

As Introduced

**131st General Assembly
Regular Session
2015-2016**

H. B. No. 432

Representatives Cupp, Rezabek

A BILL

To amend sections 2101.16, 2105.02, 2105.14, 1
2105.31, 2105.32, 2105.33, 2105.34, 2105.35, 2
2105.36, 2105.37, 2107.07, 2107.10, 2109.62, 3
2111.131, 2113.86, 5801.10, 5803.02, 5804.02, 4
5808.16, 5812.32, 5812.46, 5812.51, 5814.01, 5
5814.02, 5814.03, 5814.04, 5814.05, 5814.06, 6
5814.07, 5814.08, and 5815.23; to amend, for the 7
purpose of adopting new section numbers as 8
indicated in parentheses, sections 2105.39 9
(2105.38) and 5814.09 (5814.10); to enact new 10
sections 2105.39 and 5814.09 and sections 11
2105.40, 2127.012, and 5802.04; and to repeal 12
section 2105.38 of the Revised Code to revise 13
the law governing decedent's estates by making 14
changes in the Ohio Trust Code, the Probate Law, 15
the Uniform Principal and Income Act, the 16
Transfers to Minors Act, and the Uniform 17
Simultaneous Death Act. 18

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

Section 1. That sections 2101.16, 2105.02, 2105.14, 19
2105.31, 2105.32, 2105.33, 2105.34, 2105.35, 2105.36, 2105.37, 20

2107.07, 2107.10, 2109.62, 2111.131, 2113.86, 5801.10, 5803.02, 21
5804.02, 5808.16, 5812.32, 5812.46, 5812.51, 5814.01, 5814.02, 22
5814.03, 5814.04, 5814.05, 5814.06, 5814.07, 5814.08, and 23
5815.23 be amended; sections 2105.39 (2105.38) and 5814.09 24
(5814.10) be amended for the purpose of adopting new section 25
numbers as shown in parentheses; and new sections 2105.39 and 26
5814.09 and sections 2105.40, 2127.012, and 5802.04 of the 27
Revised Code be enacted to read as follows: 28

Sec. 2101.16. (A) Except as provided in section 2101.164 29
of the Revised Code, the fees enumerated in this division shall 30
be charged and collected, if possible, by the probate judge and 31
shall be in full for all services rendered in the respective 32
proceedings: 33

- (1) Account, in addition to advertising charges 34
 -\$ 12.00 35
 - Waivers and proof of notice of hearing on account, 36
 - per page, minimum one dollar 37
 -\$ 1.00 38
- (2) Account of distribution, in addition to 39
advertising charges 40
 -\$ 7.00 41
- (3) Adoption of child, petition for 42
 -\$ 50.00 43
- (4) Alter or cancel contract for sale or purchase of 44
real property, complaint to 45
 -\$ 20.00 46
- (5) Application and order not otherwise provided for 47
in this section or by rule adopted pursuant to 48
division (E) of this section 49
 -\$ 5.00 50
- (6) Appropriation suit, per day, hearing in 51

.....	\$ 20.00	52
(7) Birth, application for registration of		53
.....	\$ 7.00	54
(8) Birth record, application to correct		55
.....	\$ 5.00	56
(9) Bond, application for new or additional		57
.....	\$ 5.00	58
(10) Bond, application for release of surety or reduction of		59
.....	\$ 5.00	60
(11) Bond, receipt for securities deposited in lieu of		61
.....	\$ 5.00	62
(12) Certified copy of journal entry, record, or proceeding, per page, minimum fee one dollar		63
.....	\$ 1.00	64
(13) Citation and issuing citation, application for		65
.....	\$ 5.00	66
(14) Change of name, petition for		67
.....	\$ 20.00	68
(15) Claim, application of administrator or executor for allowance of administrator's or executor's own		69
.....	\$ 10.00	70
(16) Claim, application to compromise or settle		71
.....	\$ 10.00	72
(17) Claim, authority to present		73
.....	\$ 10.00	74
(18) Commissioner, appointment of		75
.....	\$ 5.00	76
(19) Compensation for extraordinary services and attorney's fees for fiduciary, application for		77
.....	\$ 5.00	78
(20) Competency, application to procure adjudication of		79

.....	\$ 20.00	84
(21) Complete contract, application to		85
.....	\$ 10.00	86
(22) Concealment of assets, citation for		87
.....	\$ 10.00	88
(23) Construction of will, complaint for		89
.....	\$ 20.00	90
(24) Continue decedent's business, application to		91
.....	\$ 10.00	92
Monthly reports of operation		93
.....	\$ 5.00	94
(25) Declaratory judgment, complaint for		95
.....	\$ 20.00	96
(26) Deposit of will		97
.....	\$ 5.00	98
	<u>25.00</u>	99
(27) Designation of heir		100
.....	\$ 20.00	101
(28) Distribution in kind, application, assent, and		102
order for		103
.....	\$ 5.00	104
(29) Distribution under section 2109.36 of the Revised		105
Code, application for an order of		106
.....	\$ 7.00	107
(30) Docketing and indexing proceedings, including the		108
filing and noting of all necessary documents,		109
maximum fee, fifteen dollars		110
.....	\$ 15.00	111
(31) Exceptions to any proceeding named in this		112
section, contest of appointment or		113
.....	\$ 10.00	114
(32) Election of surviving partner to purchase assets		115

of partnership, proceedings relating to		116
.....\$ 10.00		117
(33) Election of surviving spouse under will		118
.....\$ 5.00		119
(34) Fiduciary, including an assignee or trustee of		120
an insolvent debtor or any guardian or conservator		121
accountable to the probate court, appointment of		122
.....\$ 35.00		123
(35) Foreign will, application to record		124
.....\$ 10.00		125
Record of foreign will, additional, per page		126
.....\$ 1.00		127
(36) Forms when supplied by the probate court, not to		128
exceed		129
.....\$ 10.00		130
(37) Heirship, complaint to determine		131
.....\$ 20.00		132
(38) Injunction proceedings		133
.....\$ 20.00		134
(39) Improve real property, petition to		135
.....\$ 20.00		136
(40) Inventory with appraisalment		137
.....\$ 10.00		138
(41) Inventory without appraisalment		139
.....\$ 7.00		140
(42) Investment or expenditure of funds, application		141
for		142
.....\$ 10.00		143
(43) Invest in real property, application to		144
.....\$ 10.00		145
(44) Lease for oil, gas, coal, or other mineral,		146
petition to		147

.....	\$ 20.00	148
(45) Lease or lease and improve real property,		149
petition to		150
.....	\$ 20.00	151
(46) Marriage license		152
.....	\$ 10.00	153
Certified abstract of each marriage		154
.....	\$ 2.00	155
(47) Minor or incompetent person, etc., disposal of		156
estate under twenty-five thousand dollars of		157
.....	\$ 10.00	158
(48) Mortgage or mortgage and repair or improve real		159
property, complaint to		160
.....	\$ 20.00	161
(49) Newly discovered assets, report of		162
.....	\$ 7.00	163
(50) Nonresident executor or administrator to bar		164
creditors' claims, proceedings by		165
.....	\$ 20.00	166
(51) Power of attorney or revocation of power, bonding		167
company		168
.....	\$ 10.00	169
(52) Presumption of death, petition to establish		170
.....	\$ 20.00	171
(53) Probating will		172
.....	\$ 15.00	173
Proof of notice to beneficiaries		174
.....	\$ 5.00	175
(54) Purchase personal property, application of		176
surviving spouse to		177
.....	\$ 10.00	178
(55) Purchase real property at appraised value,		179

petition of surviving spouse to		180
.....	20.00	181
(56) Receipts in addition to advertising charges,		182
application and order to record		183
.....	5.00	184
Record of those receipts, additional, per page		185
.....	1.00	186
(57) Record in excess of fifteen hundred words in any		187
proceeding in the probate court, per page		188
.....	1.00	189
(58) Release of estate by mortgagee or other lienholder		190
.....	5.00	191
(59) Relieving an estate from administration under		192
section 2113.03 of the Revised Code or granting		193
an order for a summary release from administration		194
under section 2113.031 of the Revised Code		195
.....	60.00	196
(60) Removal of fiduciary, application for		197
.....	10.00	198
(61) Requalification of executor or administrator		199
.....	10.00	200
(62) Resignation of fiduciary		201
.....	5.00	202
(63) Sale bill, public sale of personal property		203
.....	10.00	204
(64) Sale of personal property and report, application		205
for		206
.....	10.00	207
(65) Sale of real property, petition for		208
.....	25.00	209
(66) Terminate guardianship, petition to		210
.....	10.00	211

(67) Transfer of real property, application, entry, and certificate for\$ 7.00	212 213 214
(68) Unclaimed money, application to invest\$ 7.00	215 216
(69) Vacate approval of account or order of distribution, motion to\$ 10.00	217 218 219
(70) Writ of execution\$ 5.00	220 221
(71) Writ of possession\$ 5.00	222 223
(72) Wrongful death, application and settlement of claim for\$ 20.00	224 225 226
(73) Year's allowance, petition to review\$ 7.00	227 228
(74) Guardian's report, filing and review of\$ 5.00	229 230
(75) Mentally ill person subject to court order, filing of affidavit and proceedings for\$ 25.00	231 232 233
(B) (1) In relation to an application for the appointment of a guardian or the review of a report of a guardian under section 2111.49 of the Revised Code, the probate court, pursuant to court order or in accordance with a court rule, may direct that the applicant or the estate pay any or all of the expenses of an investigation conducted pursuant to section 2111.041 or division (A) (2) of section 2111.49 of the Revised Code. If the investigation is conducted by a public employee or investigator who is paid by the county, the fees for the investigation shall	234 235 236 237 238 239 240 241 242

be paid into the county treasury. If the court finds that an 243
alleged incompetent or a ward is indigent, the court may waive 244
the costs, fees, and expenses of an investigation. 245

(2) In relation to the appointment or functioning of a 246
guardian for a minor or the guardianship of a minor, the probate 247
court may direct that the applicant or the estate pay any or all 248
of the expenses of an investigation conducted pursuant to 249
section 2111.042 of the Revised Code. If the investigation is 250
conducted by a public employee or investigator who is paid by 251
the county, the fees for the investigation shall be paid into 252
the county treasury. If the court finds that the guardian or 253
applicant is indigent, the court may waive the costs, fees, and 254
expenses of an investigation. 255

(3) In relation to the filing of an affidavit of mental 256
illness for a mentally ill person subject to court order, the 257
court may waive the fee under division (A)(75) of this section 258
if the court finds that the affiant is indigent or for good 259
cause shown. 260

(C) Thirty dollars of the thirty-five-dollar fee collected 261
pursuant to division (A)(34) of this section and twenty dollars 262
of the sixty-dollar fee collected pursuant to division (A)(59) 263
of this section shall be deposited by the county treasurer in 264
the indigent guardianship fund created pursuant to section 265
2111.51 of the Revised Code. 266

(D) The fees of witnesses, jurors, sheriffs, coroners, and 267
constables for services rendered in the probate court or by 268
order of the probate judge shall be the same as provided for 269
similar services in the court of common pleas. 270

(E) The probate court, by rule, may require an advance 271

deposit for costs, not to exceed one hundred twenty-five 272
dollars, at the time application is made for an appointment as 273
executor or administrator or at the time a will is presented for 274
probate. 275

(F) (1) Thirty dollars of the fifty-dollar fee collected 276
pursuant to division (A) (3) of this section shall be deposited 277
into the "putative father registry fund," which is hereby 278
created in the state treasury. The department of job and family 279
services shall use the money in the fund to fund the 280
department's costs of performing its duties related to the 281
putative father registry established under section 3107.062 of 282
the Revised Code. 283

(2) If the department determines that money in the 284
putative father registry fund is more than is needed for its 285
duties related to the putative father registry, the department 286
may use the surplus moneys in the fund as permitted in division 287
(C) of section 2151.3529, division (B) of section 2151.3530, or 288
section 5103.155 of the Revised Code. 289

Sec. 2105.02. ~~When, in Chapter 2105. of the Revised Code~~ 290
~~this chapter,~~ a person is described as living, it means that the 291
person was living at the time of the death of the intestate from 292
whom the estate came and that the person lived for at least one 293
hundred twenty hours following the death of the intestate, and 294
when a person is described as having died, it means that the 295
person died before such intestate or that the person failed to 296
live for at least one hundred twenty hours following the death 297
of the intestate. 298

Sec. 2105.14. ~~Descendants of an intestate begotten before~~ 299
~~the intestate's death, but born after the intestate's death, in~~ 300
~~all cases will inherit as if born in the lifetime of the~~ 301

~~intestate and surviving the intestate; but in no other case can~~ 302
~~a person~~ No descendant of an intestate shall inherit under this 303
chapter unless living at the time of the death of surviving the 304
intestate for at least one hundred twenty hours, or unless born 305
within three hundred days after the death of the intestate and 306
living for at least one hundred twenty hours after birth. 307

Sec. 2105.31. As used in sections 2105.31 to ~~2105.39~~ 308
2105.40 of the Revised Code: 309

