

Witness Statement of D. Bowen Loeffler, Esq.

In Support of

AM1496X1 to H.B. 357

A Technical Corrections Act

Re:

The Ohio Legacy Trust Act (ORC §5816.01 et seq.)

Submitted To: Ohio House Civil Justice Committee

Date Prepared: 2019 December 9

Submitted By: D. Bowen Loeffler, Esq.
Co-chair, Ohio State Bar Association's Asset Protection and Legacy Trust
Committee
Loeffler Law Firm, LLC
122 N. Adams Street
Port Clinton, OH 43452
215 W. Washington Row
Sandusky, Ohio 44870
419-732-1041 (Tel.)
419-734-0089 (F)
pclaw@thirdplanet.net

Dear Members of the Ohio House Civil Justice Committee:

My name is D. Bowen ("Bo") Loeffler. I am the co-chair of the Ohio State Bar Association's Asset Protection and Legacy Trust Committee which is a part of the Ohio State Bar Association's, Estate Planning, Trust and Probate Law Section ("EPTPL-Section, John Furniss, Esq.- Chairman") and I am here today requesting your support and approval for certain technical amendments and corrections to the Ohio Legacy Trust Act statutes set forth in Ohio Revised Code 5816.01 et. seq.

I was one of the five (5) co-authors of the Ohio Legacy Trust Act statute which became law (HB 479- 129th General Assembly) on March 27, 2013. This particular statute permits the creation of Ohio Legacy Trusts, which are a type of estate planning and asset protection trust. Ohio is one of only 19 states in the United States which permits these types of trusts. Residents of Ohio and non-residents of Ohio can create these types of trusts. In both of these situations, the trustees of

the Ohio Legacy Trusts must be located in Ohio and typically many of the Ohio Legacy Trust investments will also be located and managed in or from Ohio.

One of the many tasks of the Asset Protection and Legacy Trust Committee is to keep our Ohio Legacy Trust statutes as up to date and also as competitive as possible. By doing this, our trust companies, banks, financial institutions and related Ohio service sectors and professionals, can more effectively compete both nationwide and worldwide, in maintaining and attracting Ohio Legacy Trust business and investment dollars to the state of Ohio. These updates can also be invaluable to estate planning professionals and judges by providing further clarifications and definitions to the statutes. In the seven (7) years since the Ohio Legacy Trust statute was enacted, there have been many state, national and federal law changes that impact Ohio's Legacy Trust statute. Now is the time to act and update our statute to keep pace with the changes that have occurred.

The proposed technical amendments and corrections which you have before you have also gone through the Ohio State Bar Association (OSBA) review process and have been unanimously approved. Included in my material is a letter signed by the OSBA's Director of Policy/Legislative Counsel, Scott Lundregan, Esq. and John Furniss, Esq. (Chair of the OSBA's EPTPL Section) which describes the process, actions and approvals taken by the Ohio State Bar Association.

I have requested attorney John Sullivan, who is a national expert on these types of asset protection trusts and who is also a member of the Ohio State Bar Association's Asset Protection and Legacy Trust Committee, to prepare and submit to the Committee a detailed presentation and analysis of the proposed technical amendments and corrections to the Ohio Legacy Trust Act (titled "Witness Statement In Support of AM1496K1 to H.B. 357- A Technical Corrections Act re: The Ohio Legacy Trust Act (ORC 5816.01 et. seq. – 13 pages)). John Sullivan's witness statement is included in my material. John was also one of the five (5) original co-authors of the Ohio Legacy Trust Act statute.

The Asset Protection and Legacy Trust Committee has also been working with Representative William Seitz (District-30) and Representative Thomas Patton (District-7) and their staff, to finalize the technical amendments and corrections to the Ohio Legacy Trust. We very much appreciate their input and support.

In closing, the Asset Protection and Legacy Trust Committee, looks forward to working with the members of the Civil Justice Committee to secure the passage of the technical amendments and corrections to the Ohio Legacy Trust Act.

