

**As Reported by the House Civil Justice Committee**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**Sub. H. B. No. 464**

**Representatives Cupp, Rogers**

**Cosponsors: Representatives Lipps, Seitz, Hambley, Grendell, Miranda, Roemer,  
Ingram, Miller, J.**

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**A BILL**

To amend sections 1721.21, 1901.123, 1907.143, 1  
2106.13, 2108.05, 2108.06, 2108.07, 2108.23, 2  
2108.24, 2108.34, 2111.10, 2111.50, 2133.07, 3  
2701.10, 2717.01, 5122.15, 5804.11, 5805.06, 4  
5816.02, 5816.05, 5816.06, 5816.09, 5816.10, and 5  
5816.14; to amend, for the purpose of adopting a 6  
new section number as indicated in parentheses, 7  
section 2717.01 (2717.02); to enact new section 8  
2717.01 and sections 2717.03, 2717.04, 2717.05, 9  
2717.06, 2717.07, 2717.08, 2717.09, 2717.10, 10  
2717.11, 2717.13, 2717.14, 2717.16, 2717.18, and 11  
2717.19; and to repeal section 2133.16 of the 12  
Revised Code to expand a guardian's authority to 13  
create estate plans for their wards, to clarify 14  
a surviving spouse's allowance for support upon 15  
the spouse's selection of an automobile, to make 16  
changes in the Ohio Trust Code and the Ohio 17  
Legacy Trust Act, to make changes in the law 18  
pertaining to the referral of actions to a 19  
retired judge, to make changes to the law 20  
regarding cemetery endowment care trusts, to 21  
permit a nonprofit corporation to serve as 22

guardian of the person of an incompetent, to 23  
eliminate a donor's ability to make an 24  
anatomical gift through a will or a declaration 25  
or living will, and to make changes to the laws 26  
dealing with reimbursement of municipal and 27  
county court judges, procedures in involuntary 28  
mental health placements, and change of name 29  
procedures. 30

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

**Section 1.** That sections 1721.21, 1901.123, 1907.143, 31  
2106.13, 2108.05, 2108.06, 2108.07, 2108.23, 2108.24, 2108.34, 32  
2111.10, 2111.50, 2133.07, 2701.10, 5122.15, 5804.11, 5805.06, 33  
5816.02, 5816.05, 5816.06, 5816.09, 5816.10, and 5816.14 be 34  
amended; section 2717.01 (2717.02) be amended for the purpose of 35  
adopting a new section number as indicated in parentheses; and 36  
new section 2717.01 and sections 2717.03, 2717.04, 2717.05, 37  
2717.06, 2717.07, 2717.08, 2717.09, 2717.10, 2717.11, 2717.13, 38  
2717.14, 2717.16, 2717.18, and 2717.19 of the Revised Code be 39  
enacted to read as follows: 40

**Sec. 1721.21.** (A) As used in this section: 41

(1) "Person" means any corporation, company, partnership, 42  
individual, or other entity owning or operating a cemetery for 43  
the disposition of human remains. 44

(2) "Cemetery" means any one or a combination of more than 45  
one of the following: 46

(a) A burial ground for earth interments; 47

(b) A mausoleum for crypt entombments;	48
(c) A columbarium for the deposit of cremated remains;	49
(d) A scattering ground for the spreading of cremated remains.	50 51
(3) "Interment" means the disposition of human remains by earth burial, entombment, or inurnment.	52 53
(4) "Burial right" means the right of earth interment.	54
(5) "Entombment right" means the right of entombment in a mausoleum.	55 56
(6) "Columbarium right" means the right of inurnment in a columbarium for cremated remains.	57 58
(7) "Human remains" means any part of the body of a deceased human being, in any stage of decomposition or state of preservation, or the remaining bone fragments from the body of a deceased human being that has been reduced by cremation or alternative disposition.	59 60 61 62 63
(B) No person shall operate or continue to operate any cemetery in this state unless an endowment care trust is established and maintained as required by this section.	64 65 66
(C) Any person desiring to operate any cemetery that is organized or developed after July 1, 1970, before offering to sell or selling any burial lot, burial right, entombment right, or columbarium right in that cemetery, shall first establish an endowment care trust, segregated from other assets, and place in that fund a minimum of fifty thousand dollars in cash or in bonds of the United States, this state, or any county or municipal corporation of this state.	67 68 69 70 71 72 73 74

Whenever any person described in this division has placed 75  
another fifty thousand dollars in the endowment care trust out 76  
of gross sales proceeds, in addition to the deposit required by 77  
this division, that person, after submitting proof of this fact 78  
to the trustees of the endowment care trust, may be paid a 79  
distribution in the sum of fifty thousand dollars from the 80  
endowment care trust. 81

(D) Any person desiring to operate or to continue to 82  
operate any cemetery after July 1, 1970, shall place into the 83  
endowment care trust as required by this section not less than 84  
ten per cent of the gross sales proceeds received from the sale 85  
of any burial lot, burial right, entombment right, or 86  
columbarium right. This percentage shall be placed in the 87  
endowment care trust no later than thirty days following the 88  
month in which the entire gross sales are received. 89

(E) The trustees of the endowment care trust shall consist 90  
of at least three individuals who have been residents of the 91  
county in which the cemetery is located for at least one year, 92  
or a trust company licensed under Chapter 1111. of the Revised 93  
Code or a national bank or federal savings association that has 94  
securities pledged in accordance with section 1111.04 of the 95  
Revised Code. If the trustees are not a financial institution or 96  
trust company, the trustees shall be bonded by a fidelity bond, 97  
or insured under an insurance policy less any deductible, in an 98  
aggregate amount of not less than one hundred per cent of the 99  
funds held by the trustees. The trustees or their agent shall, 100  
on a continuous basis, keep exact records as to the amount of 101  
funds under any joint account or trust instrument being held for 102  
the individual beneficiaries showing the amount paid, the amount 103  
deposited and invested, and accruals and income. 104

The funds of the endowment care trust shall be held and 105  
invested in the manner in which trust funds are permitted to be 106  
held and invested pursuant to sections 2109.37 and 2109.371 of 107  
the Revised Code or, if provided for in the instrument creating 108  
the trust, pursuant to the Ohio Uniform Prudent Investor Act. 109

(F) Any person offering to sell or selling any burial lot, 110  
burial right, entombment right, or columbarium right shall give 111  
to the purchaser of the lot or right, at the time of sale, a 112  
written agreement that identifies and unconditionally guarantees 113  
to the purchaser the specific location of the lot or the 114  
specific location to which the right applies. 115

(G) No person shall open or close any grave, crypt, or 116  
niche for the interment of human remains in a cemetery without 117  
the permission of the cemetery association or other entity 118  
having control and management of the cemetery. 119

(H) Except as provided in division (G) of this section, 120  
this section does not apply to a family cemetery as defined in 121  
section 4767.02 of the Revised Code, to any cemetery that is 122  
owned and operated entirely and exclusively by churches, 123  
religious societies, established fraternal organizations, 124  
municipal corporations, or other political subdivisions of the 125  
state, or to a national cemetery. 126

(I) ~~The dividend and interest income distribution~~ from the 127  
endowment care trust shall be used only to pay for the both of 128  
the following: 129

(1) The cost and expenses incurred to establish, manage, 130  
invest, and administer the records and the trust and for the; 131

