person who resides in a state that has statutes or 396
rules that authorize the appointment of a nonresident of that 397
state who is not related to the testator by consanguinity or 398
affinity, as an ancillary administrator when the nonresident is 399
named in a will or nominated in accordance with any power of 400
nomination conferred in a will. 401

(b) If a person who is not a resident of this state and 402
who is named or nominated as described in division (B) (2) (a) of 403
this section so qualifies for appointment as an ancillary 404
administrator and if the provisions of section 2129.08 of the 405
Revised Code are satisfied, the court shall not refuse to 406
appoint the person, and shall not remove the person, as 407
ancillary administrator solely because the person is not a 408
resident of this state. 409

(c) The court may require that an ancillary administrator 410
who is not a resident of this state and who is named or 411
nominated as described in division (B) (2) (a) of this section, 412
assure that all of the assets of the decedent that are in the 413
county at the time of the death of the decedent will remain in 414
the county until distribution or until the court determines that 415
the assets may be removed from the county. 416

(d) The court may require a nonresident private trust 417

company or family trust company appointed under division (B) (2) 418
(a) (ii) of this section to appoint a resident agent to accept 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 477
administrator de bonis non. 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 <u>Subject to Chapter 5818. of the Revised Code, the</u>	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	596
lawful, not contrary to public policy, and possible to achieve;	597
(4) The power of the court to modify or terminate a trust	598
under sections 5804.10 to 5804.16 of the Revised Code;	599
(5) The effect of a spendthrift provision and the rights	600
of certain creditors and assignees to reach a trust as provided	601
in Chapter 5805. of the Revised Code;	602
(6) The power of the court under section 5807.02 of the	603
Revised Code to require, dispense with, or modify or terminate a	604
bond;	605
(7) The power of the court under division (B) of section	606
5807.08 of the Revised Code to adjust a trustee's compensation	607
specified in the terms of the trust which is unreasonably low or	608
high;	609
(8) Subject to division (C) of this section, the duty	610
under divisions (B) (2) and (3) of section 5808.13 of the Revised	611
Code to notify current beneficiaries of an irrevocable trust who	612
have attained twenty-five years of age of the existence of the	613
trust, of the identity of the trustee, and of their right to	614
request trustee's reports;	615
(9) Subject to division (C) of this section, the duty	616
under division (A) of section 5808.13 of the Revised Code to	617
respond to the request of a current beneficiary of an	618
irrevocable trust for trustee's reports and other information	619
reasonably related to the administration of a trust;	620

(10) The effect of an exculpatory term under section	621
5810.08 of the Revised Code;	622
(11) The rights under sections 5810.10 to 5810.13 of the	623
Revised Code of a person other than a trustee or beneficiary;	624
(12) Periods of limitation for commencing a judicial	625
proceeding;	626
(13) The power of the court to take any action and	627
exercise any jurisdiction that may be necessary in the interests	628
of justice;	629
(14) The subject-matter jurisdiction of the court for	630
commencing a proceeding as provided in section 5802.03 of the	631
Revised Code.	632
(C) With respect to one or more of the current	633
beneficiaries, the settlor, in the trust instrument, may waive	634
or modify the duties of the trustee described in divisions (B)	635
(8) and (9) of this section. The waiver or modification may be	636
made only by the settlor designating in the trust instrument one	637
or more beneficiary surrogates to receive any notices,	638
information, or reports otherwise required under those divisions	639
to be provided to the current beneficiaries. If the settlor	640
makes a waiver or modification pursuant to this division, the	641
trustee shall provide the notices, information, and reports to	642
the beneficiary surrogate or surrogates in lieu of providing	643
them to the current beneficiaries. The beneficiary surrogate or	644
surrogates shall act in good faith to protect the interests of	645
the current beneficiaries for whom the notices, information, or	646
reports are received. A waiver or modification made under this	647
division shall be effective for so long as the beneficiary	648
surrogate or surrogates, or their successor or successors	649

designated in accordance with the terms of the trust instrument, 650
act in that capacity. 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 than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

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

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

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

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

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

taken on the assumption that the trust had not been amended or 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 of appointment to an existing trust, that directs the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust.

(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.

(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.