Thank you for your time today.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Bowen Lippert". The signature is fluid and cursive, with a large initial "D" and "B".



**OHIO STATE BAR
ASSOCIATION**

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December 5, 2019

Members of the Civil Justice Committee
Ohio House of Representatives
77 South High Street
Columbus, Ohio 43215

Dear Members of the Civil Justice Committee:

The Ohio State Bar Association ("OSBA") supports the draft legislation prepared by the Legislative Service Commission labeled "Proposed Technical Corrections to Ohio Legacy Trust Act", version as of August 22, 2019.

The proposal was reviewed by the OSBA's Estate Planning, Trust, and Probate Law Section ("Section"). The Section consists of over 2,700 members, and one of its purposes is "to improve the law of Ohio by proposing, sponsoring, opposing and reporting on Ohio legislation affecting estate planning, trusts and estates." The Council is the governing body for the Section.

At the Council's September 13-14, 2019 meeting, the Council's Asset Protection and Legacy Trust Committee presented the draft legislation to the Council. After review and discussion, the Council was asked whether it supports this proposed legislation. The Council voted unanimously to support it.

The draft legislation was then presented to the OSBA Government Affairs Committee and our Board of Governors. Both of whom voted unanimously to accept the Council's recommendation to support the draft legislation.

Thank you for your interest in the OSBA's view on this proposal and, more generally, for your assistance in improving the laws of Ohio in an area that is of great importance to our members. If we can be of any further assistance with this matter, please do not hesitate to call upon us.

Sincerely,

Scott Lundregan, Esq.
Director of Policy/Legislative Counsel
Ohio State Bar Association

John Furniss, Esq.
Chair of EPTPL Section
Partner
Vorys, Sater, Seymour and Pease LLP

HEADQUARTERS
1700 Lake Shore Drive
Columbus, Ohio 43204

MAILING ADDRESS
P.O. Box 16562
Columbus, Ohio 43216-6562

PHONE
(614) 487-2050
(800) 282-6556

FAX & WEB
(614) 487-1008
www.ohioabar.org

**Witness Statement
In Support of
AM1496X1 to H.B. 357**

A Technical Corrections Act
re:
The Ohio Legacy Trust Act (ORC § 5816.01 et seq.)

Submitted To: Ohio House Civil Justice Committee

Date Prepared: 2019 December 9

Submitted By: John E. Sullivan III
Sullivan & Sullivan, Ltd.
25201 Chagrin Boulevard, Suite 350
Beachwood, Ohio 44122
216.896.0001 (Tel.)
216.896.0002 (F)
Jesullivan3@SullivanAndSullivan.com

Contents

1. Introduction..... 3

2. Background of the Legacy Trust Act..... 3

3. Jurisdictional Competition and Economic Consequences 4

4. Proposed Amendment to H.B. 357: Technical Corrections, etc. 5

 a. Relation between Legacy Trusts and Family Trust Companies 5

 i. Overview of Existing Law 5

 ii. Impact of Ohio’s FTC Act on Legacy Trust Practice 6

 iii. The Amendment will Create a Legal Nexus and Boost Ohio Business Activity 6

 iv. Avoiding Undue Beneficiary Influence 8

 b. Inserting Omitted Trust Decanting Rules: Transfers between Legacy Trusts 8

 c. IRS “Swap Power” Under IRC § 675 9

 d. Clarified Conflicts of Law Provisions 10

 e. Other Miscellaneous Points..... 11

5. Conclusion 12

Appendix 1: U.S. Asset Protection Trust States and Legislation..... 13

1. Introduction

This submission summarizes some of the key changes to the Ohio Legacy Trust Act, ORC § 5816.01 et seq. (the “**Legacy Trust Act**”), that are proposed by AM1496X1 to H.B. 357 (the “**Amendment**”).¹

For the reasons set forth below, the House Civil Justice Committee should approve and favorably report on the Amendment and its proposed changes to the Legacy Trust Act. These reasons include:

1. Keeping Ohio competitive with the growing number of other States that offer similar trusts, including the neighboring States of Indiana, Michigan, and West Virginia.
2. Clarifying certain aspects of Ohio’s current Legacy Trust Act.