(2) The maintenance, supervision, improvement, and 132  
preservation of the grounds, lots, buildings, equipment, 133

statuary, and other real and personal property of the cemetery.	134
(J) (1) Annual reports of all the assets and investments of the endowment care trust shall be prepared and maintained, and shall be available for inspection at reasonable times by any owner of interment rights in the cemetery.	135 136 137 138
(2) Every cemetery required to establish and maintain an endowment care trust shall ensure each of the following:	139 140
(a) That the cemetery has deposited, at the time specified in division (D) of this section, the amounts required by that division in the cemetery's endowment care trust;	141 142 143
(b) <del>That only dividend and interest income have been paid from the endowment care trust, and</del> the cemetery used the amounts withdrawn only for the purposes specified in division (I) of this section;	144 145 146 147
(c) <del>That</del> <u>Subject to division (K) (5) of this section, that all principal and capital gains, less any payment of taxes associated with such gains,</u> have remained in the endowment care trust;	148 149 150 151
(d) That the endowment care trust has not been used to collateralize or guarantee loans and has not otherwise been subjected to any consensual lien;	152 153 154
(e) That the endowment care trust is invested in compliance with the investing standards set forth in sections 2109.37 and 2109.371 of the Revised Code, or, if provided for in the instrument creating the trust, the Ohio Uniform Prudent Investor Act.	155 156 157 158 159
(3) Every cemetery required to establish and maintain an endowment care trust shall <del>file</del> <u>do both of the following:</u>	160 161

(a) File an affidavit annually with the division of real estate of the department of commerce, in a form prescribed by the division, certifying under oath the cemetery satisfied division (J) (2) of this section; 162  
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(b) Notify the division of real estate of the department of commerce, in a form prescribed by the division, of the percentage of the unitrust distribution from the endowment care trust, as described in divisions (K) (2) (a) (ii) and (b) of this section. 166  
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(K) (1) Every cemetery shall choose the distribution of either of the following from the endowment care trust: 171  
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(a) All net ordinary income, which includes collected dividends, interest, and other income earned by the trust, reduced by any expenses, including, but not limited to, taxes on income, fees, commissions, and costs; 173  
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(b) A unitrust disbursement not exceeding five per cent of the fair market value of the endowment care fund. "Fair market value," for the purpose of division (K) (1) (b) of this section, means the average of the net fair market value of the assets of the endowment care trust as of the last trading day for each of the three preceding fiscal year ends. 177  
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(2) (a) A cemetery that selects the unitrust disbursement distribution method, as provided in division (K) (1) (b) of this section, shall do both of the following: 183  
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(i) Deliver to the trustees of the endowment care trust written instructions, including the disbursement percentage selected, not later than sixty days prior to the beginning of a calendar year; 186  
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(ii) Deliver to the division of real estate of the 190

department of commerce notification that the cemetery selected 191  
the unitrust disbursement method and the percentage selected, in 192  
compliance with division (J)(3)(b) of this section. 193

(b) The distribution method and, if a unitrust 194  
disbursement, the disbursement percentage selected shall remain 195  
in effect unless the cemetery notifies the trustees and the 196  
division of real estate of the department of commerce of its 197  
desire to effect a change. The trustees shall ensure that an 198  
investment policy is in place whose goals and objectives are 199  
supportive of the growth of the endowment care trust. 200

(3) Distributions from the endowment care trust shall be 201  
made on a monthly, quarterly, semiannual, or annual basis, as 202  
agreed upon by the cemetery and the trustees. If the trustees do 203  
not receive written instructions from the cemetery informing the 204  
trustees of the method of calculation and distribution chosen, 205  
the trustees shall calculate and distribute the net income, as 206  
earned, on a monthly basis. 207

(4) In order to withdraw a unitrust disbursement, the fair 208  
market value of the endowment care trust after the disbursement 209  
shall be greater than eighty per cent of the aggregate fair 210  
market value of the endowment care trust as of the end of the 211  
immediately preceding calendar year. Should this not be the 212  
case, disbursement shall be limited for that year to net 213  
ordinary income. 214

(5) The trustees shall pay reasonable operating expenses 215  
and taxes of the endowment care trust itself. If the operating 216  
expenses and taxes paid are greater than two and one-half per 217  
cent of the fair market value for the preceding calendar year 218  
end and the cemetery has selected a unitrust disbursement, the 219  
trustees shall reduce the unitrust disbursement by the amount 220



exceeding two and one-half per cent. 221

**Sec. 1901.123.** (A) (1) Subject to reimbursement under 222  
division (B) of this section, the treasurer of the county in 223  
which a county-operated municipal court or other municipal court 224  
is located shall pay the per diem compensation to which an 225  
acting judge appointed pursuant to division (A) (2) (a), (B) (1), 226  
or (C) (1) of section 1901.121 of the Revised Code is entitled 227  
pursuant to division (A) (1) of section 1901.122 of the Revised 228  
Code. 229

(2) The treasurer of the county in which a county-operated 230  
municipal court or other municipal court is located shall pay 231  
the per diem compensation to which an assigned judge assigned 232  
pursuant to division (A) (1), (A) (2) (b), (B) (2), (C) (2), or (D) 233  
of section 1901.121 of the Revised Code is entitled pursuant to 234  
division (B) (1) or (4) of section 1901.122 of the Revised Code. 235

(3) Subject to reimbursement under division (B) of this 236  
section, the treasurer of the county in which a county-operated 237  
municipal court or other municipal court is located shall pay 238  
the per diem compensation to which an assigned judge assigned 239  
pursuant to division (A) (1), (A) (2) (b), (B) (2), (C) (2), or (D) 240  
of section 1901.121 of the Revised Code is entitled pursuant to 241  
division (B) (2) of section 1901.122 of the Revised Code. 242

(4) Subject to reimbursement under division (C) of this 243  
section, the supreme court shall pay the per diem compensation 244  
to which an assigned judge assigned pursuant to division (A) (1), 245  
(A) (2) (b), (B) (2), (C) (2), or (D) of section 1901.121 of the 246  
Revised Code is entitled pursuant to division (B) (3) of section 247  
1901.122 of the Revised Code. 248

(B) The treasurer of a county that, pursuant to division 249

(A) (1) or (3) of this section, is required to pay ~~any~~ the per diem compensation to which an acting judge or assigned judge is entitled ~~under division (A) (5) or (6) of section 141.04 of the Revised Code~~, shall submit to the administrative director of the supreme court quarterly requests for reimbursements of the state portion of the per diem amounts so paid. The requests shall include verifications of the payment of those amounts and an affidavit from the acting judge or assigned judge stating the days and hours worked. The administrative director shall cause reimbursements of ~~those~~ the state portion of the per diem amounts paid to be issued to the county if the administrative director verifies that those amounts were, in fact, so paid.

(C) ~~The~~ If the supreme court, pursuant to division (A) ~~(2)~~ (4) of this section, is required to pay ~~any~~ the per diem compensation to which an assigned judge is entitled ~~under division (A) (5) or (6) of section 141.04 of the Revised Code.~~ Annually, annually, on the first day of August, the administrative director of the supreme court shall issue a billing to the county treasurer of any county to which such a judge was assigned to a municipal court for reimbursement of the county or local portion of the per diem compensation previously paid by the ~~state supreme court~~ for the twelve-month period preceding the last day of June. The county or local portion of the per diem compensation shall be that part of each per diem paid by the state which is proportional to the county or local shares of the total compensation of a resident judge of such court. The county treasurer shall forward the payment within thirty days. After forwarding the payment, the county treasurer shall seek reimbursement from the applicable local municipalities as appropriate.