(A) "Co-owners with right of survivorship" includes joint 310
tenants, tenants by the entireties, and other co-owners of ~~real~~ 311
~~or personal property; insurance or other policies; or bank,~~ 312
~~savings bank, credit union, or other accounts,~~ held under 313
circumstances that entitle one or more ~~persons~~ individuals to 314
the whole of the property or account on the death of the other 315
~~person~~ individual or ~~persons~~ individuals. 316

(B) "Governing instrument" means a deed, will, trust, 317
insurance or annuity policy, account with a transfer-on-death 318
designation or the abbreviation TOD, account with a payable-on- 319
death designation or the abbreviation POD, transfer-on-death 320
designation affidavit, pension, profit-sharing, retirement, or 321
similar benefit plan, instrument creating or exercising a power 322
of appointment or a power of attorney, or a dispositive, 323
appointive, or nominative instrument of any similar type. 324

(C) "Payor" means a trustee, insurer, business entity, 325
employer, government, governmental agency, political subdivision 326
or instrumentality, or any other person authorized or obligated 327
by law or a governing instrument to make payments or transfers. 328

~~(D) "Event" includes the death of another person.~~ 329

Sec. 2105.32. (A) Except as provided in section 2105.36 of 330

the Revised Code, ~~a person~~ if title to property, the devolution 331
of property, the right to elect an interest in property, or the 332
right to exempt property, homestead, or allowance for support 333
depends upon an individual's survivorship of the death of 334
another individual, an individual who is not established by 335
clear and convincing evidence to have survived ~~another specified~~ 336
~~person~~ the other individual by one hundred twenty hours is 337
deemed to have predeceased the other ~~person for the following~~ 338
~~purposes:~~ individual. 339

~~(1) When the title to real or personal property or the~~ 340
~~devolution of real or personal property depends upon a person's~~ 341
~~survivorship of the death of another person;~~ 342

~~(2) When the right to elect an interest in or exempt a~~ 343
~~surviving spouse's share of an intestate estate under section~~ 344
~~2105.06 of the Revised Code depends upon a person's survivorship~~ 345
~~of the death of another person;~~ 346

~~(3) When the right to elect an interest in or exempt an~~ 347
~~interest of the decedent in the mansion house pursuant to~~ 348
~~section 2106.10 of the Revised Code depends upon a person's~~ 349
~~survivorship of the death of another person;~~ 350

~~(4) When the right to elect an interest in or exempt an~~ 351
~~allowance for support pursuant to section 2106.13 of the Revised~~ 352
~~Code depends upon a person's survivorship of the death of~~ 353
~~another person.~~ 354

(B) This section does not apply if its application would 355
result in a taking of an intestate estate by the state. 356

Sec. 2105.33. Except as provided in section 2105.36 of the 357
Revised Code, ~~a person~~ an individual who is not established by 358
clear and convincing evidence to have survived ~~a specified~~ an 359

event by one hundred twenty hours is deemed to have predeceased 360
the event for purposes of a provision of a governing instrument 361
that relates to the ~~person~~ individual surviving an event, 362
including the death of another individual. 363

Sec. 2105.34. Except as provided in section 2105.36 of the 364
Revised Code, the following shall apply: 365

(A) If it is not established by clear and convincing 366
evidence that one of two co-owners with right of survivorship ~~in~~ 367
~~specified real or personal property~~ survived the other co-owner 368
by one hundred twenty hours, ~~that one-half of the property shall~~ 369
~~pass or account passes as if each person~~ one co-owner had 370
survived the other ~~person~~ co-owner by one hundred twenty hours, 371
and one-half of the property or account passes as if the other 372
co-owner had survived the one co-owner by one hundred twenty 373
hours. 374

(B) If there are more than two co-owners with right of 375
survivorship ~~in specified real or personal property~~ and it is 376
not established by clear and convincing evidence that at least 377
one of the co-owners survived the others by one hundred twenty 378
hours, ~~that the property shall pass or account passes~~ in the 379
proportion that ~~each person owns~~ one co-owner's ownership bears 380
to the ownership of the whole number of co-owners. 381

Sec. 2105.35. In addition to any provisions of the Rules 382
of Evidence, the following provisions relating to the 383
determination of death and status apply: 384

(A) (1) ~~A person is dead if the person has been determined~~ 385
~~to be dead pursuant to standards established under section~~ 386
~~2108.40 of the Revised Code~~ An individual is dead if the 387
individual has sustained either irreversible cessation of 388

circulatory and respiratory functions or irreversible cessation 389
of all functions of the brain, including the brain stem, as 390
determined in accordance with accepted medical standards. If the 391
respiratory and circulatory functions of an individual are being 392
artificially sustained, under accepted medical standards a 393
determination that death has occurred is made by a physician by 394
observing and conducting a test to determine that the 395
irreversible cessation of all functions of the brain has 396
occurred. 397

(2) A physician who makes a determination of death in 398
accordance with division (A) of this section ~~2108.40 of the~~ 399
~~Revised Code and any person who acts in good faith in reliance~~ 400
~~on a determination of death made by a physician in accordance~~ 401
~~with that section is entitled to the immunity conveyed by that~~ 402
~~section and accepted medical standards is not liable for damages~~ 403
in any civil action or subject to prosecution in any criminal 404
proceeding for the physician's acts or the acts of others based 405
on that determination. 406

(3) Any person who acts in good faith and relies on a 407
determination of death made by a physician in accordance with 408
division (A) of this section and accepted medical standards is 409
not liable for damages in any civil action or subject to 410
prosecution in any criminal proceeding for the person's actions. 411

(B) A certified or authenticated copy of a death 412
certificate purporting to be issued by an official or agency of 413
the place where the death of ~~a person~~ an individual purportedly 414
occurred is prima-facie evidence of the fact, place, date, and 415
time of the ~~person's~~ individual's death and the identity of the 416
decedent. 417

(C) A certified or authenticated copy of any record or 418

report of a domestic or foreign governmental agency that ~~a~~ 419
~~person-an individual~~ is missing, detained, dead, or alive is 420
prima-facie evidence of the status and of the dates, 421
circumstances, and places disclosed by the record or report. 422

(D) In the absence of prima-facie evidence of death under 423
division (B) or (C) of this section, the fact of death may be 424
established by clear and convincing evidence, including 425
circumstantial evidence. 426

(E) Except as provided in division (F) of this section, a 427
presumption of the death of ~~a person-an individual~~ arises when 428
either of the following applies: 429

(1) ~~When the person~~ The individual has disappeared and has 430
been continuously absent from the ~~person's-individual's~~ place of 431
last domicile for a five-year period without being heard from 432
during the period; 433

(2) ~~When the person~~ The individual has disappeared and has 434
been continuously absent from the ~~person's-individual's~~ place of 435
last domicile without being heard from and was at the beginning 436
of the ~~person's-individual's~~ absence exposed to a specific peril 437
of death, even though the absence has continued for less than a 438
five-year period. 439

(F) When ~~a person-an individual~~ who is on active duty in 440
the armed services of the United States has been officially 441
determined to be absent in a status of "missing" or "missing in 442
action," a presumption of death arises when the head of the 443
federal department concerned has made a finding of death 444
pursuant to the "Federal Missing Persons Act," 80 Stat. 625 445
(1966), 37 U.S.C.A. 551, as amended. 446

(G) In the absence of evidence disputing the time of death 447

stipulated on a document described in division (B) or (C) of 448
this section, a document described in either of those divisions 449
that stipulates a time of death of an individual one hundred 450
twenty hours or more after the time of death of another ~~person-~~ 451
individual, however the time of death of the other ~~person-~~ 452
individual is determined, establishes by clear and convincing 453
evidence that the ~~person-~~individual survived the other ~~person-~~ 454
individual by one hundred twenty hours. 455

~~(H) The provisions of divisions (A) to (G) of this section-~~ 456
~~are in addition to any other provisions of the Revised Code, the~~ 457
~~Rules of Criminal Procedure, or the Rules of Evidence that~~ 458
~~pertain to the determination of death and status of a person.~~ 459

Sec. 2105.36. ~~A person who is not established by clear and~~ 460
~~convincing evidence to have survived another specified person by~~ 461
~~one hundred twenty hours shall not be deemed to have predeceased-~~ 462
~~the other person.~~ Survival by one hundred twenty hours is not 463
required if any of the following ~~apply~~ applies: 464

(A) The governing instrument contains language dealing 465
explicitly with simultaneous deaths or deaths in a common 466
disaster, and that language is ~~operative~~ operable under the 467
~~situation in question~~ facts of the case. 468

(B) The governing instrument expressly indicates that a- 469
~~person~~ an individual is not required to survive an event, 470
including the death of another individual, by any specified 471
~~period in order for any right or interest governed by the~~ 472
~~instrument to properly vest or transfer,~~ or expressly requires 473
the individual to survive the event for a specified period, but 474
the survival of the event for the specified period shall be 475
established by clear and convincing evidence. 476

~~(C) The governing instrument expressly requires the person to survive the event for a specified period in order for any right or interest governed by the instrument to properly vest or transfer, and the survival of the event by the person or survival of the event by the person for the specified period is established by clear and convincing evidence.~~ 477
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~~(D) The imposition of a one-hundred-twenty-hour requirement of the person's survival of the other specified person causes would cause a nonvested property interest or a power of appointment to be invalid under section 2131.08 of the Revised Code, and but the person's survival of the other specified person is shall be established by clear and convincing evidence.~~ 483
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~~(E) (D) The application of a one-hundred-twenty-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition, and but the person's survival of the other specified person is shall be established by clear and convincing evidence.~~ 490
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Sec. 2105.37. (A) A payor or other third party is not liable for any of the following: 495
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(1) ~~Making Having made a payment, transferring or transferred an item of real or personal property, or otherwise transferring any other benefit to a person designated in a governing instrument who, under sections 2105.31 to ~~2105.39~~ 2105.40 of the Revised Code, is not entitled to the payment or item of property or other benefit, if the payment or transfer was made before the payor or other third party received written notice of a claimed lack of entitlement ~~pursuant to~~ under those sections ~~2105.31 to 2105.39~~ of the Revised Code;~~ 497
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(2) ~~Taking~~ Having taken any other action ~~not specified in~~ 506
~~division (A) (1) of this section~~ in good faith reliance on the 507
person's apparent entitlement under the terms of the governing 508
instrument before the payor or other third party received 509
written notice of a claimed lack of entitlement ~~pursuant to~~ 510
under sections 2105.31 to ~~2105.39~~ 2105.40 of the Revised Code. 511

(B) A payor or other third party is liable for a payment, 512
transfer, or other action taken after the payor or other third 513
party receives written notice of a claimed lack of entitlement 514
~~pursuant to~~ under sections 2105.31 to ~~2105.39~~ 2105.40 of the 515
Revised Code. 516

(C) Written notice of a claimed lack of entitlement under 517
~~divisions~~ division (A) or (B) of this section ~~must~~ shall be 518
mailed to the payor's or other third party's main office or home 519
by registered or certified mail, return receipt requested, or 520
served upon the payor or other third party in the same manner as 521
a summons in a civil action. Upon receipt of written notice of a 522
claimed lack of entitlement ~~pursuant to~~ under sections 2105.31 523
to ~~2105.39~~ 2105.40 of the Revised Code, a payor or other third 524
party may pay any amount owed or transfer or deposit any item of 525
~~real or personal~~ property held by it to or with the probate 526
court that has jurisdiction over the decedent's estate. If no 527
probate proceedings have been commenced, upon receipt of written 528
notice of a claimed lack of entitlement ~~pursuant to~~ under 529
sections 2105.31 to ~~2105.39~~ 2105.40 of the Revised Code, a payor 530
or other third party may pay any amount owed or transfer or 531
deposit any item of ~~real or personal~~ property held by it to or 532
with the probate court located in the county of the decedent's 533
residence. The court shall hold the funds or ~~real or personal~~ 534
items of property until it is determined pursuant to, and upon 535
its determination under sections 2105.31 to ~~2105.39~~ 2105.40 of 536

the Revised Code to whom the funds or ~~real or personal items of~~ 537
property should be disbursed, shall order disbursement in 538
accordance with its determination. ~~The court then shall order~~ 539
~~disbursement of the funds or real or personal property in~~ 540
~~accordance with that determination.~~ Payments, transfers, or 541
deposits made to or with the court discharge the payor or other 542
third party from all claims for the value of amounts paid to or 543
items of property transferred to or deposited with the court. 544

(D) A person who purchases property for value or receives 545
a payment or other item of property or benefit in partial or 546
full satisfaction of a legally enforceable obligation, and 547
without notice that the person selling or transferring the 548
property or benefit or making a payment is not entitled to the 549
property or benefit under sections 2105.31 to 2105.40 of the 550
Revised Code, is neither obligated under those sections to 551
return the payment or item of property or benefit nor liable 552
under those sections for the amount of the payment or the value 553
of the item of property or benefit. 554

(E) A person who, not for value, receives a payment, item 555
of property, or any other benefit to which the person is not 556
entitled under sections 2105.31 to 2105.40 of the Revised Code 557
is obligated to return the payment, item of property, or 558
benefit, or is personally liable for the amount of the payment 559
or the value of the item of property or benefit, to the person 560
who is entitled to it under sections 2105.31 to 2105.40 of the 561
Revised Code. 562