2. Background of the Legacy Trust Act

Ohio’s Legacy Trust Act was adopted as part of a broader bill known as the Ohio Asset Management and Modernization Act of 2012, a/k/a House Bill 479 (129th General Assembly File No.201) (“**HB 479**”). The final version of HB 479 was unanimously approved by both chambers of the General Assembly in December 2012,² and the Legacy Trust Act took effect on 2013 March 27.³

The Legacy Trust Act authorizes a form of trust commonly known as an “asset protection trust” (or “**APT**”). In Ohio, such trusts are known as “legacy trusts.”⁴

In general, APT laws allow a trust settlor (i.e., the person who sets up a trust) to place his or her assets into trust and protect those assets from creditors, provided that the transfer into trust is not a fraudulent transfer vis-à-vis the complaining creditor.

¹ This statement sometimes refers to trusts as if they are entities. Such references are for convenience only. In reality, a trust is not an entity, but is instead a relationship whereby a trustee holds property as a fiduciary for the benefit of others. See, e.g., *Johnson v. Comr.*, 108 T.C. 448, 478 (1997) (“A trust is a relationship in which rights are created with respect to the specific property transferred by the settlor to the trustee”); *Pack v. Osborn*, 117 Ohio St.3d 14, ¶ 7 (2008) (“In general, a trust is defined as the right, enforceable in equity, to the beneficial enjoyment of property, the legal title to which is in another”) (citations and internal quotation marks omitted). Nothing in this statement is meant to suggest otherwise.

² See http://archives.legislature.state.oh.us/votes.cfm?ID=129_HB_479.

³ See legislative history to ORC § 5816.01, LAWriter version, available at:

- <http://codes.ohio.gov/orc/5816>.

⁴ See ORC § 5816.02(K)(1).

3. Jurisdictional Competition and Economic Consequences

Since 1996, APT statutes have become increasingly popular in the United States and have been adopted in a diverse array of states.⁵ Starting in 1996 with the APT laws of Alaska and Delaware, the U.S. has seen States adopt such statutes at an average rate of one (1) new state approximately every 1.25 years. Indeed, since Ohio's Legacy Trust Act went into effect in 2013, five (5) other states have adopted such statutes, specifically being Connecticut, Indiana, Michigan, Mississippi, and West Virginia. APT statutes are available in a large part of the U.S.,⁶ and the trend is to expect even more states to come on line in the future.

Moreover, such statutes are also available in many non-U.S. jurisdictions, and are derived from longstanding English common law trust rules followed in many non-U.S. common law jurisdictions.⁷

In each instance, the jurisdictions adopting APT statutes are competing for trust business, and the amounts under management can be considerable. As of 2000, authoritative estimates ranged up to **US \$6 Trillion** of global APT funds under management involving billions of dollars of trustee fees at stake, and it is likely that these figures have only increased in the intervening 19 years.⁸ Moreover, these figures give an incomplete picture of the economic impact of APT laws because this data omits certain key revenue streams, such as:

- Legal fees charged by attorneys for preparing and funding an APT, or for litigating issues related to an APT.
- Banking or brokerage fees charged by local financial institutions that hold trust funds inside a trust's home jurisdiction.
- Corporate, LLC, or partnership formation fees charged for organizing entities formed under local law and held by an APT.

Put simply, this is a valuable services market that is characterized by a competitive business

⁵ In alphabetical order, the specific 19 U.S. jurisdictions with asset protection trust legislation are Alaska, Connecticut, Delaware, Hawaii, Indiana, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming. Specific statutory citations appear in **Appendix 1**.