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

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

(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;

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

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

(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 section and the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of division (D) (2) of this section, the residuary clause is treated as creating a future interest under the terms of a trust.	970 971 972 973 974 975 976
(3) If no taker is produced under divisions (D) (1) and (2) of this section, the transferor is deceased, and the trust was created in a nonresiduary gift under the terms of a revocable trust of the transferor, the property passes under the residuary clause in the transferor's revocable trust instrument. For purposes of division (D) (3) of this section, the residuary clause in the transferor's revocable trust instrument is treated as creating a future interest under the terms of a trust.	977 978 979 980 981 982 983 984
(4) If no taker is produced under divisions (D) (1), (2), and (3) of this section, the property passes to those persons who would succeed to the transferor's intestate estate and in the shares as provided in the intestate succession law of the transferor's domicile if the transferor died on the distribution date. Notwithstanding division (A) (10) of this section, for purposes of division (D) (4) of this section, if the future interest was created by the exercise of a power of appointment, "transferor" means the donor if the power is a nongeneral power, or the donee if the power is a general power.	985 986 987 988 989 990 991 992 993 994
(E) This section applies to all trusts that become irrevocable on or after March 22, 2012. This section does not apply to any trust that was irrevocable before March 22, 2012, even if property was added to the trust on or after March 22,	995 996 997 998

2012.	999
Sec. 5810.08. A <u>(A) As used in this section, "trust</u>	1000
<u>directive" has the same meaning as in section 5818.01 of the</u>	1001
<u>Revised Code.</u>	1002
<u>(B) Except as provided in division (C) of this section, a</u>	1003
<u>term of a trust relieving a trustee of liability for breach of</u>	1004
<u>trust is unenforceable to the extent that it either of the</u>	1005
<u>following apply:</u>	1006
<u>(1) The term</u> relieves <u>relieves</u> <u>the trustee of liability for breach</u>	1007
<u>of trust committed in bad faith or with reckless indifference to</u>	1008
<u>the purposes of the trust or the interests of the beneficiaries-</u>	1009
<u>or;</u>	1010
<u>(2) The term</u> was <u>was</u> <u>inserted as the result of an abuse by the</u>	1011
<u>trustee of a fiduciary or confidential relationship to with the</u>	1012
<u>settlor.</u>	1013
<u>(C) A trustee may be relieved from liability for</u>	1014
<u>implementing or complying with a trust directive to the extent</u>	1015
<u>that the relief meets any of the following criteria:</u>	1016
<u>(1) The relief is permitted or allowed by Chapter 5818. of</u>	1017
<u>the Revised Code.</u>	1018
<u>(2) The relief is authorized by any term of a trust that</u>	1019
<u>is permitted or allowed by Chapter 5818. of the Revised Code.</u>	1020
<u>(3) The relief is otherwise allowed by the Ohio Trust</u>	1021
<u>Code.</u>	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

trust's income, capital gains, deductions, or credits in the 1055
calculation of the person's taxable income. 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 administrative duties;	1084 1085
(6) Taking custody of or storing trust property;	1086
(7) Any other similar administrative duties for the trust.	1087
(C) 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:	1088 1089 1090 1091 1092 1093 1094 1095 1096 1097
(1) Any loss that results from compliance with an authorized direction of the grantor, committee, person, or persons;	1098 1099 1100
(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.	1101 1102 1103 1104 1105
(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 <u>settlor</u>, an advisory or investment committee, or one or more other persons have authority to direct the acquisition, disposition, or retention	1106 1107 1108 1109 1110 1111 1112

of any investment. 1113

~~(E)~~(D) This section does not apply to the extent that the 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

<u>another person to a trust office;</u>	1168
<u>(3) Modify or amend the trust instrument, including</u>	1169
<u>amendments that do any of the following:</u>	1170
<u>(a) Achieve favorable tax treatment;</u>	1171
<u>(b) Respond to or take advantage of any changes in any</u>	1172
<u>federal, state, local, or other tax laws that affect or might</u>	1173
<u>affect a trust, the trust settlor, any of the trust</u>	1174
<u>beneficiaries, or the administration of the trust;</u>	1175
<u>(c) Respond to or take advantage of any changes in the</u>	1176
<u>circumstances of any beneficiary.</u>	1177
<u>(4) Increase or decrease the interests of any</u>	1178
<u>beneficiaries to the trust;</u>	1179
<u>(5) Modify the terms of any power of appointment granted</u>	1180
<u>by the trust, provided that, except to the extent the terms of a</u>	1181
<u>trust expressly allow otherwise, such a modification shall not</u>	1182
<u>allow appointments to any person or class of persons who are not</u>	1183
<u>beneficiaries of the trust;</u>	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</u>	1188
<u>regarding specified matters;</u>	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</u>	1191
<u>terms of a trust;</u>	1192
<u>(12) Otherwise direct the administration of a trust or the</u>	1193