**Sec. 1907.143.** (A) (1) Subject to reimbursement under 280

division (B) of this section, the treasurer of the county in 281  
which a county court is located shall pay the per diem 282  
compensation to which an acting judge appointed pursuant to 283  
division (A) (2) ~~(b)~~ (a), (B) (1), or (C) (1) of section 1907.141 of 284  
the Revised Code is entitled pursuant to division (A) of section 285  
1907.142 of the Revised Code. 286

(2) The treasurer of the county in which a county court is 287  
located shall pay the per diem compensation to which an assigned 288  
judge assigned pursuant to division (A) (1), (A) (2) (b), (B) (2), 289  
or (C) (2) of section 1907.141 of the Revised Code is entitled 290  
pursuant to division (B) (1) or (4) of section 1907.142 of the 291  
Revised Code. 292

(3) Subject to reimbursement under division (B) of this 293  
section, the treasurer of the county in which a county court is 294  
located shall pay the per diem compensation to which an assigned 295  
judge assigned pursuant to division (A) (1), (A) (2) (b), (B) (2), 296  
or (C) (2) of section 1907.141 of the Revised Code is entitled 297  
pursuant to division (B) (2) of section 1907.142 of the Revised 298  
Code. 299

(4) Subject to reimbursement under division (C) of this 300  
section, the supreme court shall pay the per diem compensation 301  
to which an assigned judge assigned pursuant to division (A) (1), 302  
(A) (2) (b), (B) (2), or (C) (2) of section 1907.141 of the Revised 303  
Code is entitled pursuant to division (B) (3) of section 1907.142 304  
of the Revised Code. 305

(B) The treasurer of a county that, pursuant to division 306  
(A) (1) or (3) of this section, is required to pay ~~any~~ the per 307  
diem compensation to which an acting judge or assigned judge is 308  
entitled under division (A) (5) or (6) of section 141.04 of the 309  
Revised Code, shall submit to the administrative director of the 310

supreme court quarterly requests for reimbursements of the state 311  
portion of the per diem amounts so paid. The requests shall 312  
include verifications of the payment of those amounts and an 313  
affidavit from the acting judge or assigned judge stating the 314  
days and hours worked. The administrative director shall cause 315  
reimbursements of ~~those~~ the state portion of the per diem 316  
amounts paid to be issued to the county if the administrative 317  
director verifies that those amounts were, in fact, so paid. 318

(C) ~~The~~ If the supreme court, pursuant to division (A) ~~(2)~~ 319  
(4) of this section, is required to pay ~~any~~ the per diem 320  
compensation to which an assigned judge is entitled ~~under~~ 321  
~~division (A) (5) or (6) of section 141.04 of the Revised Code.~~ 322  
Annually, annually, on the first day of August, the 323  
administrative director of the supreme court shall issue a 324  
billing to the county treasurer of any county to which such a 325  
judge was assigned to a county court for reimbursement of the 326  
county portion of the per diem compensation previously paid by 327  
the ~~state supreme court~~ for the twelve-month period preceding 328  
the last day of June. The county portion of the per diem 329  
compensation shall be that part of each per diem paid by the 330  
state which is proportional to the county shares of the total 331  
compensation of a resident judge of such court. The county 332  
treasurer shall forward the payment within thirty days. After 333  
forwarding the payment, the county treasurer shall seek 334  
reimbursement from the applicable local municipalities as 335  
appropriate. 336

**Sec. 2106.13.** (A) If a person dies leaving a surviving 337  
spouse and no minor children, leaving a surviving spouse and 338  
minor children, or leaving minor children and no surviving 339  
spouse, the surviving spouse, minor children, or both shall be 340  
entitled to receive, subject to division (B) of this section, in 341

money or property the sum of forty thousand dollars as an 342  
allowance for support. If the surviving spouse selected ~~one or~~ 343  
~~more automobiles~~ more than one automobile under section 2106.18 344  
of the Revised Code, the allowance for support prescribed by 345  
this section shall be reduced by the value of the automobile 346  
having the lowest value ~~if more than one automobile is of the~~ 347  
automobiles so selected. The money or property set off as an 348  
allowance for support shall be considered estate assets. 349

(B) The probate court shall order the distribution of the 350  
allowance for support described in division (A) of this section 351  
as follows: 352

(1) If the person died leaving a surviving spouse and no 353  
minor children, one hundred per cent to the surviving spouse; 354

(2) If the person died leaving a surviving spouse and 355  
minor children, and if all of the minor children are the 356  
children of the surviving spouse, one hundred per cent to the 357  
surviving spouse; 358

(3) If the person died leaving a surviving spouse and 359  
minor children, and if not all of the minor children are 360  
children of the surviving spouse, in equitable shares, as fixed 361  
by the probate court in accordance with this division, to the 362  
surviving spouse and the minor children who are not the children 363  
of the surviving spouse. In determining equitable shares under 364  
this division, the probate court shall do all of the following: 365

(a) Consider the respective needs of the surviving spouse, 366  
the minor children who are children of the surviving spouse, and 367  
the minor children who are not children of the surviving spouse; 368

(b) Allocate to the surviving spouse, the share that is 369  
equitable in light of the needs of the surviving spouse and the 370

minor children who are children of the surviving spouse; 371

(c) Allocate to the minor children who are not children of 372  
the surviving spouse, the share that is equitable in light of 373  
the needs of those minor children. 374

(4) If the person died leaving minor children and no 375  
surviving spouse, in equitable shares, as fixed by the probate 376  
court in accordance with this division, to the minor children. 377  
In determining equitable shares under this division, the probate 378  
court shall consider the respective needs of the minor children 379  
and allocate to each minor child the share that is equitable in 380  
light of the child's needs. 381

(C) If the surviving spouse selected ~~one or more~~ 382  
~~automobiles~~ more than one automobile under section 2106.18 of 383  
the Revised Code, the probate court, in considering the 384  
respective needs of the surviving spouse and the minor children 385  
when allocating an allowance for support under division (B) (3) 386  
of this section, shall consider the benefit derived by the 387  
surviving spouse from the transfer of the automobile having the 388  
lowest value ~~if more than one automobile is~~ of the automobiles 389  
so selected. 390

(D) If, pursuant to this section, the probate court must 391  
allocate the allowance for support, the administrator or 392  
executor, within five months of the initial appointment of an 393  
administrator or executor, shall file with the probate court an 394  
application to allocate the allowance for support. 395

(E) The administrator or executor shall pay the allowance 396  
for support unless a competent adult or a guardian with the 397  
consent of the court having jurisdiction over the guardianship 398  
waives the allowance for support to which the adult or the ward 399

represented by the guardian is entitled. 400

(F) For the purposes of this section, the value of an 401  
automobile that a surviving spouse selects pursuant to section 402  
2106.18 of the Revised Code is the value that the surviving 403  
spouse specifies for the automobile in the affidavit executed 404  
pursuant to division (B) of section 4505.10 of the Revised Code. 405

**Sec. 2108.05.** (A) A donor may make an anatomical gift by 406  
doing any of the following: 407

(1) Authorizing a statement or symbol to be imprinted on 408  
the donor's driver's license or identification card indicating 409  
that the donor has certified a willingness to make an anatomical 410  
gift; 411

~~(2) Specifying in the donor's will an intent to make an 412  
anatomical gift;~~ 413

~~(3) Specifying an intent to make an anatomical gift in the 414  
donor's declaration as described in section 2133.16 of the 415  
Revised Code;~~ 416

~~(4) During a terminal illness or injury of the donor, 417  
communicating in any manner to a minimum of two adults, at least 418  
one of whom is a disinterested witness, that the donor intends 419  
to make an anatomical gift;~~ 420

~~(5) (3) Following the procedure in division (B) of this 421  
section. 422~~

(B) A donor or other person authorized to make an 423  
anatomical gift under section 2108.04 of the Revised Code may 424  
make a gift by a donor card or other record signed by the donor 425  
or other person making the gift or by authorizing that a 426  
statement or symbol indicating that the donor has certified a 427

willingness to make an anatomical gift be included in a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall do both of the following:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person;

(2) State that it has been signed and witnessed as provided in division (B)(1) of this section.