⁶ In rough terms, the U.S. states that currently have such statutes account for 20.6% of U.S. GDP, 23% of the U.S. population, 38% of all States, and 41% of all U.S. square mileage. See *Seventh Annual Great Lakes Asset Protection Institute*, Ohio State Bar Assoc. Reference Manual, Volume No. 19-036 (2019), pg. 3.5 – 3.6.

⁷ See Sullivan, *Gutting the Rule Against Self-Settled Trusts: How the New Delaware Trust Law Competes with Offshore Trusts*, 23 Del. J. Corp. L. 423, 432 – 438 (1998).

⁸ See Nenno & Sullivan, 868 T.M., *Domestic Asset Protection Trusts* (2010), Part I(E)(9), pg. A-7, and materials cited therein (published as part of BNA's Tax Management portfolio series).

environment that gives trust settlors numerous foreign and domestic options.

More recently, the regional market has become even more competitive for Ohio. Since Ohio adopted its Legacy Trust Act in 2012, three (3) neighboring states have adopted APT statutes, specifically being West Virginia in 2016,⁹ Michigan in 2017,¹⁰ and Indiana in 2019.¹¹

Unsurprisingly, this competitive environment has prompted commentators to make comparative APT rankings. While opinions vary, Ohio frequently ranks in the top three (3) U.S. jurisdictions.¹² This high ranking enables Ohio trust practitioners and trustees to successfully market Ohio APTs to people throughout the United States and overseas. However, the continuing growth of U.S. APT jurisdictions means that Ohio must work to keep its competitive advantage.

Accordingly, Ohio needs to keep its statute up to date, technically correct, and in sync with other developments in trust law both inside and outside Ohio.

4. Proposed Amendment to H.B. 357: Technical Corrections, etc.

The Amendment is essentially a technical corrections act that also includes one noteworthy new feature. The new item relates to the relationship between “family trust companies” (or “FTCs”) and Ohio legacy trusts. The balance of the Amendment includes a series of technical clean-ups, some of which involve minor grammatical clean-ups, one of which corrects a prior oversight related to decantings from one legacy trust to another, and some of which clarify pre-existing Ohio law.

The following is a more detailed analysis:

a. Relation between Legacy Trusts and Family Trust Companies

i. Overview of Existing Law

The Amendment’s most significant change to the Legacy Trust Act pertains to ORC § 5816.02(S) and its definition of “**qualified trustee.**”

⁹ See <https://www.jenkinsfenstermaker.com/blog/2018/08/estate-planning-asset-protection-strategies-in-wv.shtml>.

¹⁰ See <https://www.wnj.com/Publications/Introducing-Michigans-New-Asset-Protection-Trust>.

¹¹ See:

- <https://www.theindianalawyer.com/articles/50406-indianas-legacy-trust-law-creates-new-asset-protection-strategy>.

¹² See, e.g., Steve Oshins’ 10th Annual Domestic Asset Protection Trust State Rankings Chart, available at:

- https://db78e19b-dca5-49f9-90f6-1acaf5eaa6ba.filesusr.com/ugd/b211fb_8281d9df73e7457998ad5605a5e9f060.pdf

A “qualified trustee” is an essential element of a legacy trust.¹³ In most legacy trusts, the qualified trustee has a significant role in trust administration and/or the approval or disapproval of distributions to trust beneficiaries. In some legacy trusts, the qualified trustee also has a significant role in trust investment decisions.

Under existing law, a “qualified trustee” basically boils down to a natural person who is an Ohio resident or an institutional trustee subject to state or federal regulation.