conduct of a trust officeholder. 1194

(G) "Protector" means a trust officeholder, other than a trustee, that holds a power of direction pursuant to the terms of a trust, regardless of whether the terms of a trust refer to the person holding a power of direction as a "protector," "adviser," "director," or some other name or title. 1195
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(H) "Settlor," "state," "terms of a trust," "trustee," and "trust instrument" have the same meanings as in section 5801.01 of the Revised Code. 1200
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(I) "Trust directive" means a verbal, written, or other directive, order, or instruction issued by a protector to another trust officeholder whereby the protector, as part of the protector's exercise or nonexercise of a power of direction, requires the trust officeholder to implement, comply with, or otherwise act in a manner consistent with the directive, order, or instruction. 1203
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(J) (1) "Trust office" means any office, position, or role created by the terms of a trust whereby the person holding or occupying such office is wholly or partially responsible for either of the following: 1210
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(a) The management, administration, or supervision of the trust or the trust estate; 1214
1215

(b) The investment of trust property. 1216

(2) Without limiting the generality of division (J) (1) of this section, "trust office" includes the offices of trustee, protector, advisor, and investment advisor. 1217
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(3) "Trust office" does not include the position or role of settlor or beneficiary. 1220
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

(K) "Trust officeholder" means any person who holds a 1226
trust office. 1227

(L) "Willful misconduct" means intentional wrongdoing. 1228
"Willful misconduct" does not include negligence, gross 1229
negligence, or recklessness. 1230

(M) "Wrongdoing" means malicious conduct or conduct 1231
designed to defraud or seek an unconscionable advantage. 1232

Sec. 5818.011. This chapter may be cited as the Ohio trust 1233
protector and directed trust act. 1234

Sec. 5818.02. (A) This chapter governs the rights, powers, 1235
discretion, duties, and liabilities of a protector in connection 1236
with the protector's exercise or nonexercise of a power of 1237
direction. Where permitted by this chapter, the terms of a trust 1238
prevail over this chapter and may modify, supplement, limit, 1239
eliminate, waive, or restrict the application of this chapter. 1240

(B) (1) Except as otherwise provided by the terms of a 1241
trust or section 5518.03 of the Revised Code, and to the maximum 1242
extent allowed by the Ohio Constitution and the United States 1243
Constitution, this chapter applies to any trust, whenever 1244
created, that is wholly or partially administered in this state 1245
or that is wholly or partially governed by the laws of this 1246
state. 1247

(2) The terms of a trust may provide that the laws of this 1248
state wholly or partially govern some of the rights, powers, 1249
discretion, duties, or liabilities of a protector while the laws 1250

of one or more jurisdictions other than this state govern all 1251
other rights, powers, discretion, duties, or liabilities of a 1252
protector. 1253

Sec. 5818.03. Any person who is, within the meaning of the 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 1313
with some matters and not a fiduciary in connection with other 1314
matters; 1315

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

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

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

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

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

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

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

(A) If a protector is acting in a fiduciary capacity, then 1335

the protector may exercise any power of direction to the same 1336
extent as, and subject to the same fiduciary obligations and 1337
limitations applicable to, a trustee of the trust if the trustee 1338
is authorized to exercise the same power. 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

<u>trust directive.</u>	1449
<u>(4) A trust officeholder may require a protector to place</u>	1450
<u>a verbal trust directive in writing before the trust</u>	1451
<u>officeholder implements or complies with the trust directive.</u>	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

any other provision of this chapter, this section governs and 1476
controls. 1477

Sec. 5818.16. A trust officeholder may petition a court of 1478
competent jurisdiction for instructions regarding the trust 1479
officeholder's duties under section 5818.15 of the Revised Code. 1480

The right conferred by this section is in addition to the 1481
trust officeholder's rights under section 5818.15 of the Revised 1482
Code to seek clarification of a trust directive from a protector 1483
and require a trust directive to be in writing, and the trust 1484
officeholder's right under section 5818.23 of the Revised Code 1485
to ask a person to clarify the capacity in which that person is 1486
acting. 1487

A trust officeholder may exercise the rights granted by 1488
sections 5818.15 and 5818.23 of the Revised Code in addition to 1489
or instead of petitioning for judicial instructions under this 1490
section. 1491