(C) Once a donor has authorized a statement or symbol to be imprinted on the donor's driver's license or identification card indicating that the donor has certified a willingness to make an anatomical gift, the donor does not need to recertify the donor's willingness to make an anatomical gift upon renewal of the driver's license or identification card. The authorization shall remain in effect until the donor withdraws that authorization.

(D) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

~~(E) An anatomical gift made by will takes effect on the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.~~

**Sec. 2108.06.** (A) Subject to section 2108.08 of the Revised Code, an anatomical gift made under section 2108.04 of the Revised Code may be amended by any of the following means:

(1) By a record signed by the donor or other person



authorized to make an anatomical gift under section 2108.04 of 457  
the Revised Code; 458

(2) Subject to division (C) of this section, by a record 459  
signed by another individual acting at the direction of the 460  
donor or other person authorized to make an anatomical gift 461  
under section 2108.04 of the Revised Code if the donor or other 462  
person is physically unable to sign; 463

(3) By a later-executed document of gift that amends a 464  
previous anatomical gift or portion of an anatomical gift, 465  
either expressly or by inconsistency; 466

(4) By any form of communication during a terminal illness 467  
or injury addressed to at least two adults; 468

(5) By a parent who is reasonably available, if the donor 469  
is an unemancipated minor who has died; 470

~~(6) If made in a will, by the manner provided for 471  
amendment of wills or by any of the applicable means described 472  
in divisions (B) (1) to (5) of this section. 473~~

(B) Subject to section 2108.08 of the Revised Code, an 474  
anatomical gift made under section 2108.04 of the Revised Code 475  
may be revoked by any of the following means: 476

(1) By a record signed by the donor or other person 477  
authorized to make an anatomical gift under section 2108.04 of 478  
the Revised Code; 479

(2) Subject to division (C) of this section, by a record 480  
signed by another individual acting at the direction of the 481  
donor or other person authorized to make an anatomical gift 482  
under section 2108.04 of the Revised Code if the donor or other 483  
person is physically unable to sign; 484

(3) By a later-executed document of gift that revokes a 485  
previous anatomical gift or portion of an anatomical gift, 486  
either expressly or by inconsistency; 487

(4) By any form of communication during a terminal illness 488  
or injury addressed to at least two adults; 489

(5) By a parent who is reasonably available, if the donor 490  
is an unemancipated minor who has died; 491

(6) By the destruction or cancellation of the document of 492  
gift, or the portion of the document of gift, used to make the 493  
gift, with the intent to revoke the gift; 494

~~(7) If made in a will, by the manner provided for 495  
revocation of wills or by any of the applicable means described 496  
in divisions (B) (1) to (6) of this section. 497~~

(C) A record signed pursuant to division (A) (2) or (B) (2) 498  
of this section shall do both of the following: 499

(1) Be witnessed by a minimum of two adults who have 500  
signed at the request of the donor or other person; 501

(2) State that it has been signed and witnessed as 502  
provided in division (C) (1) of this section. 503

**Sec. 2108.07.** (A) An individual may refuse to make an 504  
anatomical gift of the individual's body or part by doing any of 505  
the following: 506

(1) Indicating a refusal in a record signed by either of 507  
the following: 508

(a) The individual; 509

(b) Subject to division (B) of this section, another 510  
individual acting at the direction of the individual, if the 511

individual is physically unable to sign.	512
<del>(2) Indicating a refusal in the individual's will, whether</del>	513
<del>or not the will is admitted to probate or invalidated after the</del>	514
<del>individual's death;</del>	515
<del>(3) Indicating a refusal by any form of communication made</del>	516
<del>by the individual during the individual's terminal illness or</del>	517
<del>injury addressed to a minimum of two adults.</del>	518
(B) A record signed pursuant to division (A) (1) (b) of this	519
section shall do both of the following:	520
(1) Be witnessed by at least two adults who have signed at	521
the request of the individual;	522
(2) State that it has been signed and witnessed as	523
provided in division (B) (1) of this section.	524
(C) An individual who has made a refusal may amend or	525
revoke the refusal by doing any of the following:	526
(1) Amending or revoking the refusal in the manner	527
provided in division (A) of this section for making a refusal;	528
(2) Subsequently making an anatomical gift pursuant to	529
section 2108.05 of the Revised Code that is inconsistent with	530
the refusal;	531
(3) Destroying or canceling the record evidencing the	532
refusal, or the portion of the record used to make the refusal,	533
with the intent to revoke the refusal.	534
(D) Except as provided in division (E) of this section, in	535
the absence of an express, contrary indication by the individual	536
set forth in the refusal, an individual's unrevoked refusal to	537
make an anatomical gift of the individual's body or part bars	538

all other persons from making an anatomical gift of the 539  
individual's body or part. 540

(E) The parent of a deceased unemancipated minor who is 541  
reasonably available may revoke a refusal made by the minor. 542

**Sec. 2108.23.** (A) (1) The bureau of motor vehicles shall 543  
develop and maintain a donor registry that identifies each 544  
individual who has agreed to make an anatomical gift by a 545  
designation on a driver's license or identification card as 546  
provided in division (A) (1) of section 2108.05 of the Revised 547  
Code. The registry shall be fully operational not later than 548  
July 1, 2002. 549

(2) Any person who provides to the bureau the form set 550  
forth in division ~~(D) (2)~~ (C) (2) of section 2133.07 of the 551  
Revised Code requesting to be included in the donor registry 552  
shall be included. 553

(B) The bureau shall maintain the registry in a manner 554  
that provides to organ procurement organizations, tissue banks, 555  
and eye banks immediate access to the information in the 556  
registry twenty-four hours a day and seven days a week. 557

(C) (1) The registrar of motor vehicles, in consultation 558  
with the director of health and the second chance trust fund 559  
advisory committee created under section 2108.35 of the Revised 560  
Code, shall formulate proposed rules that specify all of the 561  
following: 562

(a) The information to be included in the registry; 563

(b) A process, in accordance with division (B) of section 564  
2108.06 of the Revised Code, for an individual to revoke the 565  
individual's intent to make an anatomical gift and for updating 566  
information in the registry; 567

(c) How the registry will be made available to organ procurement organizations, tissue banks, and eye banks;	568 569
(d) Limitations on the use of and access to the registry;	570
(e) How information on organ, tissue, and eye donation will be developed and disseminated to the public by the bureau and the department of health;	571 572 573
(f) Anything else the registrar considers appropriate.	574
(2) In adopting the proposed rules under this division, the registrar may consult with any person or entity that expresses an interest in the matters to be dealt with in the rules.	575 576 577 578
(3) Following formulation of the proposed rules, but not later than January 1, 2002, the registrar shall adopt rules in accordance with Chapter 119. of the Revised Code.	579 580 581
(D) The costs of developing and initially implementing the registry shall be paid from the second chance trust fund created in section 2108.34 of the Revised Code.	582 583 584
<b>Sec. 2108.24.</b> (A) As used in this section:	585
(1) "Advance health-care directive" means a durable power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health-care decision.	586 587 588 589
(2) <del>"Declaration" means a written document executed in accordance with section 2133.02 of the Revised Code.</del>	590 591
<del>(3) "Health care decision" means any decision regarding the health care of the prospective donor.</del>	592 593
(B) If a prospective donor has <del>a declaration or an</del> advance	594

health-care directive the terms of which are in conflict with 595  
the express or implied terms of a potential anatomical gift with 596  
regard to administration of measures necessary to ensure the 597  
medical suitability of a part for transplantation or therapy and 598  
the prospective donor is capable of resolving the conflict, 599  
subject to division (G) of this section, the prospective donor's 600  
attending physician shall confer with the prospective donor to 601  
resolve the conflict. 602