However, current law does not allow FTCs authorized by ORC § 1112.01, et seq., to serve as qualified trustees. This is unsurprising: the Legacy Trust Act took effect in 2013, as noted above, while the Family Trust Company Act did not take effect until three (3) years later, in 2016.¹⁴ Consequently, there was no need to consider FTCs when the Legacy Trust Act was adopted.

ii. Impact of Ohio’s FTC Act on Legacy Trust Practice

With the adoption of the Ohio Family Trust Company Act, many Ohio practitioners report that clients have asked about the possible use of an FTC as a qualified trustee. If allowed, such use would enable families to maintain privacy and family control over family assets, which would encourage additional use of Ohio trust laws, Ohio trust attorneys, and related Ohio services.

However, families interested in this option cannot enter such arrangements in Ohio, and are currently instead forced to look for this option in other jurisdictions that allow this approach, such as South Dakota.¹⁵ This competitive disadvantage will inevitably cost Ohio business.

iii. The Amendment will Create a Legal Nexus and Boost Ohio Business Activity

On the other hand, it’s important that FTCs maintain certain meaningful minimum contacts with Ohio. Such contacts establish a nexus between Ohio and a trust and enhance arguments that Ohio law should apply even if the FTC is organized by an out-of-state family. To that end, under proposed ORC § 5816.02(S)(b)(ii)(I) – (IV), FTCs can act as qualified trustees of legacy trusts only if they meet all of the following criteria:

¹³ See ORC § 5816.02(K)(1)(a).

¹⁴ See legislative history to ORC § 1112.01, LAWriter version, available at:

- <http://codes.ohio.gov/orc/1112.01v1>

¹⁵ See Admin. Rule of S. Dak. § 20:07:22:03. See also:

- <https://dlr.sd.gov/banking/trusts/default.aspx#types>
- <https://www.sdtrustco.com/pftc-regulated-and-unregulated/>

- An FTC must maintain an office in Ohio, on either an exclusive basis or on a shared basis with one or more other persons.
- An FTC must open and maintain at least one bank or brokerage account in Ohio.
- An FTC must maintain in Ohio, on an exclusive or nonexclusive basis, electronic or physical records for the legacy trust.
- An FTC must satisfy all requirements imposed by ORC § 1112.14(B), (C), (D), and (E)(1), which specifically means:
 - Subdivision B: Holding in Ohio at least two annual governing board meetings with a quorum of the board members being physically present.
 - Subdivision C: Employ, engage, or contract with at least one individual, on a part-time basis, to provide the FTC with services in this state.
 - Subdivision D: Perform wholly or partly in Ohio at least three (3) statutorily specified administrative or custodial functions related to the FTC. The list of such functions consists of annual account reviews, annual investment reviews, trust accountings, account correspondence, completion of trust account tax returns, and the distribution of account statements.
 - Subdivision E(1): Maintain a board of at least three (3) directors, one of whom must be an Ohio resident.
- An FTC must also satisfy the normal requirements applicable to all qualified trustees by ORC § 5816.02(S)(2).¹⁶
- An must also be a corporation or LLC organized in Ohio.¹⁷

As a legal matter, the combined effect of these provisions is to assure that any out-of-state family that uses an Ohio FTC as the qualified trustee of an Ohio legacy trust will have a meaningful nexus with Ohio for choice-of-law purposes.

¹⁶ ORC 5816.02(S)(2) requires a qualified trustee to maintain or arrange for custody in Ohio of some or all of the legacy trust in question, maintain records for the legacy trust on an exclusive or nonexclusive basis, prepare or arranges for the preparation of required income tax returns for the legacy trust, or otherwise materially participate in the administration of the legacy trust.

¹⁷ ORC § 1112.01(H).

As an economic matter, these provisions assure that any such out-of-state family will materially contribute to the Ohio economy in some fashion, both through the engagement of Ohio personnel to perform trust-related services and through the use of Ohio facilities for office, meeting, and storage purposes.