(F) If sections 2105.31 to 2105.40 of the Revised Code or 563
any provision of those sections are preempted by federal law 564
with respect to a payment, an item of property, or any other 565
benefit covered by those sections, a person who, not for value, 566

receives the payment, item of property, or other benefit to 567
which the person is not entitled under sections 2105.31 to 568
2105.40 of the Revised Code is obligated to return the payment, 569
item of property, or benefit, or is personally liable for the 570
amount of the payment or the value of the item of property or 571
benefit, to the person who would have been entitled to it were 572
sections 2105.31 to 2105.40 of the Revised Code or any provision 573
of those sections not preempted. 574

~~Sec. 2105.39~~ 2105.38. (A) Sections 2105.31 to ~~2105.39~~ 575
~~2105.40~~ of the Revised Code do not impair any act done in any 576
proceeding, or any right that accrued, before ~~May 16, 2002~~ the 577
effective date of the amendment of this section. If a right is 578
acquired, extinguished, or barred upon the expiration of a 579
prescribed period of time that has commenced to run, prior to 580
~~May 16, 2002~~ the effective date of the amendment of this 581
section, under any provision of the Revised Code, the provision 582
of the applicable section of the Revised Code applies with 583
respect to that right. 584

(B) Any rule of construction ~~or presumption~~ regarding any 585
provision of a governing instrument that is provided in sections 586
2105.31 to ~~2105.39~~ 2105.40 of the Revised Code applies to any 587
governing instrument that is executed, ~~or any multiple party~~ 588
~~account that is opened,~~ prior to May 16, 2002 the effective date 589
of the amendment of this section, unless there is a clear 590
indication of a contrary intent in the governing instrument ~~or~~ 591
~~multiple party account.~~ 592

~~(C) If any provision of sections 2105.31 to 2105.39 of the~~ 593
~~Revised Code or the application of those sections to any persons~~ 594
~~or circumstance is held invalid, the invalidity does not affect~~ 595
~~other provisions or applications of sections 2105.31 to 2105.39~~ 596

~~of the Revised Code that can be given effect without the invalid- 597
provision or application. 598~~

Sec. 2105.39. Sections 2105.31 to 2105.40 of the Revised 599
Code shall be applied and construed to effectuate their general 600
purpose to make uniform the law with respect to the subject of 601
those sections among the states enacting the law. 602

Sec. 2105.40. Sections 2105.31 to 2105.40 of the Revised 603
Code may be cited as the uniform simultaneous death act. 604

Sec. 2107.07. A will may be deposited by the testator, or 605
by some person for the testator, in the office of the judge of 606
the probate court in the county in which the testator lives, 607
before or after the death of the testator, and if deposited 608
after the death of the testator, with or without applying for 609
its probate. Upon the payment of the fee of twenty-five dollars 610
to the court, the judge shall receive, keep, and give a 611
certificate of deposit for the will. That will shall be safely 612
kept until delivered or disposed of as provided by section 613
2107.08 of the Revised Code. If the will is not delivered or 614
disposed of as provided in that section within one hundred years 615
after the date the will was deposited, the judge may dispose of 616
the will in any manner the judge considers feasible. The judge, 617
~~on being paid the fee of five dollars, shall receive, keep, and 618
give a certificate of deposit for~~ shall retain an electronic 619
copy of the will prior to its disposal after one hundred years 620
under this section. 621

Every will that is so deposited shall be enclosed in a 622
sealed envelope that shall be indorsed with the name of the 623
testator. The judge shall indorse on the envelope the date of 624
delivery and the person by whom the will was delivered. The 625
envelope may be indorsed with the name of a person to whom it is 626

to be delivered after the death of the testator. The will shall 627
not be opened or read until delivered to a person entitled to 628
receive it, until the testator files a complaint in the probate 629
court for a declaratory judgment of the validity of the will 630
pursuant to section 2107.081 of the Revised Code, or until 631
otherwise disposed of as provided in section 2107.08 of the 632
Revised Code. Subject to section 2107.08 of the Revised Code, 633
the deposited will shall not be a public record until the time 634
that an application is filed to probate it. 635

Sec. 2107.10. (A) No property or right, testate or 636
intestate, shall pass to a beneficiary named in a will who knows 637
of the existence of the will for one year after the death of the 638
testator and has the power to control it and, without reasonable 639
cause, intentionally conceals or withholds it or neglects or 640
refuses within that one year to cause it to be offered for or 641
admitted to probate. The property devised or bequeathed to that 642
beneficiary shall ~~descend to the heirs of the testator, not~~ 643
~~including any heir who has concealed or withheld the will~~ pass 644
as if the beneficiary had predeceased the testator. 645

(B) No property or right, testate or intestate, passes to 646
a beneficiary named in a will when the will was declared valid 647
and filed with a probate judge pursuant to section 2107.084 of 648
the Revised Code, the declaration and filing took place in a 649
county different from the county in which the will of the 650
testator would be probated under section 2107.11 of the Revised 651
Code, and the named beneficiary knew of the declaration and 652
filing and of the death of the testator and did not notify the 653
probate judge with whom the will was filed. This division does 654
not preclude a named beneficiary from acquiring property or 655
rights from the estate of the testator for failing to notify a 656
probate judge if the named beneficiary reasonably believes that 657

the judge has previously been notified of the testator's death. 658

Sec. 2109.62. (A) (1) Upon the filing of a motion by a 659
trustee with the court that has jurisdiction over the trust, 660
upon the provision of reasonable notice to all beneficiaries who 661
are known and in being and who have vested or contingent 662
interests in the trust, and after holding a hearing, the court 663
may terminate the trust, in whole or in part, if it determines 664
that all of the following apply: 665

(a) It is no longer economically feasible to continue the 666
trust. 667

(b) The termination of the trust is for the benefit of the 668
beneficiaries. 669

(c) The termination of the trust is equitable and 670
practical. 671

(d) The current value of the trust is less than one 672
hundred thousand dollars. 673

(2) The existence of a spendthrift or similar provision in 674
a trust instrument or will does not preclude the termination of 675
a trust pursuant to this section. 676

(B) If property is to be distributed from an estate being 677
probated to a trust and the termination of the trust pursuant to 678
this section does not clearly defeat the intent of the testator, 679
the probate court has jurisdiction to order the outright 680
distribution of the property or to make the property custodial 681
property under sections 5814.01 to ~~5814.09~~ 5814.10 of the 682
Revised Code. A probate court may so order whether the motion 683
for the order is made by an inter vivos trustee named in the 684
will of the decedent or by a testamentary trustee. 685

(C) Upon the termination of a trust pursuant to this 686
section, the probate court shall order the distribution of the 687
trust estate in accordance with any provision specified in the 688
trust instrument for the premature termination of the trust. If 689
there is no provision of that nature in the trust instrument, 690
the probate court shall order the distribution of the trust 691
estate among the beneficiaries of the trust in accordance with 692
their respective beneficial interests and in a manner that the 693
court determines to be equitable. For purposes of ordering the 694
distribution of the trust estate among the beneficiaries of the 695
trust under this division, the court shall consider all of the 696
following: 697

(1) The existence of any agreement among the beneficiaries 698
with respect to their beneficial interests; 699

(2) The actuarial values of the separate beneficial 700
interests of the beneficiaries; 701

(3) Any expression of preference of the beneficiaries that 702
is contained in the trust instrument. 703

Sec. 2111.131. (A) The probate court may enter an order 704
that authorizes a person under a duty to pay or deliver money or 705
personal property to a minor who does not have a guardian of the 706
person and estate or a guardian of the estate, to perform that 707
duty in amounts not exceeding five thousand dollars annually, by 708
paying or delivering the money or property to any of the 709
following: 710

(1) The guardian of the person only of the minor; 711

(2) The minor's natural guardians, if any, as determined 712
pursuant to section 2111.08 of the Revised Code; 713

(3) The minor; 714

(4) Any person who has the care and custody of the minor 715
and with whom the minor resides, other than a guardian of the 716
person only or a natural guardian; 717

(5) A financial institution incident to a deposit in a 718
federally insured savings account in the sole name of the minor; 719

(6) A custodian designated by the court in its order, for 720
the minor under sections 5814.01 to ~~5814.09~~5814.10 of the 721
Revised Code. 722

(B) An order entered pursuant to division (A) of this 723
section authorizes the person or entity specified in it, to 724
receive the money or personal property on behalf of the minor 725
from the person under the duty to pay or deliver it, in amounts 726
not exceeding five thousand dollars annually. Money or personal 727
property so received by guardians of the person only, natural 728
guardians, and custodians as described in division (A) (4) of 729
this section may be used by them only for the support, 730
maintenance, or education of the minor involved. The order of 731
the court is prima-facie evidence that a guardian of the person 732
only, a natural guardian, or a custodian as described in 733
division (A) (4) of this section has the authority to use the 734
money or personal property received. 735

(C) A person who pays or delivers moneys or personal 736
property in accordance with a court order entered pursuant to 737
division (A) of this section is not responsible for the proper 738
application of the moneys or property by the recipient. 739

Sec. 2113.86. (A) Unless a will or another governing 740
instrument otherwise provides, and except as otherwise provided 741
in this section, a tax shall be apportioned equitably in 742
accordance with the provisions of this section among all persons 743

interested in an estate in proportion to the value of the 744
interest of each person as determined for estate tax purposes. 745

(B) Except as otherwise provided in this division, any tax 746
that is apportioned against a gift made in a clause of a will 747
other than a residuary clause or in a provision of an inter 748
vivos trust other than a residuary provision, shall be 749
reapportioned to the residue of the estate or trust. It shall be 750
charged in the same manner as a general administration expense. 751
However, when a portion of the residue of the estate or trust is 752
allowable as a deduction for estate tax purposes, the tax shall 753
be reapportioned to the extent possible to the portion of the 754
residue that is not so allowable. 755

(C) (1) A tax shall not be apportioned against an interest 756
that is allowable as an estate tax marital or charitable 757
deduction, except to the extent that the interest is a part of 758
the residue of an estate or trust against which tax is 759
reapportioned pursuant to division (B) of this section. 760

(2) Estate tax of this state or another jurisdiction shall 761
not be reapportioned against an interest that is allowable as a 762
deduction for federal estate tax purposes, to the extent that 763
there is other property in the estate or trust that is not 764
allowable as a deduction for federal estate tax purposes and 765
against which estate tax of this state or another jurisdiction 766
can be apportioned. 767

(3) A provision in a will or other governing instrument 768
that apportions tax to an interest that is otherwise allowable 769
as an estate tax marital or charitable deduction is ineffective 770
unless it refers to the marital or charitable deduction and 771
expressly and unambiguously acknowledges and accepts any 772
resultant partial loss of the deduction. 773

(D) A tax shall not be apportioned against property that 774
passes to a surviving spouse as an elective share under section 775
2106.01 of the Revised Code or as an intestate share under 776
section 2105.06 of the Revised Code, to the extent that there is 777
other property in the estate that is not allowable as a 778
deduction for estate tax purposes against which the tax can be 779
apportioned. 780

(E) (1) Any federal estate tax credit for state or foreign 781
death taxes on property that is includible in an estate for 782
federal estate tax purposes, shall inure to the benefit of the 783
persons chargeable with the payment of the state or foreign 784
death taxes in proportion to the amount of the taxes paid by 785
each person, but any federal estate tax credit for state or 786
foreign death taxes inuring to the benefit of a person cannot 787
exceed the federal estate tax apportioned to that person. 788

(2) Any federal estate tax credit for gift taxes paid by a 789
donee of a gift shall inure to the benefit of that donee for 790
purposes of this section. 791

(3) Credits against tax not covered by division (E) (1) or 792
(2) of this section shall be apportioned equitably among persons 793
in the manner in which the tax is apportioned among them. 794

(F) Any additional estate tax that is due because a 795
qualified heir has disposed of qualified farm property in a 796
manner not authorized by law or ceased to use any part of the 797
qualified farm property for a qualified use, shall be 798
apportioned against the interest of the qualified heir. 799

(G) If both a present interest and a future interest in 800
property are involved, a tax shall be apportioned entirely to 801
the principal. This shall be the case even if the future 802

interest qualifies for an estate tax charitable deduction, even 803
if the holder of the present interest also has rights in the 804
principal, and even if the principal is otherwise exempt from 805
apportionment. 806

(H) Penalties shall be apportioned in the same manner as a 807
tax, and interest on tax shall be apportioned to the income of 808
the estate or trust, unless a court directs a different 809
apportionment of penalties or interest based on a finding that 810
special circumstances make an apportionment as provided in this 811
division inequitable. 812

(I) If any part of an estate consists of property, the 813
value of which is included in the gross estate of the decedent 814
by reason of section 2044 of the "Internal Revenue Code of 815
1986," 100 Stat. 2085, 26 N 2044, as amended, or of section 816
5731.131 of the Revised Code, the estate is entitled to recover 817
from the persons holding or receiving the property any amount by 818
which the estate tax payable exceeds the estate tax that would 819
have been payable if the value of the property had not been 820
included in the gross estate of the decedent. This division does 821
not apply if the decedent's will or another governing instrument 822
provides otherwise and the will or instrument refers to either 823
section mentioned in this division or to qualified terminable 824
interest marital deduction property. 825