(C) If a prospective donor has ~~a declaration or an~~ advance 603  
health-care directive the terms of which are in conflict with 604  
the express or implied terms of a potential anatomical gift with 605  
regard to administration of measures necessary to ensure the 606  
medical suitability of a part for transplantation or therapy and 607  
the prospective donor is incapable of resolving the conflict, 608  
one of the following shall apply depending on the circumstances: 609

(1) If the prospective donor has an agent, the agent 610  
shall, subject to division (G) of this section, act for the 611  
prospective donor to resolve the conflict. 612

(2) If the prospective donor does not have an agent, the 613  
individual or class of individuals determined in the following 614  
descending order of priority and subject to divisions (D), (E), 615  
(F), and (G) of this section shall act for the prospective donor 616  
to resolve the conflict: 617

(a) The prospective donor's surviving spouse; 618

(b) The prospective donor's surviving adult children; 619

(c) The prospective donor's surviving parent or parents; 620

(d) The prospective donor's surviving adult siblings; 621

(e) The prospective donor's surviving adult grandchildren; 622

(f) The prospective donor's surviving grandparent or	623
grandparents;	624
(g) A surviving adult who exhibited special care and	625
concern for the prospective donor;	626
(h) The prospective donor's guardians of the person;	627
(i) The persons, other than those in divisions (C) (2) (a)	628
to (h) of this section, to whom the prospective donor has	629
assigned the right of disposition for the prospective donor's	630
body pursuant to section 2108.70 of the Revised Code or who have	631
the right of disposition for the prospective donor's body at the	632
time of death as described in section 2108.81 of the Revised	633
Code.	634
(D) If an appropriate individual entitled to resolve a	635
conflict between the terms of a prospective donor's <del>declaration</del>	636
<del>or</del> advance health-care directive and the express or implied	637
terms of a potential anatomical gift as described in division	638
(C) of this section is not reasonably available to resolve the	639
conflict, is incapacitated, or declines to resolve the conflict,	640
the next priority individual or class of individuals specified	641
in that division is authorized to resolve the conflict.	642
(E) If at least one individual in a class of individuals	643
entitled to resolve a conflict between the terms of a	644
prospective donor's <del>declaration or</del> advance health-care directive	645
and the express or implied terms of a potential anatomical gift	646
is not reasonably available, is incapacitated, or declines to	647
resolve the conflict, the conflict shall be resolved by the	648
individual or individuals in the class who are reasonably	649
available, not incapacitated, and willing to resolve the	650
conflict.	651

(F) If individuals in a class of individuals determined in accordance with division (C) (2) of this section disagree on how a conflict between the terms of a prospective donor's ~~declaration or~~ advance health-care directive and the express or implied terms of a potential anatomical gift should be resolved, the opinion of the majority of the individuals who are reasonably available, not incapacitated, and are willing to resolve the conflict shall prevail.

(G) A conflict between the terms of a prospective donor's ~~declaration or~~ advance health-care directive and the express or implied terms of a potential anatomical gift with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy shall be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 2108.09 of the Revised Code. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part shall not be withheld or withdrawn from the prospective donor unless withholding or withdrawing the measures is necessary for appropriate end-of-life care.

**Sec. 2108.34.** (A) There is hereby created in the state treasury the second chance trust fund. The fund shall consist of voluntary contributions deposited as provided in sections 4503.721, 4506.081, 4507.231, and 4507.501 of the Revised Code. All investment earnings of the fund shall be credited to the fund.

(B) The director of health shall use the money in the fund only for the following purposes:



(1) Development and implementation of a campaign that explains and promotes the second chance trust fund;	682 683
(2) Development and implementation of local and statewide public education programs about organ, tissue, and eye donation, including the informational material required to be provided under sections 4506.081, 4507.231, and 4507.501 of the Revised Code;	684 685 686 687 688
(3) Development and implementation of local and statewide donor awareness programs in schools;	689 690
(4) Development and implementation of local and statewide programs to recognize donor families;	691 692
(5) Development and distribution of materials promoting organ, tissue, and eye donation;	693 694
(6) Cooperation with the Ohio Supreme Court, Ohio State Bar Association, and law schools of this state to more effectively educate attorneys about the donation of anatomical gifts and to encourage them to assist their clients in donating anatomical gifts through anatomical gift declarations, durable powers of attorney for health care, <del>declarations as defined in section 2133.01 of the Revised Code, wills,</del> and any other appropriate means;	695 696 697 698 699 700 701 702
(7) Cooperation with the state medical board, state medical, osteopathic, and ophthalmological associations, and colleges of medicine and osteopathic medicine in this state to more effectively educate physicians about the donation of anatomical gifts and to encourage them to assist their patients in making declarations of anatomical gifts;	703 704 705 706 707 708
(8) Development of statewide hospital training programs to encourage and facilitate compliance with sections 2108.14 and	709 710

2108.15 of the Revised Code;	711
(9) Reimbursement of the bureau of motor vehicles for the administrative costs incurred in the performance of duties under sections 4506.081, 4507.231, and 4507.501 of the Revised Code;	712 713 714
(10) Reimbursement of the department of health for administrative costs incurred in the performance of duties under this section and section 2108.35 of the Revised Code;	715 716 717
(11) Reimbursement of members of the second chance fund advisory committee for actual and necessary expenses incurred in the performance of official duties.	718 719 720
(C) The director shall make the materials developed under division (B) (5) of this section available to other state agencies.	721 722 723
(D) The director shall consider recommendations made by the second chance trust fund advisory committee pursuant to section 2108.35 of the Revised Code. The director shall determine the appropriateness of and approve or disapprove projects recommended by the advisory committee for funding and approve or disapprove the disbursement of money from the second chance trust fund.	724 725 726 727 728 729 730
<b>Sec. 2111.10.</b> <u>(A)</u> As used in this section, "developmental disability" has the same meaning as in section 5123.01 of the Revised Code.	731 732 733
<u>(B)</u> Any appointment of a corporation as guardian shall apply to the estate only and not to the person, except <del>that a</del> <u>when either of the following applies:</u>	734 735 736
<u>(1)</u> A nonprofit corporation organized under the laws of this state and entitled to tax exempt status under section	737 738

501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 739  
26 ~~U.S.C.A.~~ U.S.C. 501, ~~as amended~~, that has a contract with the 740  
department of developmental disabilities to provide protective 741  
services may be appointed as a guardian of a person with a 742  
developmental disability and may serve as guardian pursuant to 743  
sections 5123.55 to 5123.59 of the Revised Code. 744

(2) A nonprofit corporation domiciled in this state and 745  
organized under the laws of this state and entitled to tax 746  
exempt status under section 501(a) of the "Internal Revenue Code 747  
of 1986," 100 Stat. 2085, 26 U.S.C. 501 may be appointed as a 748  
guardian of the person of an incompetent when certified by the 749  
probate court to receive such an appointment. The probate court 750  
shall certify that nonprofit corporation and any individual 751  
acting as a guardian on behalf of the nonprofit corporation upon 752  
meeting the requirements for serving as a guardian as prescribed 753  
by the supreme court in the Rules of Superintendence for the 754  
Courts of Ohio and the rules of court adopted by the probate 755  
court of the county exercising jurisdiction over the 756  
incompetent. A nonprofit corporation appointed as guardian of 757  
the person of an incompetent shall not be the residential 758  
caregiver, health care provider, or employer of the incompetent. 759