In short, the Amendment's FTC provisions will enable Ohio to compete with jurisdictions like South Dakota that already offer such a planning option. In other words, Ohio will be better positioned to attract and retain FTC-APT trust business, and won't need to watch it slip away to other jurisdictions.

iv. Avoiding Undue Beneficiary Influence

The Amendment's FTC provisions also substantially minimize the risk that a beneficiary – including a settlor beneficiary – will exercise undue influence over trust distribution decisions. In particular, proposed ORC § 5816.02(S)(b)(ii)(V) specifically prohibits each beneficiary of a legacy trust from holding any vote or authority over distribution decisions taken by an FTC regarding that beneficiary.¹⁸

This provision will guard against sham trust allegations by assuring that persons other than the beneficiary in question will control distributions to that beneficiary.

b. Inserting Omitted Trust Decanting Rules: Transfers between Legacy Trusts

Proposed ORC § 5816.10(I) will add a new decanting provision to deal with transfers from one legacy trust to another legacy trust.

Decanting is a valuable planning tool. It often allows planners and clients to “fix” outdated estate plans at minimal cost by moving assets from an old trust with inflexible or harmful clauses to another trust with more flexible or beneficial clauses.

Current Ohio law already allows for trust decanting in general.¹⁹ Current Ohio law also allows for decantings from non-APTs to an Ohio legacy trust,²⁰ and for decantings from a non-Ohio APT to

¹⁸ “No beneficiary of a legacy trust, when acting for or on behalf of a family trust company, or when acting as an officer, manager, director, employee, or other agent or representative of a family trust company, may have any vote or authority regarding any decision to make or withhold any distribution from such legacy trust to or for the benefit of that beneficiary.” Proposed ORC § 5816.02(S)(b)(ii)(V).

¹⁹ See ORC § 5808.18.

²⁰ See ORC § 5816.10(C), (E).

an Ohio legacy trust.²¹ However, nothing in current Ohio law addresses the effect of decanting from one legacy trust to another legacy trust.

Proposed ORC § 5816.10(I) corrects this oversight by expressly addressing and allowing such decantings.

Significantly, proposed ORC § 5816.10(I) contains “relation back” or “tacking” clauses regarding the date of disposition. In particular:

- If decanted assets were previously held by one or more prior legacy trusts on a continuous basis, then the date of disposition to the new legacy trust (i.e., the legacy trust that receives the decanted assets) will relate back to the date on which the decanted assets were first placed into the earliest legacy trust to hold the assets.
- The Amendment also addresses cases in which assets have been decanted from a non-legacy trust to one legacy trust and then again to another new legacy trust. Under current ORC § 5816.10(E)(2), if a legacy trust receives assets from a non-legacy trust governed by an APT statute similar to the Legacy Trust Act, then the date of disposition to the legacy trust will relate back to the date on which those assets were first contributed to the non-legacy trust. If thereafter the first legacy trust decants to another legacy trust, the date of disposition will again relate back to the original date of disposition to the non-legacy trust.

The Amendment’s proposed “relation back” or “tacking” rules eliminate any uncertainty about the date of disposition, preserve pre-existing rights under relevant statutes of limitation, and avoid an inadvertent revival of claims due to the creation of a new date of disposition.

c. IRS “Swap Power” Under IRC § 675

The Amendment will allow legacy trusts to expressly include a “swap power” under § 675 of the Internal Revenue Code (the “IRC”).

Specifically, under proposed ORC § 5816.05(N), a trust settlor will be allowed to reacquire trust property by substituting property of equivalent value. In effect, a settlor will be able to hold a “call option” and force a trustee to sell trust property back to the settlor at fair market value.

Note that a trustee is typically already free to sell trust assets at fair market value to any beneficiary, including the settlor, so an avenue already exists for executing a swap. Further, the “equivalent value” rule assures that any such swap under new ORC § 5816.05(N) will not cause any material change to the balance sheets of a settling trust or a buying settlor. Thus, the proposed “swap

²¹ See ORC § 5816.10(E)(2).

power” will not have any material impact on trust economics.