Sec. 2127.012. (A) In addition to the other methods 826
provided by law, a guardian of the estate may sell at public or 827
private sale, grant options to sell, exchange, re-exchange, or 828
otherwise dispose of any parcel of real estate belonging to the 829
estate at any time, at prices, and upon terms that are 830
consistent with this section, and may execute and deliver deeds 831
and other instruments of conveyance if all of the following 832

conditions are met: 833

(1) The ward's spouse and all persons entitled to the next 834
estate of inheritance from the ward in the real property give 835
written consent to a power of sale for a particular parcel of 836
real estate or to a power of sale for all the real estate 837
belonging to the estate. Each consent to a power of sale 838
provided for in this section shall be filed in the probate 839
court. 840

(2) Any sale under a power of sale authorized under this 841
section shall be made at a price of at least eighty per cent of 842
the appraised value, as set forth in an approved inventory, if 843
the real estate was appraised within two years prior to the 844
filing of the consents. If the value of the real estate in an 845
approved inventory was not determined by an appraisal, or the 846
appraisal was completed more than two years prior to the 847
filing of the consents, the real estate shall be appraised and a 848
sale shall be made at a price of at least eighty per cent of the 849
appraised value. 850

(3) No power of sale provided for in this section is 851
effective if the ward's spouse or any next of kin is a minor. No 852
person may give the consent of the minor that is required by 853
this section. 854

(4) Upon filing the consents under this section, the 855
guardian shall execute such bond or additional bond payable to 856
the state in an amount that the court considers sufficient, 857
having regard to the amount of real property to be sold, its 858
appraised value, the amount of the original bond given by the 859
guardian, and the distribution to be made of the proceeds 860
arising from the sale. 861

(B) A ward's spouse who is the guardian of the estate may 862
sell real estate to self pursuant to this section. 863

Sec. 5801.10. (A) As used in this section, "creditor" 864
means any of the following: 865

(1) A person holding a debt or security for a debt entered 866
into by a trustee on behalf of the trust; 867

(2) A person holding a debt secured by one or more assets 868
of the trust; 869

(3) A person having a claim against the trustee or the 870
assets of the trust under section 5805.06 of the Revised Code; 871

(4) A person who has attached through legal process a 872
beneficiary's interest in the trust. 873

(B) (1) Subject to division (B) (2) of this section, the 874
parties to an agreement under this section shall be any two or 875
more of the following, or their representatives under the 876
representation provisions of Chapter 5803. of the Revised Code, 877
except that only the settlor and any trustee are required to be 878
parties to an amendment of any revocable trust: 879

(a) The settlor if living and if no adverse income or 880
transfer tax results would arise from the settlor's 881
participation; 882

(b) The beneficiaries; 883

(c) The currently serving trustees; 884

(d) Creditors, if their interest is to be affected by the 885
agreement. 886

(2) In addition to the parties to an agreement under 887
division (B) (1) of this section, the parties shall include the 888

attorney general if an agreement described in division (C) (7) of 889
this section is being made and either of the following applies: 890

(a) An organization with one or more purposes that are 891
described in division (A) of section 5804.05 of the Revised Code 892
is a beneficiary. 893

(b) The trust is a charitable trust. 894

(c) The persons specified in division (B) of this section 895
may by written instrument enter into an agreement with respect 896
to any matter concerning the construction of, administration of, 897
or distributions under the terms of the trust, the investment of 898
income or principal held by the trustee, or other matters. The 899
agreement may not effect a termination of the trust before the 900
date specified for the trust's termination in the terms of the 901
trust, change the interests of the beneficiaries in the trust 902
except as necessary to effect a modification described in 903
division (C) (5), (6), or (7) of this section, or include terms 904
and conditions that could not be properly approved by the court 905
under Chapters 5801. to 5811. of the Revised Code or other 906
applicable law. The invalidity of any provision of the agreement 907
does not affect the validity of other provisions of the 908
agreement. Matters that may be resolved by a private settlement 909
agreement include, but are not limited to, all of the following: 910

(1) Determining classes of creditors, beneficiaries, 911
heirs, next of kin, or other persons; 912

(2) Resolving disputes arising out of the administration 913
or distribution under the terms of the trust, including disputes 914
over the construction of the language of the trust instrument or 915
construction of the language of other writings that affect the 916
terms of the trust; 917

(3) Granting to the trustee necessary or desirable powers 918
not granted in the terms of the trust or otherwise provided by 919
law, to the extent that those powers either are not inconsistent 920
with the express provisions or purposes of the terms of the 921
trust or, if inconsistent with the express provisions or 922
purposes of the terms of the trust, are necessary for the due 923
administration of the terms of the trust; 924

(4) Modifying the terms of the trust, if the modification 925
is not inconsistent with any material purpose of the trust; 926

(5) Modifying the terms of the trust in the manner 927
required to qualify the gift under the terms of the trust for 928
the charitable estate or gift tax deduction permitted by federal 929
law, including the addition of mandatory governing instrument 930
requirements for a charitable remainder trust as required by the 931
Internal Revenue Code and regulations promulgated under it in 932
any case in which the parties interested in the trust have 933
submitted written agreements to the proposed changes or written 934
disclaimer of interest; 935

(6) Modifying the terms of the trust in the manner 936
required to qualify any gift under the terms of the trust for 937
the estate tax marital deduction available to noncitizen 938
spouses, including the addition of mandatory governing 939
instrument requirements for a qualified domestic trust under 940
section 2056A of the Internal Revenue Code and regulations 941
promulgated under it in any case in which the parties interested 942
in the trust have submitted written agreements to the proposed 943
changes or written disclaimer of interest; 944

(7) Construing or modifying the terms of a trust that 945
refer to the federal estate tax, federal generation-skipping 946
transfer tax, or Ohio estate tax, or that contain a division of 947

property based on the imposition or amount of one or more of 948
those taxes, to give effect to the intent of the settlor; 949

(8) Resolving any other matter that arises under Chapters 950
5801. to 5811. of the Revised Code. 951

(D) No agreement shall be entered into under this section 952
affecting the rights of a creditor without the creditor's 953
consent or affecting the collection rights of federal, state, or 954
local taxing authorities. 955

(E) Any agreement entered into under this section that 956
complies with the requirements of division (C) of this section 957
shall be final and binding on the parties to the agreement or 958
persons represented by the parties to the agreement whether by 959
reason of Chapter 5803. of the Revised Code or otherwise, and 960
their heirs, successors, and assigns, but shall have no effect 961
on any trustee, settlor, beneficiary, or creditor who is not a 962
party to the agreement or is not represented by a party to the 963
agreement. 964

(F) Notwithstanding anything in this section, in division 965
(D) of section 5803.03 of the Revised Code, or in any other rule 966
of law to the contrary, a trustee serving under the terms of the 967
trust shall only represent its own individual or corporate 968
interests in negotiating or entering into an agreement subject 969
to this section. No trustee serving under the terms of the trust 970
shall be considered to represent any settlor, beneficiary, or 971
the interests of any settlor or beneficiary in negotiating or 972
entering into an agreement subject to this section. 973

(G) Any party to a private settlement agreement entered 974
into under this section may request the court to approve the 975
agreement, to determine whether the representation as provided 976

in Chapter 5803. of the Revised Code was adequate, and to 977
determine whether the agreement contains terms and conditions 978
the court could have properly approved. 979

(H) If an agreement entered into under this section 980
contains a provision requiring binding arbitration of any 981
disputes arising under the agreement, the provision is 982
enforceable. 983

(I) Nothing in this section affects any of the following: 984

(1) The right of a beneficiary to disclaim under section 985
5815.36 of the Revised Code; 986

(2) The termination or modification of a trust under 987
section 5804.10, 5804.11, 5804.12, 5804.13, 5804.14, 5804.15, or 988
5804.16 of the Revised Code; 989

(3) The ability of a trustee to divide or consolidate a 990
trust under section 5804.17 of the Revised Code; 991

(4) The power of the trustee to make distributions 992
pursuant to section 5808.18 of the Revised Code. 993

(J) Nothing in this section restricts or limits the 994
jurisdiction of any court to dispose of matters not covered by 995
agreements under this section or to supervise the acts of 996
trustees appointed by that court. 997

(K) This section shall be liberally construed to favor the 998
validity and enforceability of agreements entered into under it. 999

(L) A trustee serving under the trust instrument is not 1000
liable to any third person arising from any loss due to that 1001
trustee's actions or inactions taken or omitted in good faith 1002
reliance on the terms of an agreement entered into under this 1003
section. 1004

(M) Subject to divisions (B) (2) and (C) (7) of this section, this section does not apply to any of the following:

(1) A charitable trust that has one or more charitable organizations as qualified beneficiaries;

(2) A charitable trust the terms of which authorize or direct the trustee to distribute trust income or principal to one or more charitable organizations to be selected by the trustee, or for one or more charitable purposes described in division (A) of section 5804.05 of the Revised Code, if any of the following apply:

(a) The distributions may be made on the date that an agreement under this section would be entered into.

(b) The distributions could be made on the date that an agreement under this section would be entered into if the interests of the current beneficiaries of the trust terminated on that date, but the termination of those interests would not cause the trust to terminate.

(c) The distributions could be made on the date that an agreement under this section would be entered into if the trust terminated on that date.

(3) An agreement pursuant to section 109.232 of the Revised Code.

(N) This section does not prohibit some or all of the persons who could enter into an agreement under this section from entering into agreements that are not described in this section and are governed by other law, including the common law. Nothing in this section limits or negates any consents, releases, or ratifications, whether under section 5810.09 of the Revised Code or otherwise, relating to any agreement described

in this section or governed by other law. 1034

Sec. 5802.04. An action brought under Chapters 5801. to 1035
5811. of the Revised Code is a civil action subject to the Rules 1036
of Civil Procedure, and unless it involves a testamentary or 1037
other trust that already is subject to court supervision, is 1038
commenced by filing a complaint. 1039

Sec. 5803.02. To the extent there is no conflict of 1040
interest between the holder of a general testamentary power of 1041
appointment and the persons represented with respect to the 1042
particular question or dispute, the holder may represent and 1043
bind persons whose interests, as permissible appointees, takers 1044
in default, or otherwise, are subject to the power. To the 1045
extent there is no conflict of interest between the holder of a 1046
limited testamentary power of appointment or a presently 1047
exercisable limited power of appointment and the persons 1048
represented with respect to the particular question or dispute, 1049
the holder may also represent and bind persons whose interests 1050
as possible appointees are subject to the power. The rights of 1051
the holder of a presently exercisable general power of 1052
appointment are governed by section 5806.03 of the Revised Code. 1053

Sec. 5804.02. (A) A trust is created only if all of the 1054
following apply: 1055

(1) ~~The~~ Subject to division (F) of this section, the 1056
settlor of the trust, other than the settlor of a trust created 1057
by a court order, has capacity to create a trust. 1058

(2) ~~The~~ Subject to division (F) of this section, the 1059
settlor of the trust, other than the settlor of a trust created 1060
by a court order, indicates an intention to create the trust. 1061

(3) The trust has a definite beneficiary or is one of the 1062

following:	1063
(a) A charitable trust;	1064
(b) A trust for the care of an animal, as provided in section 5804.08 of the Revised Code;	1065 1066
(c) A trust for a noncharitable purpose, as provided in section 5804.09 of the Revised Code.	1067 1068
(4) The trustee has duties to perform.	1069
(5) The same person is not the sole trustee and sole beneficiary.	1070 1071
(B) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.	1072 1073 1074
(C) A power in a trustee or other person to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.	1075 1076 1077 1078 1079
(D) A trust is valid regardless of the existence, size, or character of the corpus of the trust. This division applies to any trust instrument that was executed prior to, or is executed on or after, January 1, 2007.	1080 1081 1082 1083
(E) A trust is not invalid because a person, including, but not limited to, the creator of the trust, is or may become the sole trustee and the sole holder of the present beneficial enjoyment of the corpus of the trust, provided that one or more other persons hold a vested, contingent, or expectant interest relative to the enjoyment of the corpus of the trust upon the cessation of the present beneficial enjoyment. A merger of the	1084 1085 1086 1087 1088 1089 1090

legal and equitable titles to the corpus of a trust described in 1091
this division does not occur in its creator, and, 1092
notwithstanding any contrary provision of Chapter 2107. of the 1093
Revised Code, the trust is not a testamentary trust that is 1094
required to comply with that chapter in order for its corpus to 1095
be legally distributed to other beneficiaries in accordance with 1096
the provisions of the trust upon the cessation of the present 1097
beneficial enjoyment. This division applies to any trust that 1098
satisfies the provisions of this division, whether the trust was 1099
executed prior to, on, or after October 10, 1991. 1100

(F) An agent under a power of attorney may create a trust 1101
for the principal, whether or not the principal has capacity to 1102
create the trust and indicates an intention to create the trust, 1103
but only as provided in sections 1337.21 to 1337.64 of the 1104
Revised Code, including sections 1337.42 and 1337.58 of the 1105
Revised Code and their limitations on creation of trusts and on 1106
gifts of property of the principal and the duty of the agent to 1107
attempt to preserve the principal's estate plan. 1108