**Sec. 2111.50.** (A) (1) At all times, the probate court is 760  
the superior guardian of wards who are subject to its 761  
jurisdiction, and all guardians who are subject to the 762  
jurisdiction of the court shall obey all orders of the court 763  
that concern their wards or guardianships. 764

(2) (a) Subject to divisions (A) (2) (b) and (c) of this 765  
section, the control of a guardian over the person, the estate, 766  
or both of the guardian's ward is limited to the authority that 767  
is granted to the guardian by the Revised Code, relevant 768

decisions of the courts of this state, and orders or rules of 769  
the probate court. 770

(b) Except for the powers specified in division (E) of 771  
this section and unless otherwise provided in or inconsistent 772  
with another section of the Revised Code, the probate court may 773  
confer upon a guardian any power that this section grants to the 774  
probate court in connection with wards. Nothing in this section 775  
is intended to create or imply a duty upon a guardian to apply 776  
for authority to exercise any power authorized in this section. 777  
No inference of impropriety or liability of the guardian or 778  
others associated with the guardian shall arise as a result of a 779  
guardian not applying for authority to exercise a power 780  
authorized in this section. 781

(c) For good cause shown, the probate court may limit or 782  
deny, by order or rule, any power that is granted to a guardian 783  
by a section of the Revised Code or relevant decisions of the 784  
courts of this state. 785

(B) In connection with any person whom the probate court 786  
has found to be an incompetent or a minor subject to 787  
guardianship and for whom the court has appointed a guardian, 788  
the court has, subject to divisions (C) to (E) of this section, 789  
all the powers that relate to the person and estate of the ward 790  
and that the ward could exercise if present and not a minor or 791  
under a disability, except the power to make or revoke a will. 792  
These powers include, but are not limited to, the power to do 793  
any of the following: 794

(1) Convey ~~or~~, release, or disclaim the present, 795  
contingent, or expectant interests in real or personal property 796  
of the ward, including, but not limited to, dower and any right 797  
of survivorship incident to a transfer on death designation, 798

<u>payable on death designation,</u> survivorship tenancy, joint	799
tenancy, or tenancy by the entireties;	800
(2) Exercise <del>or,</del> <u>release, or disclaim</u> powers as a trustee,	801
personal representative, custodian for a minor, guardian, or	802
donee of a power of appointment;	803
(3) <del>Enter</del> <u>Subject to division (B) (4) of this section,</u>	804
<u>enter into contracts, or create revocable trusts of property of</u>	805
<u>the estate of the ward,</u> that may not extend beyond the minority,	806
disability, or life of the ward;	807
(4) <u>Create, amend, or revoke revocable trusts of property</u>	808
<u>of the estate of the ward that may extend beyond the minority,</u>	809
<u>disability, or life of the ward;</u>	810
<u>(5)</u> Exercise options to purchase securities or other	811
property;	812
<del>(5)</del> <u>(6)</u> Exercise rights to elect options under annuities	813
and insurance policies, <u>including changing beneficiaries of</u>	814
<u>insurance policies, retirement plans, individual retirement</u>	815
<u>accounts, and annuities,</u> and to surrender an annuity or	816
insurance policy for its cash value;	817
<del>(6)</del> <u>(7)</u> Exercise the right to an elective share in the	818
estate of the deceased spouse of the ward pursuant to <del>section</del>	819
<del>2106.08</del> <u>Chapter 2106.</u> of the Revised Code;	820
<del>(7)</del> <u>(8)</u> Make gifts, in trust or otherwise, to relatives of	821
the ward and, consistent with any prior pattern of the ward of	822
giving to charities or of providing support for friends, to	823
charities and friends of the ward.	824
(C) Except for the powers specified in division (D) of	825
this section, all powers of the probate court that are specified	826

in this chapter and that relate either to any person whom it has 827  
found to be an incompetent or a minor subject to guardianship 828  
and for whom it has appointed a guardian and all powers of a 829  
guardian that relate to the guardian's ward or guardianship as 830  
described in division (A) (2) of this section, shall be exercised 831  
in the best interest, as determined in the court's or guardian's 832  
judgment, of the following: 833

(1) The ward whom the probate court has found to be an 834  
incompetent or a minor subject to guardianship; 835

(2) The dependents of the ward; 836

(3) The members of the household of the ward. 837

(D) If the court is to exercise or direct the exercise, 838  
pursuant to division (B) of this section, of the power to make 839  
gifts in trust or otherwise, the following conditions shall 840  
apply: 841

(1) The exercise of the particular power shall not impair 842  
the financial ability of the estate of the ward whom the probate 843  
court has found to be an incompetent or a minor subject to 844  
guardianship and for whom the court has appointed a guardian, to 845  
provide for the ward's foreseeable needs for maintenance and 846  
care; 847

(2) If applicable, the court shall consider any of the 848  
following: 849

(a) The estate, income, and other tax advantages of the 850  
exercise of a particular power to the estate of a ward whom the 851  
probate court has found to be an incompetent or a minor subject 852  
to guardianship and for whom the court has appointed a guardian; 853

(b) Any pattern of giving of, or any pattern of support 854

provided by, the ward prior to the ward's incompetence; 855

(c) The disposition of property made by the ward's will or 856  
revocable trust; 857

(d) If there is no knowledge of a will or revocable trust 858  
of the ward, the ward's prospective heirs; 859

(e) Any relevant and trustworthy statements of the ward, 860  
whether established by hearsay or other evidence. 861

(E) (1) The probate court shall cause notice as described 862  
in division (E) (2) of this section to be given and a hearing to 863  
be conducted prior to its exercise or direction of the exercise 864  
of any of the following powers pursuant to division (B) of this 865  
section: 866

(a) The exercise ~~or~~ release, or disclaimer of powers as a 867  
donee of a power of appointment; 868

(b) Unless the amount of the gift is no more than one 869  
thousand dollars, the making of a gift, in trust or otherwise; 870

(c) The power to create, amend, or revoke a revocable 871  
trust as described in division (B) (4) of this section; 872

(d) The power to exercise rights to elect options under 873  
annuities and insurance policies, including changing 874  
beneficiaries of insurance policies, retirement plans, 875  
individual retirement accounts, and annuities, and to surrender 876  
an annuity or insurance policy for its cash value, as described 877  
in division (B) (6) of this section. 878

(2) The notice required by division (E) (1) of this section 879  
shall be given to the following persons: 880

(a) Unless a guardian of a ward has applied for the 881

exercise of a power specified in division (E) (1) of this 882  
section, to the guardian; 883

(b) To the ward whom the probate court has found to be an 884  
incompetent or a minor subject to guardianship; 885

(c) If known, to a guardian who applied for the exercise 886  
of a power specified in division (E) (1) of this section, to the 887  
prospective heirs of the ward whom the probate court has found 888  
to be an incompetent or a minor subject to guardianship under 889  
section 2105.06 of the Revised Code, to the beneficiaries under 890  
the last known will of the ward or under an existing revocable 891  
trust of the ward, and to any person who has a legal interest in 892  
property that may be divested or limited as the result of the 893  
exercise of a power specified in division (E) (1) of this 894  
section; 895

(d) To all of the following as applicable: 896

(i) The heirs at law and next of kin of the ward; 897

(ii) The beneficiaries under an existing will or revocable 898  
trust of the ward; 899

(iii) The beneficiaries of any insurance policies, 900  
retirement plans, individual retirement accounts, and annuities 901  
owned by the ward; 902

(iv) The beneficiaries under any proposed revocable trust 903  
and the proposed beneficiaries under any changes in the 904  
designation of beneficiaries of any insurance policies, 905  
retirement plans, individual retirement accounts, or annuities 906  
as described in division (E) (2) (d) (iii) of this section. 907