However, a “swap power” can be very useful for income tax planning. Inclusion of a “swap power” in a trust is one of the ways to generate “grantor trust” status,²² which causes all trust income to flow through to the grantor,²³ whereupon that income will be taxed at individual income tax rates. This is attractive because individual income tax rates avoid the “bracket compression” associated with trust income taxes.²⁴

The language of proposed new ORC § 5816.05(N) is designed to track the language of IRC § 675(4)(C) and related IRS regs and rulings.²⁵ The Amendment states that the settlor’s swap power must be exercisable in a non-fiduciary capacity because federal tax law so requires.²⁶ However, applicable tax rules also require the trustee to act in a fiduciary capacity when determining whether a settlor is actually tendering property of equivalent value.²⁷ This tax requirement imposed on trustees further assures that any swap will actually be for equivalent value.

d. Clarified Conflicts of Law Provisions

The Legacy Trust Act contains its own fraudulent transfer rules that are specifically applicable to legacy trusts.²⁸ ORC § 5816.10(A) already provides that these fraudulent transfer provisions will preempt any conflicting fraudulent transfer laws.²⁹

The Amendment will strengthen § 5816.10(A). The new language expressly states that, to the maximum extent allowed under the Ohio and U.S. Constitutions, this preemptive effect applies to any conflicting fraudulent transfer laws of any jurisdiction. This new version of § 5816.10(A) is not meant to change existing Ohio law, but is simply intended to clarify its scope. It is offered in response to questions and comments from out-of-state practitioners, who were unclear about the

²² See IRC § 675(4)(C).

²³ See IRC § 671.

²⁴ Under “bracket compression,” individuals and trusts ultimately pay the same maximum income tax rate, but the maximum rates (and all other lower rates) apply to trust income at much lower thresholds, thus causing trusts to experience a much higher average income tax rate. For a handy comparison of the 2019 trust and individual tax rates, see:

- <https://www.putnam.com/literature/pdf/II985-1c8a682ed561733a32008b46dd84b79f.pdf>

²⁵ See, e.g., 26 U.S. Code § 675(4)(C); 26 CFR § 1.675-1(b)(4); Rev. Rul. 2008-22; PLR 201235006; PLR 200842007.

²⁶ See, e.g., 26 U.S. Code § 675(4)(C); 26 CFR § 1.675-1(b)(4); Rev. Rul. 2008-22.

²⁷ See Rev. Rul. 2008-22.

²⁸ ORC §§ 5816.07, 5816.08.

²⁹ “In the event of any conflict between any provision of this chapter and any provision of Chapter 1336. of the Revised Code [i.e., the Ohio Uniform Fraudulent Transfer Act] or any other provision of law similar to any provision of Chapter 1336. of the Revised Code, the provision of this chapter shall control and prevail.” ORC § 5816.10(A).

preemptive scope of the current § 5816.10(A).

Additionally, proposed ORC § 5816.10(K) states that the Legacy Trust Act reflects the “strong public policy” of Ohio. This is designed to: i.) Reduce the risk that Ohio law will be ignored if any substantive dispute regarding a legacy trust is adjudicated outside Ohio, and, ii.) Increase the odds that a non-Ohio court will transfer a legacy trust dispute to an Ohio court on the grounds that Ohio has expressed a strong interest in the legal questions raised in such a dispute.

The proposed new language in § 5816.10(K) is also meant to dovetail with the existing language of ORC § 5816.10(H), which already requires Ohio courts to assert jurisdiction over any legacy trust dispute to the maximum extent allowed by the Ohio and U.S. Constitutions.³⁰

e. Other Miscellaneous Points

The Amendment contains a series of grammatical and technical clean-ups, none of which are intended to effect any substantive change, and all of which are intended to clarify existing law. For example:

- ORC § 5816.02(H)’s current reference to a “transfer” is clarified to include “direct or indirect” transfers, thus making clear that indirect transfers into a legacy trust are also covered by its protections.
- ORC § 5816.02(S)(1)(b)(i)’s current reference to the “superintendent of banks” will be changed to make a more contemporary reference to the “superintendent of financial institutions.”
- ORC § 5816.02(S)(2)’s current reference to “records” will be modernized to refer to “electronic or physical” records.
- ORC § 5816.05(A)’s current reference to a “defined event” will be clarified to also include a more familiar reference to a “stated contingency.”
- ORC § 5816.06(E) will include a “then” to create a clear “if-then” statement regarding the

³⁰ “To the maximum extent permitted by the Ohio Constitution and the United States Constitution, the courts of this state shall exercise jurisdiction over any legacy trust or any qualified disposition and shall adjudicate any case or controversy brought before them regarding, arising out of, or related to, any legacy trust or any qualified disposition if that case or controversy is otherwise within the subject matter jurisdiction of the court. Subject to the Ohio Constitution and the United States Constitution, no court of this state shall dismiss or otherwise decline to adjudicate any case or controversy described in this division on the ground that a court of another jurisdiction has acquired or may acquire proper jurisdiction over, or may provide proper venue for, that case or controversy or the parties to the case or controversy.” ORC § 5816.10(H).

effects of a flawed or omitted affidavit of solvency.

- ORC § 5816.09 includes various grammatical and definitional clean-ups related to “orders” issued by courts (typically out-of-state courts) that do not apply Ohio law to a legacy trust dispute.
- ORC § 5816.10(E)(2) makes a grammatical clean-up to its last sentence.
- ORC § 5816.10(H) twice inserts the phrase “any legacy trust matter” to more clearly express its previously intended broad scope.
- ORC § 5816.10(J) is added to give consistent meaning to the words “action” and “proceeding.”

5. Conclusion

Accordingly, the Committee should approve and favorably report on the Amendment and its proposed changes to the Legacy Trust Act. The proposed changes will keep Ohio competitive in the burgeoning APT market, and will provide technical clarifications that will be useful to courts and practitioners.

Appendix 1: U.S. Asset Protection Trust States and Legislation

<i>State (In Alphabetical Order)</i>	<i>Statutory Citation</i>
Alaska	AS §§ 34.40.010, 34.40.110
Connecticut	Qualified Dispositions in Trust Act, adopted as part of Sub. H.B. No. 7104, Pub. Act No. 19-137, signed into law on 2019 July 12, formal codification numbers pending (as of Dec. 2019)
Delaware	Qualified Dispositions into Trust Act, 12 Del. Code § 3570, et seq.
Hawaii	Permitted Transfers in Trust Act, 30 HRS § 554G 1, et seq.
Indiana	Indiana Legacy Trust Act, Ind. Code § 30-4-8, et seq.
Michigan	Michigan Qualified Disposition in Trust Act, MCL 700.1041 et seq.
Mississippi	Mississippi Qualified Disposition in Trust Act, Miss. Code § 91-9-701, et. seq.
Missouri	Mo. Rev. Stat. § 456.5 505.3 (part of Missouri Uniform Trust Code)
Nevada	Spendthrift Trust Act of Nevada, N.R.S. § 166.010, et seq.
New Hampshire	Ch. 564 D, N.H. RSA, N.H. Qualified Disposition in Trust Act
Ohio	Ohio Legacy Trust Act, ORC § 5816.01, et seq.
Oklahoma	31 Okla. Stat. § 10, et seq.
Rhode Island	Qualified Dispositions in Trust Act, Gen. Laws R.I. § 18-9.2-1, et seq.
South Dakota	Qualified Dispositions Act, SDCL § 55 16 1, et seq.
Tennessee	TCA §§ 66 1 202, 35 15 505
Utah	Utah Code § 25 6 14
Virginia	Virginia Code §§ 55 545.03:2 and 55 545.03:3
West Virginia	W. Va. Code § 44D-5-503a, et seq.
Wyoming	W.S. § 4 10 510, et seq.