Sec. 5818.17. The following rules of construction apply in 1492
connection with all protectors, directed trusts, and trust 1493
directives: 1494

(A) Courts shall give effect to this state's policy of 1495
maximizing a settlor's freedom of disposition as set forth in 1496
division (D) of section 5801.04 of the Revised Code. 1497

(B) Courts shall liberally interpret, construe, and apply 1498
this chapter in ways and means that do all of the following: 1499

(1) (a) Recognize and allow directed trusts; 1500

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

(c) Uphold the validity and enforceability of trust 1503

directives. 1504

(2) Without limiting the generality of the foregoing, the 1505
term "power of direction" shall be liberally and broadly 1506
interpreted, construed, and applied. 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
protector. 1537

Sec. 5818.19. Except as otherwise provided by the terms of 1538
a trust: 1539

(A) A trustee does not have a duty to do any of the 1540
following: 1541

(1) Monitor or supervise a protector; 1542

(2) Inform a protector of the trustee's communications 1543
with beneficiaries regarding a protector's performance in or 1544
suitability for trust office; 1545

(3) Inform a protector of matters that were communicated 1546
in confidence to the trustee by a beneficiary, or that the 1547
trustee reasonably believes were communicated in confidence to 1548
the trustee by a beneficiary; 1549

(4) Inform or give advice to a settlor, beneficiary, 1550
trustee, or protector regarding any instance in which the 1551
trustee might have acted differently than a protector. 1552

(B) A protector, referred to in this division as a "first 1553
protector," does not have a duty to do any of the following: 1554

(1) Monitor a trustee or another protector; 1555

(2) Inform a trustee of the first protector's 1556
communications with beneficiaries regarding a trustee's 1557
performance in or suitability for trust office; 1558

(3) Inform another protector of the first protector's 1559
communications with beneficiaries regarding the other 1560
protector's performance in or suitability for trust office; 1561

(4) Inform a trustee or another protector of matters that 1562
were communicated in confidence to the first protector, or that 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 liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time. 1702
1703
1704

(C) A regulated financial-service institution or licensed trust company qualified to do trust business in this state need not give bond. 1705
1706
1707

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

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

(B) A person designated as a protector cannot be identified or does not exist. 1713
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 individual serving as a protector. 1718
1719

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

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

<u>(1) Compel the protector to perform the protector's</u>	1757
<u>duties;</u>	1758
<u>(2) Enjoin the protector from engaging in acts of willful</u>	1759
<u>misconduct or self-dealing;</u>	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
<u>Sec. 5818.33. (A) Except as provided in division (A) of</u>	1779
<u>section 5818.34 of the Revised Code, if the terms of a trust do</u>	1780
<u>not specify the protector's compensation, a protector is</u>	1781
<u>entitled to compensation that is reasonable under the</u>	1782
<u>circumstances.</u>	1783

(B) If the terms of a trust specify the protector's 1784
compensation, the protector is entitled to be compensated as 1785
specified, but the court may allow more or less compensation if 1786
the duties of the protector are substantially different from 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

(f) A person who cohabitates with the individual; 1843

(g) An employee or attorney employed by the same firm as 1844
the individual at the time the trust instrument is executed. 1845

(3) An attorney that prepared, or supervised the execution 1846
of, the trust instrument, or a person related to that attorney, 1847
is deemed to have been appointed as protector in the trust 1848
instrument when any of the following apply: 1849

(a) The trust instrument vests the power of direction in 1850
the attorney or a person related to the attorney. 1851

(b) The trust instrument vests the power of direction in 1852
the attorney, or a person related to the attorney, in the event 1853
that another person designated as protector is unable or 1854
unwilling to accept the designation. 1855

(c) The trust instrument vests the attorney, or a person 1856
related to the attorney, with the power to appoint a protector, 1857
and the appointed protector vests the power of direction in the 1858
attorney or a person related to the attorney. 1859

Sec. 5818.35. (A) A settlor shall execute a written 1860
statement acknowledging that the disclosures required under 1861
section 5818.34 of the Revised Code were made prior to executing 1862
the trust instrument. The written statement shall be made in a 1863
separate writing from the trust instrument but may be annexed to 1864
the trust instrument. The written statement may be executed 1865
before or after the execution of the trust appointing the 1866
attorney that prepared, or supervised the execution of, the 1867

trust instrument, or a person related to that attorney. 1868

(B) The written statement executed under division (A) of 1869
this section must be in substantially the following form: 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