(e) To any other persons the court orders. 908

(F) When considering any question related to, and issuing 909



orders for, medical or surgical care or treatment of 910  
incompetents or minors subject to guardianship, the probate 911  
court has full parens patriae powers unless otherwise provided 912  
by a section of the Revised Code. 913

**Sec. 2133.07.** (A) As used in this section+ 914

~~(1) "Anatomical gift" has the same meaning as in section 915  
2108.01 of the Revised Code. 916~~

~~(2) "DNR identification" has the same meaning as in 917  
section 2133.21 of the Revised Code. 918~~

(B) A printed form of a declaration may be sold or 919  
otherwise distributed in this state for use by adults who are 920  
not advised by an attorney. By use of a printed form of that 921  
nature, a declarant may authorize the use or continuation, or 922  
the withholding or withdrawal, of life-sustaining treatment 923  
should the declarant be in a terminal condition, a permanently 924  
unconscious state, or either a terminal condition or a 925  
permanently unconscious state, may authorize the withholding or 926  
withdrawal of nutrition or hydration should the declarant be in 927  
a permanently unconscious state as described in division (A)(3) 928  
(a) of section 2133.02 of the Revised Code, and may designate 929  
one or more persons who are to be notified by the declarant's 930  
attending physician at any time that life-sustaining treatment 931  
would be withheld or withdrawn pursuant to the declaration. The 932  
printed form shall not be used as an instrument for granting any 933  
other type of authority or for making any other type of 934  
designation, except that the printed form may be used as a DNR 935  
identification if the declarant specifies on the form that the 936  
declarant wishes to use it as a DNR identification ~~and except as 937  
provided in division (C) of this section. 938~~

~~(C) A printed form of a declaration under division (B) of this section shall include, before the signature of the declarant or another individual at the direction of the declarant, statements that conform substantially to the following form:~~

~~"ANATOMICAL GIFT (optional)~~

~~Upon my death, the following are my directions regarding donation of all or part of my body:~~

~~In the hope that I may help others upon my death, I hereby give the following body parts:~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

~~for any purpose authorized by law: transplantation, therapy, research, or education.~~

~~If I do not indicate a desire to donate all or part of my body by filling in the lines above, no presumption is created about my desire to make or refuse to make an anatomical gift."~~

~~(D) (1) A printed form of a declaration under division (B) of this section shall include, as a separate page or as a portion of a page that can be detached from the declaration, a donor registry enrollment form that permits the donor to be included in the donor registry created under section 2108.23 of the Revised Code.~~

~~(2) The donor registry enrollment form may be in any form that complies with the requirements of division (B) of section 2108.05 of the Revised Code. On completion, the form shall be forwarded to the bureau of motor vehicles.~~

**Sec. 2701.10.** (A) Any voluntarily retired judge, or any 966  
judge who is retired under Section 6 of Article IV, Ohio 967  
Constitution, may register with the clerk of any court of common 968  
pleas, municipal court, or county court for the purpose of 969  
receiving referrals for adjudication of civil actions or 970  
proceedings, and submissions for determination of specific 971  
issues or questions of fact or law in any civil action or 972  
proceeding, pending in the court. There is no limitation upon 973  
the number, type, or location of courts with which a retired 974  
judge may register under this division. Upon registration with 975  
the clerk of any court under this division, the retired judge is 976  
eligible to receive referrals and submissions from that court, 977  
in accordance with this section. Each court of common pleas, 978  
municipal court, and county court shall maintain an index of all 979  
retired judges who have registered with the clerk of that court 980  
pursuant to this division and shall make the index available to 981  
any person, upon request. 982

(B) (1) The parties to any civil action or proceeding 983  
pending in any court of common pleas, municipal court, or county 984  
court unanimously may choose to have the action or proceeding in 985  
its entirety referred for adjudication, or to have any specific 986  
issue or question of fact or law in the action or proceeding 987  
submitted for determination, to a judge of their choosing who 988  
has registered with the clerk of that court in accordance with 989  
division (A) of this section. 990

If the parties unanimously do choose to have a referral or 991  
submission made to a retired judge pursuant to this section, all 992  
of the parties to the action or proceeding shall enter into a 993  
written agreement with the retired judge that does all of the 994  
following: 995

(a) Designates the retired judge to whom the referral or submission is to be made;	996 997
(b) If a submission is to be made, describes in detail the specific issue or question to be submitted;	998 999
(c) Indicates either of the following:	1000
(i) That the action or proceeding in its entirety is to be referred to, and is to be tried, determined, and adjudicated by that retired judge;	1001 1002 1003
(ii) Indicates that the issue or question is to be submitted, and is to be tried and determined by that retired judge.	1004 1005 1006
(d) Indicates that the parties will assume the responsibility for providing facilities, equipment, and personnel reasonably needed by the retired judge during <del>his</del> <u>the retired judge's</u> consideration of the action or proceeding and will pay all costs arising out of the provision of the facilities, equipment, and personnel;	1007 1008 1009 1010 1011 1012
(e) Identifies an amount of compensation to be paid by the parties to the retired judge for <del>his</del> <u>the retired judge's</u> services and the manner of payment of the compensation;	1013 1014 1015
<u>(f) Indicates a procedure for terminating the agreement with the retired judge.</u>	1016 1017
(2) In any case described in division (B) (1) of this section, the agreement shall be filed with the clerk of the court or the judge before whom the action or proceeding is pending. <del>Upon the filing of the agreement, the</del> <u>The</u> judge before whom the action or proceeding is pending <u>shall address the agreement within fourteen days after its filing. That judge, by</u>	1018 1019 1020 1021 1022 1023

journal entry, ~~shall may, at the judge's discretion,~~ order the 1024  
referral or submission in accordance with the agreement. No 1025  
referral or submission shall be made to a retired judge under 1026  
this section, unless the parties to the action or proceeding 1027  
unanimously choose to have the referral or submission made, 1028  
enter into an agreement of the type described in division (B)(1) 1029  
of this section with the retired judge, and file the agreement 1030  
in accordance with this division. 1031

(C) Upon the entry of an order of referral or submission 1032  
in accordance with division (B)(2) of this section, the retired 1033  
judge to whom the referral or submission is made, relative to 1034  
the action or proceeding referred or the issue or question 1035  
submitted, shall have all of the powers, duties, and authority 1036  
of an active judge of the court in which the action or 1037  
proceeding is pending. The court in which the action or 1038  
proceeding is pending is not required to provide the retired 1039  
judge with court or other facilities, equipment, or personnel 1040  
during ~~his~~ the retired judge's consideration of the action, 1041  
proceeding, issue, or question. The retired judge shall not 1042  
receive any compensation, other than that agreed to by the 1043  
parties and the retired judge, for ~~his~~ the retired judge's 1044  
services during ~~his~~ consideration of the action, proceeding, 1045  
issue, or question. 1046

(D) (1) A retired judge to whom a referral is made under 1047  
this section shall try all of the issues in the action or 1048  
proceeding, shall prepare relevant findings of fact and 1049  
conclusions of law, and shall enter a judgment in the action or 1050  
proceeding in the same manner as if ~~he~~ the retired judge were an 1051  
active judge of the court. A retired judge to whom a submission 1052  
is made under this section shall try the specific issue or 1053  
question submitted, shall prepare relevant findings of fact or 1054

conclusions of law, shall make a determination on the issue or 1055  
question submitted, and shall file the findings, conclusions, 1056  
and determination with the clerk of the court in which the 1057  
action or proceeding is pending. Any judgment entered, and any 1058  
finding of fact, conclusion of law, or determination of an issue 1059  
or question made, by a retired judge in accordance with this 1060  
section shall have the same force and effect as if it had been 1061  
entered or made by an active judge of the court, and any appeal 1062  
from the judgment, finding, conclusion, or determination shall 1063  
be made as if the judgment had been entered, or the finding, 1064  
conclusion, or determination had been made, by an active judge 1065  
of the court. 1066