Sec. 5808.16. Without limiting the authority conferred by 1109
section 5808.15 of the Revised Code, a trustee may do all of the 1110
following: 1111

(A) Collect trust property and accept or reject additions 1112
to the trust property from a settlor or any other person; 1113

(B) Acquire or sell property, for cash or on credit, at 1114
public or private sale; 1115

(C) Exchange, partition, or otherwise change the character 1116
of trust property; 1117

(D) Deposit trust money in an account in a regulated 1118
financial-service institution; 1119

(E) Borrow money, with or without security, and mortgage 1120
or pledge trust property for a period within or extending beyond 1121
the duration of the trust; 1122

(F) With respect to an interest in a proprietorship, 1123
partnership, limited liability company, business trust, 1124
corporation, or other form of business or enterprise, continue 1125
the business or other enterprise and take any action that may be 1126
taken by shareholders, members, or property owners, including 1127
merging, dissolving, or otherwise changing the form of business 1128
organization or contributing additional capital; 1129

(G) With respect to stocks or other securities, exercise 1130
the rights of an absolute owner, including the right to do any 1131
of the following: 1132

(1) Vote, or give proxies to vote, with or without power 1133
of substitution, or enter into or continue a voting trust 1134
agreement; 1135

(2) Hold a security in the name of a nominee or in other 1136
form without disclosure of the trust so that title may pass by 1137
delivery; 1138

(3) Pay calls, assessments, and other sums chargeable or 1139
accruing against the securities and sell or exercise stock 1140
subscription or conversion rights; 1141

(4) Deposit the securities with a depository or other 1142
regulated financial-service institution. 1143

(H) With respect to an interest in real property, 1144
construct, or make ordinary or extraordinary repairs to, 1145
alterations to, or improvements in, buildings or other 1146
structures, demolish improvements, raze existing or erect new 1147
party walls or buildings, subdivide or develop land, dedicate 1148

land to public use or grant public or private easements, and 1149
make or vacate plats and adjust boundaries; 1150

(I) Enter into a lease for any purpose as lessor or 1151
lessee, including a lease or other arrangement for exploration 1152
and removal of natural resources, with or without the option to 1153
purchase or renew, for a period within or extending beyond the 1154
duration of the trust; 1155

(J) Grant an option involving a sale, lease, or other 1156
disposition of trust property or acquire an option for the 1157
acquisition of property, including an option exercisable beyond 1158
the duration of the trust, and exercise an option so acquired; 1159

(K) Insure the property of the trust against damage or 1160
loss and insure the trustee, the trustee's agents, and 1161
beneficiaries against liability arising from the administration 1162
of the trust; 1163

(L) Abandon or decline to administer property of no value 1164
or of insufficient value to justify its collection or continued 1165
administration; 1166

(M) With respect to possible liability for violation of 1167
environmental law, do any of the following: 1168

(1) Inspect or investigate property the trustee holds or 1169
has been asked to hold, or property owned or operated by an 1170
organization in which the trustee holds or has been asked to 1171
hold an interest, for the purpose of determining the application 1172
of environmental law with respect to the property; 1173

(2) Take action to prevent, abate, or otherwise remedy any 1174
actual or potential violation of any environmental law affecting 1175
property held directly or indirectly by the trustee, whether 1176
taken before or after the assertion of a claim or the initiation 1177

of governmental enforcement;	1178
(3) Decline to accept property into trust or disclaim any	1179
power with respect to property that is or may be burdened with	1180
liability for violation of environmental law;	1181
(4) Compromise claims against the trust that may be	1182
asserted for an alleged violation of environmental law;	1183
(5) Pay the expense of any inspection, review, abatement,	1184
or remedial action to comply with environmental law.	1185
(N) Pay or contest any claim, settle a claim by or against	1186
the trust, and release, in whole or in part, a claim belonging	1187
to the trust;	1188
(O) Pay taxes, assessments, compensation of the trustee	1189
and of employees and agents of the trust, and other expenses	1190
incurred in the administration of the trust;	1191
(P) Exercise elections with respect to federal, state, and	1192
local taxes;	1193
(Q) Select a mode of payment under any employee benefit or	1194
retirement plan, annuity, or life insurance policy payable to	1195
the trustee, exercise rights under any employee benefit or	1196
retirement plan, annuity, or life insurance policy payable to	1197
the trustee, including the right to indemnification for expenses	1198
and against liabilities, and take appropriate action to collect	1199
the proceeds;	1200
(R) Make loans out of trust property, including loans to a	1201
beneficiary on terms and conditions the trustee considers to be	1202
fair and reasonable under the circumstances, and the trustee has	1203
a lien on future distributions for repayment of those loans;	1204
(S) Guarantee loans made by others to the settlor of a	1205

revocable trust and, if the settlor so directs, guarantee loans 1206
made by others to a third party and mortgage, pledge, or grant a 1207
security interest in the property of a revocable trust to secure 1208
the payment of loans made by others to the settlor of the 1209
revocable trust and, if the settlor so directs, loans made by 1210
others to a third party; 1211

(T) Appoint a trustee to act in another jurisdiction with 1212
respect to trust property located in the other jurisdiction, 1213
confer upon the appointed trustee all of the powers and duties 1214
of the appointing trustee, require that the appointed trustee 1215
furnish security, and remove any trustee so appointed; 1216

(U) Pay an amount distributable to a beneficiary who is 1217
under a legal disability or who the trustee reasonably believes 1218
is incapacitated, by paying it directly to the beneficiary or 1219
applying it for the beneficiary's benefit, or by doing any of 1220
the following: 1221

(1) Paying it to the beneficiary's guardian of the estate, 1222
or, if the beneficiary does not have a guardian of the estate, 1223
the beneficiary's guardian of the person; 1224

(2) Paying it to the beneficiary's custodian under 1225
sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code and, for 1226
that purpose, creating a custodianship; 1227

(3) If the trustee does not know of a guardian of the 1228
person or estate, or custodian, paying it to an adult relative 1229
or other person having legal or physical care or custody of the 1230
beneficiary, to be expended on the beneficiary's behalf; 1231

(4) Managing it as a separate fund on the beneficiary's 1232
behalf, subject to the beneficiary's continuing right to 1233
withdraw the distribution. 1234

(V) On distribution of trust property or the division or 1235
termination of a trust, make distributions in divided or 1236
undivided interests, allocate particular assets in proportionate 1237
or disproportionate shares, value the trust property for those 1238
purposes, and adjust for resulting differences in valuation; 1239

(W) Resolve a dispute concerning the interpretation of the 1240
trust or its administration by mediation, arbitration, or other 1241
procedure for alternative dispute resolution; 1242

(X) Prosecute or defend an action, claim, or judicial 1243
proceeding in any jurisdiction to protect trust property and the 1244
trustee in the performance of the trustee's duties; 1245

(Y) Sign and deliver contracts and other instruments that 1246
are useful to achieve or facilitate the exercise of the 1247
trustee's powers; 1248

(Z) On termination of the trust, exercise the powers 1249
appropriate to wind up the administration of the trust and 1250
distribute the trust property to the persons entitled to it; 1251

(AA) Employ agents, attorneys, accountants, investment 1252
advisors, and other professionals. 1253

Sec. 5812.32. (A) As used in this section, ~~"payment"~~; 1254

(1) "Payment" means a payment that a trustee may receive 1255
over a fixed number of years or during the life of one or more 1256
individuals because of services rendered or property transferred 1257
to the payer in exchange for future payments. "Payment" includes 1258
a payment made in money or property from the payer's general 1259
assets or from a separate fund created by the payer, ~~including.~~ 1260
For purposes of divisions (D), (E), (F), and (G) of this 1261
section, "payment" also includes any payment made from any 1262
separate fund regardless of the reason for the payment. 1263

(2) "Separate fund" includes a private or commercial 1264
annuity, an individual retirement account, or a pension, profit- 1265
sharing, stock-bonus, or stock-ownership plan. 1266

(B) To the extent that a payment is characterized as 1267
interest ~~or~~, a dividend, or a payment made in lieu of interest 1268
or a dividend, a trustee shall allocate ~~it~~ the payment to 1269
income. The trustee shall allocate to principal the balance of 1270
the payment and any other payment received in the same 1271
accounting period that is not characterized as interest, a 1272
dividend, or an equivalent payment. 1273

(C) If no part of a payment is characterized as interest, 1274
a dividend, or an equivalent payment, and all or part of the 1275
payment is required to be made, a trustee shall allocate to 1276
income ten per cent of the part that is required to be made 1277
during the accounting period and the balance to principal. If no 1278
part of a payment is required to be made or the payment received 1279
is the entire amount to which the trustee is entitled, the 1280
trustee shall allocate the entire payment to principal. For 1281
purposes of this division, a payment is not "required to be 1282
made" to the extent that it is made because the trustee 1283
exercises a right of withdrawal. 1284

~~(D) If, to obtain an estate tax marital deduction for a~~ 1285
~~trust, a trustee must allocate more of a payment to income than~~ 1286
~~is provided for by this section, the trustee shall allocate to~~ 1287
~~income the additional amount necessary to obtain the marital~~ 1288
~~deduction. Except as otherwise provided in division (E) of this~~ 1289
~~section, divisions (F) and (G) of this section apply, and~~ 1290
~~divisions (B) and (C) of this section do not apply, in~~ 1291
~~determining the allocation of a payment made from a separate~~ 1292
~~fund to either of the following:~~ 1293

(1) A trust for which an election to qualify for a marital deduction under section 2056(b) (7) of the Internal Revenue Code of 1986, 26 U.S.C. 2056(b) (7), as amended, has been made; 1294
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(2) A trust that qualifies for the marital deduction under section 2056(b) (5) of the Internal Revenue Code of 1986, 26 U.S.C. 2056(b) (5), as amended. 1297
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1299

(E) Divisions (D), (F), and (G) of this section do not apply if and to the extent that the series of payments would, without the application of division (D) of this section, qualify for the marital deduction under section 2056(b) (7) (C) of the Internal Revenue Code of 1986, 26 U.S.C. 2056(b) (7) (C), as amended. 1300
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(F) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to sections 5812.01 to 5812.52 of the Revised Code. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period. 1306
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(G) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four per cent of the fund's value according to the most recent 1320
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statement of value preceding the beginning of the accounting 1324
period. If the trustee can determine neither the internal income 1325
of the separate fund nor the value of the fund, the internal 1326
income of the fund is deemed to equal the product of the 1327
interest rate and the present value of the expected future 1328
payments, as determined under section 7520 of the Internal 1329
Revenue Code of 1986, 26 U.S.C. 7520, as amended, for the month 1330
preceding the accounting period for which the computation is 1331
made. 1332

(H) This section does not apply to ~~payments~~ a payment to 1333
which section 5812.33 of the Revised Code applies. 1334

(I) (1) This section applies to a trust described in 1335
division (D) of this section on and after any of the following 1336
dates: 1337

(a) If the trust has not received a payment from a 1338
separate fund on the effective date of the amendment of this 1339
section, the date of the decedent's death; 1340

(b) If the trust receives the first payment from any and 1341
all separate funds payable to the trust in the calendar year 1342
beginning January 1 of the year in which the amendment of this 1343
section takes effect, the date of the decedent's death; 1344

(c) If the trust is not described in division (I) (1) (a) or 1345
(b) of this section, January 1 of the year in which the 1346
amendment of this section takes effect. 1347

(2) For purposes of division (I) (1) of this section, 1348
"decedent" means the individual by reason of whose death the 1349
trust may receive a payment from the separate fund. 1350

Sec. 5812.46. (A) A tax required to be paid by a trustee 1351
based on receipts allocated to income shall be paid from income. 1352

(B) A tax required to be paid by a trustee based on 1353
receipts allocated to principal shall be paid from principal, 1354
even if the tax is called an income tax by the taxing authority. 1355

(C) A tax required to be paid by a trustee on the trust's 1356
share of an entity's taxable income shall be paid 1357
~~proportionately~~ as follows: 1358

(1) From income, to the extent that receipts from the 1359
entity are allocated only to income; 1360

(2) From principal, ~~as follows:~~ 1361

~~(a) To~~ to the extent that receipts from the entity are 1362
allocated only to principal; ~~and~~ 1363

~~(b) To~~ (3) Proportionately from principal and income, to 1364
the extent that receipts from the entity are allocated to both 1365
income and principal; 1366

(4) From principal, to the extent that the trust's share 1367
of the entity's taxable income tax exceeds the total receipts 1368
described in divisions (C) (1) and (2) (a) of this section from 1369
the entity. 1370

(D) ~~For purposes of this section, receipts allocated to~~ 1371
~~principal or income shall be reduced by the amount distributed~~ 1372
~~to a beneficiary from principal or income for which the trust~~ 1373
~~receives a deduction in calculating the tax. After applying~~ 1374
divisions (A) to (C) of this section, the trustee shall adjust 1375
income or principal receipts to the extent that the trust's 1376
taxes are reduced because the trust receives a deduction for 1377
payments made to a beneficiary. 1378

Sec. 5812.51. (A) Sections 5812.01 to 5812.52 of the 1379
Revised Code may be cited as the "uniform principal and income 1380

act~~(1997)~~." 1381

(B) In applying and construing the "uniform principal and 1382
income act~~(1997)~~,"~~7~~ consideration shall be given to the need to 1383
promote uniformity of the law with respect to its subject matter 1384
among states that enact the "uniform principal and income 1385
act~~(1997)~~."~~7~~ 1386

Sec. 5814.01. As used in sections 5814.01 to ~~5814.09~~ 1387
5814.10 of the Revised Code, unless the context otherwise 1388
requires: 1389

(A) "Benefit plan" means any plan of an employer for the 1390
benefit of any employee, any plan for the benefit of any 1391
partner, or any plan for the benefit of a proprietor, and 1392
includes, but is not limited to, any pension, retirement, death 1393
benefit, deferred compensation, employment agency, stock bonus, 1394
option, or profit-sharing contract, plan, system, account, or 1395
trust. 1396

(B) "Broker" means a person that is lawfully engaged in 1397
the business of effecting transactions in securities for the 1398
account of others. A "broker" includes a financial institution 1399
that effects such transactions and a person who is lawfully 1400
engaged in buying and selling securities for the person's own 1401
account, through a broker or otherwise, as a part of a regular 1402
business. 1403

(C) "Court" means the probate court. 1404

(D) "The custodial property" includes: 1405

(1) All securities, money, life or endowment insurance 1406
policies, annuity contracts, benefit plans, real estate, 1407
tangible and intangible personal property, proceeds of a life or 1408
endowment insurance policy, an annuity contract, or a benefit 1409

plan, and other types of property under the supervision of the 1410
same custodian for the same minor as a consequence of a transfer 1411
or transfers made to the minor, a gift or gifts made to the 1412
minor, or a purchase made by the custodian for the minor, in a 1413
manner prescribed in sections 5814.01 to ~~5814.09~~5814.10 of the 1414
Revised Code; 1415

(2) The income from the custodial property; 1416

(3) The proceeds, immediate and remote, from the sale, 1417
exchange, conversion, investment, reinvestment, or other 1418
disposition of the securities, money, life or endowment 1419
insurance policies, annuity contracts, benefit plans, real 1420
estate, tangible and intangible personal property, proceeds of a 1421
life or endowment insurance policy, an annuity contract, or a 1422
benefit plan, other types of property, and income. 1423

(E) "Custodian" or "successor custodian" means a person so 1424
designated in a manner prescribed in sections 5814.01 to ~~5814.09~~ 1425
5814.10 of the Revised Code. 1426

(F) "Financial institution" means any bank, as defined in 1427
section 1101.01, any building and loan association, as defined 1428
in section 1151.01, any credit union as defined in section 1429
1733.01 of the Revised Code, and any federal credit union, as 1430
defined in the "Federal Credit Union Act," 73 Stat. 628 (1959), 1431
12 U.S.C.A. 1752, as amended. 1432

(G) "Guardian of the minor" includes the general guardian, 1433
guardian, tutor, or curator of the property, estate, or person 1434
of a minor. 1435

(H) "Issuer" means a person who places or authorizes the 1436
placing of the person's name on a security, other than as a 1437
transfer agent, to evidence that it represents a share, 1438

participation, or other interest in the person's property or in 1439
an enterprise, or to evidence the person's duty or undertaking 1440
to perform an obligation that is evidenced by the security, or 1441
who becomes responsible for or in place of any such person. 1442

(I) "Legal representative" of a person means the executor, 1443
administrator, general guardian, guardian, committee, 1444
conservator, tutor, or curator of the person's property or 1445
estate. 1446

(J) "Member of the minor's family" means a parent, 1447
stepparent, spouse, grandparent, brother, sister, uncle, or aunt 1448
of the minor, whether of the whole or half blood, or by 1449
adoption. 1450

(K) ~~"Minor"~~ (1) Except as provided in division (K) (2) of 1451
this section, "minor" means a person an individual who has not 1452
attained the age of twenty-one years. 1453

(2) When used with reference to the beneficiary for whose 1454
benefit custodial property is held or is to be held, "minor" 1455
means an individual who has not attained the age at which the 1456
custodian is required under section 5814.09 of the Revised Code 1457
to transfer the custodial property to the beneficiary. 1458

(L) "Security" includes any note, stock, treasury stock, 1459
common trust fund, bond, debenture, evidence of indebtedness, 1460
certificate of interest or participation in an oil, gas, or 1461
mining title or lease or in payments out of production under an 1462
oil, gas, or mining title or lease, collateral trust 1463
certificate, transferable share, voting trust certificate, or, 1464
in general, any interest or instrument commonly known as a 1465
security, or any certificate of interest or participation in, 1466
any temporary or interim certificate, receipt or certificate of 1467

deposit for, or any warrant or right to subscribe to or 1468
purchase, any of the foregoing. A "security" does not include a 1469
security of which the donor or transferor is the issuer. A 1470
security is in "registered form" when it specifies a person who 1471
is entitled to it or to the rights that it evidences and its 1472
transfer may be registered upon books maintained for that 1473
purpose by or on behalf of the issuer. 1474

(M) "Transfer" means a disposition, other than a gift, by 1475
a person who is eighteen years of age or older that creates 1476
custodial property under sections 5814.01 to ~~5814.09~~ 5814.10 of 1477
the Revised Code. 1478

(N) "Transfer agent" means a person who acts as 1479
authenticating trustee, transfer agent, registrar, or other 1480
agent for an issuer in the registration of transfers of its 1481
securities, in the issue of new securities, or in the 1482
cancellation of surrendered securities. 1483

(O) "Transferor" means a person who is eighteen years of 1484
age or older, who makes a transfer. 1485

(P) "Trust company" means a financial institution that is 1486
authorized to exercise trust powers. 1487

(Q) "Administrator" includes an "administrator with the 1488
will annexed." 1489

Sec. 5814.02. (A) A person who is eighteen years of age or 1490
older may, during the person's lifetime, make a gift or transfer 1491
of a security, money, a life or endowment insurance policy, an 1492
annuity contract, a benefit plan, real estate, tangible or 1493
intangible personal property, or any other property to, may 1494
designate as beneficiary of a life or endowment insurance 1495
policy, an annuity contract, or a benefit plan, or make a 1496

transfer by the irrevocable exercise of a power of appointment 1497
in favor of, a person who is a minor on the date of the gift or 1498
transfer: 1499

(1) If the subject of the gift or transfer is a security 1500
in registered form, by registering it in the name of the donor 1501
or transferor, another person who is eighteen years of age or 1502
older, or a trust company, followed, in substance, by the words: 1503
"as custodian for (name of minor) under the 1504
Ohio Transfers to Minors Act;" 1505

(2) If the subject of the gift or transfer is a security 1506
not in registered form, by delivering it to the donor or 1507
transferor, another person who is eighteen years of age or 1508
older, or a trust company, accompanied by a statement of a gift 1509
or transfer in the following form, in substance, signed by the 1510
donor or transferor and the person or trust company designated 1511
as custodian: 1512

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT 1513

I, (name of donor or transferor), 1514
hereby deliver to (name of custodian) as custodian 1515
for (name of minor) under the Ohio Transfers 1516
to Minors Act, the following security (ies): (insert an 1517
appropriate description of the security or securities delivered, 1518
sufficient to identify it or them). 1519

..... 1520

(signature of donor or transferor) 1521

..... (name of custodian) hereby acknowledges 1522
receipt of the above described security (ies) as custodian for 1523
the above minor under the Ohio Transfers to Minors Act. 1524

Dated: 1525

(signature of custodian)" 1526

(3) If the subject of the gift or transfer is money, by 1527
paying or delivering it to a broker, or a financial institution 1528
for credit to an account in the name of the donor or transferor, 1529
another person who is eighteen years of age or older, or a trust 1530
company, followed, in substance, by the words: "as custodian for 1531
..... (name of minor) under the Ohio Transfers to 1532
Minors Act." 1533

(4) If the subject of the gift or transfer is a life or 1534
endowment insurance policy, an annuity contract, or a benefit 1535
plan, by assigning the policy, contract, or plan to the donor or 1536
transferor, another person who is eighteen years of age or 1537
older, or a trust company, followed, in substance by the words: 1538
"as custodian for (name of minor) under the 1539
Ohio Transfers to Minors Act." 1540

(5) If the subject of the gift or transfer is an interest 1541
in real estate, by executing and delivering in the appropriate 1542
manner a deed, assignment, or similar instrument in the name of 1543
the donor or transferor, another person who is eighteen years of 1544
age or older, or a trust company, followed, in substance, by the 1545
words: "as custodian for (name of minor) under 1546
the Ohio Transfers to Minors Act." 1547

(6) If the subject of the gift or transfer is tangible 1548
personal property, by delivering it to the donor or transferor, 1549
another person who is eighteen years of age or older, or a trust 1550
company, accompanied by a statement of a gift or transfer in the 1551
following form, in substance, signed by the donor or transferor 1552
and the person or trust company designated as custodian: 1553

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT 1554

I, (name of donor or transferor), hereby 1555
deliver to (name of custodian) as custodian 1556
for (name of minor) under the Ohio Transfers 1557
to Minors Act, the following property: (insert an appropriate 1558
description of the property delivered, sufficient to identify 1559
it). 1560

..... 1561
(signature of donor or transferor) 1562
..... (name of custodian) hereby 1563
acknowledges receipt of the above described property as 1564
custodian for the above minor under the Ohio Transfers to Minors 1565
Act. 1566
Dated: 1567
(signature of custodian)" 1568

(7) If the subject of the gift or transfer is tangible 1569
personal property, title to which is evidenced by a certificate 1570
of title issued by a department or agency of a state or of the 1571
United States, by issuing title to the donor or transferor, 1572
another person who is eighteen years of age or older, or a trust 1573
company, accompanied by a statement of a gift or transfer in the 1574
following form, in substance: "as custodian 1575
for (name of minor) under the Ohio 1576
Transfers to Minors Act;" or by delivering the title to another 1577
person who is eighteen years of age or older or a trust company, 1578
endorsed to that person followed in substance by the following 1579
words: "as custodian for (name of minor) 1580
under the Ohio Transfers to Minors Act." 1581

(8) If the subject of the gift or transfer is the 1582
designation of a minor as beneficiary of a life or endowment 1583
insurance policy, an annuity contract, or a benefit plan, by 1584

designating as beneficiary of the policy, contract, or plan the 1585
donor or transferor, another person who is eighteen years of age 1586
or older, or a trust company, followed, in substance, by the 1587
words: "as custodian for (name of minor) 1588
under the Ohio Transfers to Minors Act." 1589

(9) If the subject of the gift or transfer is an 1590
irrevocable exercise of a power of appointment in favor of a 1591
minor or is an interest in any property that is not described in 1592
divisions (A) (1) to (8) of this section, by causing the 1593
ownership of the property to be transferred by any written 1594
document in the name of the donor or transferor, another person 1595
who is eighteen years of age or older, or a trust company, 1596
followed, in substance, by the words: "as custodian 1597
for (name of minor) under the Ohio Transfers 1598
to Minors Act." 1599

(B) Trustees, inter vivos or testamentary, executors, and 1600
administrators having authority to distribute or pay any trust 1601
or estate property to or for the benefit of a minor, or having 1602
authority to distribute or pay any trust or estate property to 1603
any other person for the benefit of a minor may, if authorized 1604
by a will or trust instrument, distribute or pay trust or estate 1605
property of any type mentioned in division (A) of this section 1606
in the manner and form provided in that division, and may name 1607
the custodian or successor custodian of the property if the will 1608
or trust instrument does not name an eligible custodian, or if 1609
the will or trust does not name an eligible successor custodian 1610
and the naming of a successor custodian is necessary. A person 1611
who is eighteen years of age or older, in the person's will or 1612
trust instrument, may provide that the fiduciary shall make any 1613
payment or distribution as provided in this division and may 1614
name the custodian and a successor custodian of the trust or 1615

estate property. As to any distribution or payment so made, the 1616
testator of a will, under the provisions of which a testamentary 1617
trust or estate is being administered, or the settlor of an 1618
inter vivos trust shall be deemed the donor or transferor. 1619

(C) Any gift, transfer, payment, or distribution that is 1620
made in a manner prescribed in division (A), (B), or (E) of this 1621
section may be made to only one minor and only one person may be 1622
the custodian. All gifts, transfers, payments, and distributions 1623
made by a person in a manner prescribed in sections 5814.01 to 1624
~~5814.09~~ 5814.10 of the Revised Code to the same custodian for 1625
the benefit of the same minor result in a single custodianship. 1626

(D) A donor or transferor who makes a gift or transfer to 1627
a minor in a manner prescribed in division (A) of this section 1628
and a trustee, executor, or administrator acting under division 1629
(B) or (E) of this section shall promptly do all things within 1630
the donor's, transferor's, trustee's, executor's, or 1631
administrator's power to put the subject of the gift or transfer 1632
in the possession and control of the custodian, but neither the 1633
donor's, transferor's, trustee's, executor's, or administrator's 1634
failure to comply with this division, nor the designation by the 1635
donor, transferor, trustee, executor, or administrator of an 1636
ineligible custodian, nor the renunciation by the person or 1637
trust company designated as custodian, affects the consummation 1638
of the gift or transfer. 1639

(E) If there is no will, or if a will, trust, or other 1640
governing instrument does not contain an authorization to make a 1641
transfer as described in this division, a trustee, executor, or 1642
administrator may make a transfer in a manner prescribed in 1643
division (A) of this section to self, another person who is 1644
eighteen years of age or older, or a trust company, as 1645

custodian, if all of the following apply: 1646

(1) Irrespective of the value of the property, the 1647
trustee, executor, or administrator considers the transfer to be 1648
in the best interest of the minor; 1649

(2) Irrespective of the value of the property, the 1650
transfer is not prohibited by or inconsistent with the 1651
applicable will, trust agreement, or other governing instrument; 1652

(3) If the value of the property exceeds ~~ten~~twenty-five 1653
thousand dollars, the transfer is authorized by the appropriate 1654
court. 1655

(F) Except with respect to real property, a donor or 1656
transferor who makes a gift or transfer to a minor in a manner 1657
prescribed in division (A) of this section and a trustee, 1658
executor, or administrator acting under division (B) or (E) of 1659
this section may also designate one or more successor 1660
custodians, in substance, by adding to such designation the 1661
following words or words of similar import for the successor or 1662
successors designated: "In the event of the death or inability 1663
or unwillingness to serve of (name of 1664
custodian), or any successor custodian designated 1665
hereby, (name of first successor custodian), 1666
followed by (name of second successor 1667
custodian), in the order named, shall serve as successor 1668
custodian." 1669

Sec. 5814.03. (A) A gift or transfer made in a manner 1670
prescribed in sections 5814.01 to ~~5814.09~~5814.10 of the Revised 1671
Code, is irrevocable and conveys to the minor indefeasibly 1672
vested legal title to the security, money, life or endowment 1673
insurance policy, annuity contract, benefit plan, real estate, 1674

tangible or intangible personal property, or other property 1675
given or, subject to the right of the owner of the policy, 1676
contract, or benefit plan to change the beneficiary if the 1677
custodian is not the owner, to the proceeds of a life or 1678
endowment insurance policy, an annuity contract, or a benefit 1679
plan given, but no guardian of the minor has any right, power, 1680
duty, or authority with respect to the custodial property except 1681
as provided in sections 5814.01 to ~~5814.09~~5814.10 of the 1682
Revised Code. 1683

(B) By making a gift or transfer in a manner prescribed in 1684
sections 5814.01 to ~~5814.09~~5814.10 of the Revised Code, the 1685
donor or transferor incorporates in the gift or transfer all the 1686
provisions of these sections and grants to the custodian, and to 1687
any issuer, transfer agent, financial institution, broker, or 1688
third person dealing with a person or trust company designated 1689
as custodian, the respective powers, rights, and immunities 1690
provided in these sections. 1691

Sec. 5814.04. (A) The custodian shall collect, hold, 1692
manage, invest, and reinvest the custodial property. 1693

(B) The custodian shall pay over to the minor for 1694
expenditure by the minor, or expend for the use or benefit of 1695
the minor, as much of or all the custodial property as the 1696
custodian considers advisable for the use and benefit of the 1697
minor in the manner, at the time or times, and to the extent 1698
that the custodian in the custodian's discretion considers 1699
suitable and proper, with or without court order, with or 1700
without regard to the duty or ability of the custodian or of any 1701
other person to support the minor or the minor's ability to do 1702
so, and with or without regard to any other income or property 1703
of the minor that may be applicable or available for any 1704

purpose. Any payment or expenditure that is made under this 1705
division is in addition to, is not a substitute for, and does 1706
not affect the obligation of any person to support the minor for 1707
whom the payment or expenditure is made. 1708

(C) The court, on the petition of a parent or guardian of 1709
the minor or of the minor, if the minor has attained the age of 1710
fourteen years, may order the custodian to pay over to the minor 1711
for expenditure by the minor or to expend as much of or all the 1712
custodial property as is necessary for the use and benefit of 1713
the minor. 1714

(D) (1) Except as provided in division (D) (2) of this 1715
section and in section 5814.09 of the Revised Code, to the 1716
extent that the custodial property is not so expended, the 1717
custodian shall deliver or pay the custodial property over to 1718
the minor on the minor's attaining the age of twenty-one years 1719
or, if the minor dies before attaining the age of twenty-one 1720
years, shall, upon the minor's death, deliver or pay the 1721
custodial property over to the estate of the minor. 1722

(2) If the donor or transferor, in the written instrument 1723
that makes or provides for the gift or transfer, directs the 1724
custodian to deliver or pay over the custodial property to the 1725
minor on the minor's attaining any age between eighteen and 1726
twenty-one, the custodian shall deliver or pay over the 1727
custodial property to the minor on the minor's attaining that 1728
age, or, if the minor dies before attaining that age, the 1729
custodian shall, upon the minor's death, deliver or pay the 1730
custodial property over to the estate of the minor. 1731

(E) The custodian, notwithstanding statutes restricting 1732
investments by fiduciaries, shall invest and reinvest the 1733
custodial property as would a prudent person of discretion and 1734

intelligence dealing with the property of another, except that 1735
the custodian may, in the discretion of the custodian and 1736
without liability to the minor or the estate of the minor, 1737
retain any custodial property received in a manner prescribed in 1738
sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code. If a 1739
custodian has special skills or is named custodian on the basis 1740
of representations of special skills or expertise, the custodian 1741
is under a duty to use those skills or that expertise. 1742

(F) The custodian may sell, exchange, convert, or 1743
otherwise dispose of custodial property in the manner, at the 1744
time or times, for the price or prices, and upon the terms the 1745
custodian considers advisable. The custodian may vote in person 1746
or by general or limited proxy a security that is custodial 1747
property. The custodian may consent, directly or through a 1748
committee or other agent, to the reorganization, consolidation, 1749
merger, dissolution, or liquidation of an issuer of a security 1750
that is custodial property, and to the sale, lease, pledge, or 1751
mortgage of any property by or to such an issuer, and to any 1752
other action by such an issuer. The custodian may purchase any 1753
life or endowment insurance policy or annuity contract on the 1754
life of the minor or any member of the family of the minor and 1755
pay, from funds in the custodian's custody, any premiums on any 1756
life or endowment insurance policy or annuity contract held by 1757
the custodian as custodial property. The custodian may execute 1758
and deliver any and all instruments in writing that the 1759
custodian considers advisable to carry out any of the 1760
custodian's powers as custodian. 1761

(G) The custodian shall register each security that is 1762
custodial property and in registered form in the name of the 1763
custodian, followed, in substance, by the words: "as custodian 1764
for (name of minor) under the Ohio Transfers to 1765

Minors Act," or shall maintain each security that is custodial 1766
property and in registered form in an account with a broker or 1767
in a financial institution in the name of the custodian, 1768
followed, in substance, by the words: "as custodian 1769
for (name of minor) under the Ohio Transfers to 1770
Minors Act." A security held in account with a broker or in a 1771
financial institution in the name of the custodian may be held 1772
in the name of the broker or financial institution. A security 1773
that is custodial property and in registered form and that is 1774
held by a broker or in a financial institution in which the 1775
broker or financial institution does not have a lien for 1776
indebtedness due to it from a custodial account may not be 1777
pledged, lent, hypothecated, or disposed of except upon the 1778
specific instructions of the custodian. The custodian shall hold 1779
all money that is custodial property in an account with a broker 1780
or in a financial institution in the name of the custodian, 1781
followed, in substance, by the words: "as custodian 1782
for (name of minor) under the Ohio Transfers to 1783
Minors Act." The custodian shall hold all life or endowment 1784
insurance policies, annuity contracts, or benefit plans that are 1785
custodial property in the name of the custodian, followed, in 1786
substance, by the words "as custodian for (name 1787
of minor) under the Ohio Transfers to Minors Act." The custodian 1788
shall take title to all real estate that is custodial property 1789
in the name of the custodian, followed, in substance, by the 1790
words: "as custodian for (name of minor) under the 1791
Ohio Transfers to Minors Act." In the event one or more 1792
successor custodians have been designated by the donor, 1793
transferor, trustee, executor, or administrator pursuant to 1794
division (F) of section 5814.02 of the Revised Code or by the 1795
custodian pursuant to division (E) of section 5814.07 of the 1796
Revised Code, each registration, account, policy, contract, 1797

plan, or title in the name of the custodian set forth in this 1798
division shall include such designation of successor custodian 1799
or custodians. The custodian shall keep all other custodial 1800
property separate and distinct from the custodian's own property 1801
in a manner to identify it clearly as custodial property. 1802

(H) The custodian shall keep records of all transactions 1803
with respect to the custodial property and make the records 1804
available for inspection at reasonable intervals by a parent or 1805
legal representative of the minor or by the minor, if the minor 1806
has attained the age of fourteen years. 1807

(I) A custodian has, with respect to the custodial 1808
property, in addition to the rights and powers provided in 1809
sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised Code, all the 1810
rights and powers that a guardian has with respect to property 1811
not held as custodial property. 1812

(J) The custodian may invest in or pay premiums on any 1813
life or endowment insurance policy or annuity contract on either 1814
of the following: 1815

(1) The life of the minor, if the minor or the estate of 1816
the minor is the sole beneficiary under the policy or contract; 1817

(2) The life of any person in whom the minor has an 1818
insurable interest, if the minor, the minor's estate, or the 1819
custodian in the custodian's capacity as custodian is the sole 1820
beneficiary. 1821

(K) All of the rights, powers, and authority of the 1822
custodian over custodial property, including all of the 1823
incidents of ownership in any life or endowment insurance 1824
policy, annuity contract, or benefit plan, are held only in the 1825
capacity of the custodian as custodian. 1826

Sec. 5814.05. (A) A custodian is entitled to reimbursement 1827
from the custodial property for reasonable expenses incurred in 1828
the performance of the custodian's duties. 1829

(B) A custodian may act without compensation for the 1830
custodian's services. 1831

(C) Unless the custodian is a donor or transferor, the 1832
custodian may receive from custodial property reasonable 1833
compensation for the custodian's services determined by one of 1834
the following standards in the order stated: 1835

(1) A direction by the donor or transferor when the gift 1836
or transfer is made; 1837

(2) A statute of this state applicable to custodians; 1838

(3) The statute of this state applicable to guardians; 1839

(4) An order of the court. 1840

(D) Except as otherwise provided in sections 5814.01 to 1841
~~5814.09~~5814.10 of the Revised Code, a custodian shall not be 1842
required to give a bond for the performance of the custodian's 1843
duties. 1844

(E) A custodian not compensated for the custodian's 1845
services is not liable for losses to the custodial property 1846
unless they result from the custodian's bad faith, intentional 1847
wrongdoing, or gross negligence or from the custodian's failure 1848
to maintain the standard of prudence in investing the custodial 1849
property provided in sections 5814.01 to ~~5814.09~~5814.10 of the 1850
Revised Code. 1851

Sec. 5814.06. An issuer, transfer agent, financial 1852
institution, broker, life insurance company, or other person 1853
acting on the instructions of or otherwise dealing with any 1854

person purporting to act as a donor or transferor or dealing 1855
with any person or trust company purporting to act as a 1856
custodian is not required to do any of the following: 1857

(A) Determine either of the following: 1858

(1) Whether the person or trust company designated by the 1859
purported donor or transferor, or the person or trust company 1860
purporting to act as a custodian, has been duly designated; 1861

(2) Whether any purchase, sale, or transfer to or by, or 1862
any other act of, any person or trust company purporting to act 1863
as a custodian is in accordance with or authorized by sections 1864
5814.01 to ~~5814.09~~ 5814.10 of the Revised Code. 1865

(B) Inquire into the validity or propriety under sections 1866
5814.01 to ~~5814.09~~ 5814.10 of the Revised Code of any instrument 1867
or instructions executed or given by a person purporting to act 1868
as a donor or transferor or by a person or trust company 1869
purporting to act as a custodian; 1870

(C) See to the application by any person or trust company 1871
purporting to act as a custodian of any money or other property 1872
paid or delivered to the person or trust company. 1873

Sec. 5814.07. (A) Any person who is eighteen years of age 1874
or older or a trust company is eligible to become a successor 1875
custodian. A successor custodian has all the rights, powers, 1876
duties, and immunities of a custodian designated in a manner 1877
prescribed by sections 5814.01 to ~~5814.09~~ 5814.10 of the Revised 1878
Code. 1879

(B) A custodian may resign and designate the custodian's 1880
successor by doing all of the following: 1881

(1) Executing an instrument of resignation that designates 1882

the successor custodian; 1883

(2) Causing each security that is custodial property and 1884
in registered form to be registered in the name of the successor 1885
custodian followed, in substance, by the words: "as custodian 1886
for (name of minor) under the Ohio 1887
Transfers to Minors Act;" 1888

(3) Executing in the appropriate manner a deed, 1889
assignment, or similar instrument for all interest in real 1890
estate that is custodial property in the name of the successor 1891
custodian, followed, in substance, by the words: "as custodian 1892
for (name of minor) under the Ohio 1893
Transfers to Minors Act;" 1894

(4) Delivering to the successor custodian the instrument 1895
of resignation, each security registered in the name of the 1896
successor custodian, each deed, assignment, or similar 1897
instrument for all interest in real estate that is in the name 1898
of the successor custodian, and all other custodial property, 1899
together with any additional instruments that are required for 1900
the transfer of the custodial property. 1901

(C) A custodian may petition the court for permission to 1902
resign and for the designation of a successor custodian. 1903

(D) A custodian may designate by the custodian's will a 1904
successor custodian, which designation is effective at the 1905
custodian's death. Upon the custodian's death, the custodian's 1906
legal representative shall do each of the following: 1907

(1) Cause each security that is custodial property and in 1908
registered form to be registered in the name of the successor 1909
custodian, followed, in substance, by the words: "as custodian 1910
for (name of minor) under the Ohio 1911

Transfers to Minors Act,"	1912
(2) Execute in the appropriate manner a deed, assignment,	1913
or similar instrument for all interest in real estate that is	1914
custodial property in the name of the successor custodian,	1915
followed, in substance, by the words: "as custodian	1916
for (name of minor) under the Ohio	1917
Transfers to Minors Act,"	1918
(3) Deliver to the successor custodian each security	1919
registered in the name of the successor custodian, each deed,	1920
assignment, or similar instrument for all interest in real	1921
estate that is in the name of the successor custodian, and all	1922
other custodial property, together with any additional	1923
instruments that are required for the transfer of the custodial	1924
property.	1925
(E) <u>A custodian may designate one or more successor</u>	1926
<u>custodians by transferring the property of any type specified in</u>	1927
<u>division (A) of section 5814.02 of the Revised Code, other than</u>	1928
<u>real estate, in the manner and form provided in that division,</u>	1929
<u>to self as custodian, followed by the designation of the</u>	1930
<u>successor custodian or custodians in the manner and form</u>	1931
<u>provided in division (F) of section 5814.02 of the Revised Code.</u>	1932
<u>A custodian may designate one or more successor custodians of</u>	1933
<u>real property by designating the successor custodian or</u>	1934
<u>custodians in the manner and form provided in sections 5302.22</u>	1935
<u>to 5302.23 of the Revised Code. A designation of a successor</u>	1936
<u>custodian or custodians by the custodian shall replace any</u>	1937
<u>previous designation of successor custodians by the donor,</u>	1938
<u>transferor, or previous custodian.</u>	1939
(F) <u>If no eligible successor custodian is designated by</u>	1940
<u>the donor or, transferor, trustee, executor, or administrator</u>	1941

pursuant to division (F) of section 5814.02 of the Revised Code 1942
or in the donor's or transferor's will or trust, or by the 1943
custodian in the custodian's will, ~~or if the custodian dies~~ 1944
~~intestate~~ pursuant to division (D) of this section or by 1945
transfer pursuant to division (E) of this section, the legal 1946
representative of a custodian who is deceased or is adjudged to 1947
be an incompetent by a court, ~~the legal representative of the~~ 1948
~~custodian~~ may designate a successor custodian. If the court in 1949
which the estate or guardianship proceedings relative to the 1950
custodian are pending approves the designation, the designation 1951
shall be regarded as having been effective as of the date of the 1952
death of the custodian or as of the date the custodian was 1953
adjudged to be an incompetent. Upon the approval of the court, 1954
the legal representative of the custodian shall cause the 1955
custodial property to be transferred or registered in the name 1956
of the successor custodian as provided in divisions (D) (1) to 1957
(3) of this section. 1958

~~(F)~~ (G) If a person or entity designated as successor 1959
custodian is not eligible, or renounces or dies before the minor 1960
attains the age of twenty-one years or before the minor attains 1961
the age at which the custodian is required under section 5814.09 1962
of the Revised Code to deliver the custodial property to the 1963
minor, or if the custodian dies without designating a successor 1964
custodian and division ~~(E)~~ (F) of this section does not apply 1965
because the custodian does not have a legal representative, the 1966
guardian of the minor shall be the successor custodian. If the 1967
minor does not have a guardian, a donor or transferor, the legal 1968
representative of the donor or transferor, the legal 1969
representative of the custodian, a member of the minor's family 1970
who is eighteen years of age or older, or the minor, if the 1971
minor has attained the age of fourteen years, may petition the 1972

court for the designation of a successor custodian. 1973

~~(G)~~ (H) A donor or transferor, the legal representative of 1974
a donor or transferor, a member of the minor's family who is 1975
eighteen years of age or older, a guardian of the minor, or the 1976
minor, if the minor has attained the age of fourteen years, may 1977
petition the court that, for cause shown in the petition, the 1978
custodian be removed and a successor custodian be designated or, 1979
in the alternative, that the custodian be required to give bond 1980
for the performance of the custodian's duties. 1981

~~(H)~~ (I) Upon the filing of a petition as provided in this 1982
section, the court shall grant an order, directed to the persons 1983
and returnable on any notice that the court may require, to show 1984
cause why the relief prayed for in the petition should not be 1985
granted and, in due course, grant any relief that the court 1986
finds to be in the best interests of the minor. 1987

Sec. 5814.08. (A) The minor, if the minor has attained the 1988
age of fourteen years, or the legal representative of the minor, 1989
a member of the minor's family who is eighteen years of age or 1990
older, or a donor or transferor or the donor's or transferor's 1991
legal representative may petition the court for an accounting by 1992
the custodian or the custodian's legal representative. A 1993
successor custodian may petition the court for an accounting by 1994
the custodian that the successor custodian succeeded. 1995

(B) The court, in a proceeding under sections 5814.01 to 1996
~~5814.09~~ 5814.10 of the Revised Code, or otherwise, may require 1997
or permit the custodian or the custodian's legal representative 1998
to account and, if the custodian is removed, shall so require 1999
and order delivery of all custodial property to the successor 2000
custodian and the execution of all instruments required for the 2001
transfer of the custodial property. 2002

Sec. 5814.09. (A) Subject to the requirements and 2003
limitations of this section, the time for delivery to the minor 2004
of custodial property transferred under or pursuant to division 2005
(A) of section 5814.02 of the Revised Code may be delayed until 2006
a specified time after the minor attains the age of twenty-one 2007
years, which time shall be specified in the written instrument 2008
that makes or provides for the gift or transfer pursuant to 2009
divisions (A) (1) to (9) of section 5814.02 of the Revised Code. 2010

(B) To specify a delayed time for delivery to the minor of 2011
the custodial property, the words "as custodian 2012
for (name of minor) until age 2013
(age of delivery of property to minor) under the Ohio Transfers 2014
to Minors Act," shall be substituted in substance for the words 2015
"as custodian for (name of minor) under the 2016
Ohio Transfers to Minors Act." 2017

(C) The time for delivery to the minor of custodial 2018
property transferred under a will, trust instrument, or 2019
irrevocable exercise of a testamentary power of appointment may 2020
be delayed under this section only if the governing will, trust, 2021
or exercise of the power of appointment provides in substance 2022
that the custodianship is to continue until the time the minor 2023
attains a specified age, which time shall not be later than the 2024
date the minor attains the age of twenty-five years. 2025

(D) If the custodial property is transferred by inter 2026
vivos gift and the time for delivery of the custodial property 2027
to the minor is delayed beyond the time the minor attains the 2028
age of twenty-one years, the custodian, nevertheless, shall 2029
deliver the custodial property to the minor if requested in 2030
writing by the minor within sixty days of the minor attaining 2031
the age of twenty-one years, unless the donor or transferor, in 2032

the written instrument of gift or transfer pursuant to divisions 2033
(A) (1) to (9) of section 5814.02 of the Revised Code, provides 2034
that the custodial property may not be delivered to the minor 2035
prior to attaining the specified age of delivery, which time 2036
shall not be later than the date the minor attains the age of 2037
twenty-five years. 2038

(E) If the time for delivery to the minor of custodial 2039
property is delayed until a specified time after the minor 2040
attains the age of twenty-one years and the minor dies prior to 2041
attaining that age, the custodian shall, upon the minor's death, 2042
deliver the custodial property to the estate of the minor. 2043

(F) A custodian may not commingle the assets of custodial 2044
property that have different delivery dates. 2045

Sec. ~~5814.09~~ 5814.10. (A) Sections 5814.01 to ~~5814.09~~ 2046
~~5814.10~~ of the Revised Code shall be construed to effectuate 2047
their general purpose to make uniform the law of those states 2048
that enact similar provisions. 2049

(B) Sections 5814.01 to ~~5814.09~~ ~~5814.10~~ of the Revised 2050
Code shall not be construed as providing an exclusive method for 2051
making gifts or transfers to minors. 2052

(C) Nothing in sections 5814.01 to ~~5814.09~~ ~~5814.10~~ of the 2053
Revised Code⁷ shall affect gifts made under former sections 2054
1339.19 to 1339.28 of the Revised Code, nor the powers, duties, 2055
and immunities conferred by gifts in such manner upon custodians 2056
and persons dealing with custodians. Sections 5814.01 to ~~5814.09~~ 2057
~~5814.10~~ of the Revised Code henceforth apply, however, to all 2058
gifts made in a manner and form prescribed in former sections 2059
1339.19 to 1339.28 of the Revised Code, except insofar as the 2060
application impairs constitutionally vested rights. Sections 2061

5814.01 to ~~5814.09~~5814.10 of the Revised Code shall be 2062
construed as a continuation of the provisions of former sections 2063
1339.19 to 1339.28 of the Revised Code, according to the 2064
language employed, and not as a new enactment. 2065

(D) Nothing in sections 5814.01 to ~~5814.09~~5814.10 of the 2066
Revised Code, as of May 7, 1986, shall affect gifts made under 2067
those sections as they existed prior to May 7, 1986, or the 2068
powers, duties, and immunities conferred by the gifts in any 2069
manner upon custodians and persons dealing with custodians. 2070
Sections 5814.01 to ~~5814.09~~5814.10 of the Revised Code, as of 2071
May 7, 1986, hereafter apply to all gifts made in a manner and 2072
form prescribed in those sections as they existed prior to May 2073
7, 1986, except to the extent that the application of those 2074
sections, as of May 7, 1986, would impair constitutionally 2075
vested rights. 2076

Sec. 5815.23. (A) Except as provided in division (B) of 2077
this section, an instrument that creates an inter vivos or 2078
testamentary trust shall not require or permit the accumulation 2079
for more than one year of any income of property that satisfies 2080
both of the following: 2081

(1) The property is granted to a surviving spouse of the 2082
testator or other settlor. 2083

(2) The property qualifies for the federal estate tax 2084
marital deduction allowed by subtitle B, Chapter 11 of the 2085
"Internal Revenue Code of 1986," 26 U.S.C. 2056, as amended, the 2086
estate tax marital deduction allowed by division (A) of section 2087
5731.15 of the Revised Code, or the qualified terminable 2088
interest property deduction allowed by division (B) of section 2089
5731.15 of the Revised Code. 2090

(B) (1) Division (A) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that obtaining a marital deduction or a qualified terminable interest property deduction as described in division (A) (2) of this section is less important than requiring or permitting the accumulation of income of property in accordance with a provision in the instrument that requires or permits the accumulation for more than one year of any income of property.

(2) Division (A) of this section does not apply to any beneficiary of an inter vivos or testamentary trust other than the surviving spouse of the testator or other settlor or to any inter vivos or testamentary trust of which the surviving spouse of the testator or other settlor is a beneficiary if an interest in property does not qualify for a marital deduction or a qualified terminable interest property deduction as described in division (A) (2) of this section.

~~(C) (1) The trustee of a trust that qualifies for an estate tax marital deduction for federal or Ohio estate tax purposes and that is the beneficiary of an individual retirement account has a fiduciary duty, in regard to the income distribution provision of the trust, to withdraw and distribute the income of the individual retirement account, at least annually, to the surviving spouse of the testator or other settlor.~~

~~(2) A trustee's fiduciary duty as described in division (C) (1) of this section is satisfied if the terms of the trust instrument expressly provide the surviving spouse a right to withdraw all of the assets from the trust or a right to compel the trustee to withdraw and distribute the income of the individual retirement account to the surviving spouse.~~

~~(D)~~ Divisions (A) and (B) ~~and (C) (1)~~ of this section are 2121
intended to codify existing fiduciary and trust law principles 2122
relating to the interpretation of a testator's or other 2123
settlor's intent with respect to the income provisions of a 2124
trust. Divisions (A) and (B) ~~and (C)~~ of this section apply to 2125
trust instruments executed prior to and existing on October 1, 2126
1996, or executed thereafter. The trustee of a trust described 2127
in division (A) or (B) of this section, in a written trust 2128
amendment, may elect to not apply divisions (A) and (B) of this 2129
section to the trust. Any election of that nature, when made, is 2130
irrevocable. 2131

Section 2. That existing sections 2101.16, 2105.02, 2132
2105.14, 2105.31, 2105.32, 2105.33, 2105.34, 2105.35, 2105.36, 2133
2105.37, 2105.39, 2107.07, 2107.10, 2109.62, 2111.131, 2113.86, 2134
5801.10, 5803.02, 5804.02, 5808.16, 5812.32, 5812.46, 5812.51, 2135
5814.01, 5814.02, 5814.03, 5814.04, 5814.05, 5814.06, 5814.07, 2136
5814.08, 5814.09, and 5815.23 and section 2105.38 of the Revised 2137
Code are hereby repealed. 2138