(2) Upon conclusion of the referred action or proceeding 1067  
or determination of the submitted issue or question, 1068  
jurisdiction is returned to the referring judge. 1069

(E) Any judge who registers with any court in accordance 1070  
with division (A) of this section may have ~~his~~ the judge's name 1071  
removed from the index of registered retired judges maintained 1072  
by that court at any time after the registration. On and after 1073  
the date of removal of the name of a retired judge from the 1074  
index of a court, the retired judge is not eligible under this 1075  
section to receive referrals or submissions from that court. 1076

(F) This section does not affect, and shall not be 1077  
construed as affecting, the provisions of section 141.16 of the 1078  
Revised Code. This section does not apply to any action or 1079  
proceeding pending in a small claims division of a municipal 1080  
court or county court. 1081

Sec. 2717.01. As used in this chapter: 1082

(A) "Application" means, as context requires, an 1083

application under section 2717.02, 2717.04, or 2717.13 of the 1084  
Revised Code. 1085

(B) "Applicant" means, as context requires, a person who 1086  
makes the filing under section 2717.02 or 2717.04 of the Revised 1087  
Code, or the minor on whose behalf a filing is made under 1088  
section 2717.13 of the Revised Code. 1089

(C) "Conform" means to make a person's legal name 1090  
consistent in all official identity documents by correcting a 1091  
misspelling, inconsistency, or other error in an official 1092  
identity document. 1093

(D) "Official identity document" means a birth record, 1094  
marriage record, divorce decree, driver's license, state issued 1095  
identification card, social security card with the social 1096  
security number redacted, passport, or any other official 1097  
government-issued document required or commonly used to verify a 1098  
person's identity. 1099

(E) "Sexually oriented offense" and "child-victim oriented 1100  
offense" have the same meanings as in section 2950.01 of the 1101  
Revised Code. 1102

**Sec. ~~2717.01~~ 2717.02.** ~~(A) (1) A person desiring a to change~~ 1103  
~~of the person's name may file an application in the probate~~ 1104  
~~court of the county in which the person resides. The application~~ 1105  
~~shall set forth that the applicant has been a bona fide resident~~ 1106  
~~of that county for at least one year prior to the filing of the~~ 1107  
~~application, the cause for which the change of name is sought,~~ 1108  
~~and the requested new name. The application shall require the~~ 1109  
~~applicant to state whether the applicant has been convicted of,~~ 1110  
~~pleaded guilty to, or been adjudicated a delinquent child for~~ 1111  
~~identity fraud or has a duty to comply with section 2950.04 or~~ 1112

~~2950.041 of the Revised Code because the applicant was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim-oriented offense.~~ 1113  
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~~(2) Except as provided in division (A)(4) of this section, notice of the application shall be given once by publication in a newspaper of general circulation in the county at least thirty days before the hearing on the application. The notice shall set forth the court in which the application was filed, the case number, and the date and time of the hearing.~~ 1117  
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~~(3) Except as provided by division (C) of this section, upon proof that proper notice was given or that notice was waived under division (A)(4) of this section and proof that the facts set forth in the application show reasonable and proper cause for changing the name of the applicant, the court may order the change of name.~~ 1123  
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~~(4) If an applicant for a change of name submits to the court, along with the application described in division (A)(1) of this section, satisfactory proof that the publication of the notice under division (A)(2) of this section would jeopardize the applicant's personal safety, both of the following apply:~~ 1129  
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~~(a) The court shall waive the notice requirement.~~ 1134

~~(b) If the court orders the change of name under division (A)(3) of this section, the court shall order the records of the change of name proceeding to be sealed and to be opened only by order of the court for good cause shown or at the request of the applicant for any reason.~~ 1135  
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~~(B) An application for change of name may be made on behalf of a minor by either of the minor's parents, a legal~~ 1140  
1141



~~guardian, or a guardian ad litem. When application is made on- 1142  
behalf of a minor, in addition to the notice and proof required- 1143  
pursuant to division (A) of this section, the consent of both- 1144  
living, legal parents of the minor shall be filed, or notice of- 1145  
the hearing shall be given to the parent or parents not- 1146  
consenting by certified mail, return receipt requested. If there- 1147  
is no known father of the minor, the notice shall be given to- 1148  
the person who the mother of the minor alleges to be the father.- 1149  
If no father is so alleged, or if either parent or the address- 1150  
of either parent is unknown, notice pursuant to division (A) of- 1151  
this section shall be sufficient as to the father or parent. 1152~~

~~Any additional notice required by this division may be- 1153  
waived in writing by any person entitled to the notice. 1154~~

~~(C) (1) The court shall not order a change of name under- 1155  
division (A) of this section if the person applying for a change- 1156  
of name or for whom the application for a change of name is made- 1157  
has a duty to comply with section 2950.04 or 2950.041 of the- 1158  
Revised Code because the applicant or the person on whose behalf- 1159  
the application for a change of name is made was convicted of,- 1160  
pleaded guilty to, or was adjudicated a delinquent child for- 1161  
having committed a sexually oriented offense or a child-victim- 1162  
oriented offense. 1163~~

~~(2) The court shall not order a change of name under- 1164  
division (A) of this section if the person applying for a change- 1165  
of name or for whom the application for a change of name is made- 1166  
has pleaded guilty to, been convicted of, or been adjudicated a- 1167  
delinquent child for committing a violation of section 2913.49- 1168  
of the Revised Code unless the guilty plea, conviction, or- 1169  
adjudication has been reversed on appeal. 1170~~

~~(3) As used in this division, "sexually oriented offense"- 1171~~

~~and "child victim oriented offense" have the same meanings as in~~ 1172  
~~section 2950.01 of the Revised Code.~~ 1173

Sec. 2717.03. Subject to sections 2717.07 and 2717.19 of 1174  
the Revised Code, an application for a change of name shall set 1175  
forth all of the following: 1176

(A) That the applicant has been a bona fide resident of 1177  
the county for at least sixty days prior to the filing of the 1178  
application. 1179

(B) The reason for which the change of name is sought. 1180

(C) The requested new name. 1181

Sec. 2717.04. A person desiring to conform the person's 1182  
legal name on an official identity document may file an 1183  
application in the probate court of the county in which the 1184  
person resides. 1185

Sec. 2717.05. Subject to sections 2717.07 and 2717.19 of 1186  
the Revised Code, an application to conform a legal name shall 1187  
set forth all of the following: 1188

(A) That the applicant has been a bona fide resident of 1189  
the county where the applicant is filing for at least sixty days 1190  
prior to the filing of the application. 1191

(B) An explanation of the misspelling, inconsistency, or 1192  
other error in the name. 1193

(C) A description of the correction sought to conform the 1194  
name on all official identity documents. 1195

Sec. 2717.06. (A) An application shall be supported by an 1196  
affidavit verifying all of the following: 1197

(1) The applicant's residency in the county for a period 1198

<u>of at least sixty days;</u>	1199
<u>(2) That the application is not made for the purpose of evading any creditors or other obligations;</u>	1200
<u>(3) That the applicant is not a debtor in any currently pending bankruptcy proceeding;</u>	1202
<u>(4) That all of the documentary evidence submitted under section 2717.07 of the Revised Code with the application is true, accurate, and complete;</u>	1204
<u>(5) Any other information the court may require.</u>	1207
<u>(B) The affidavit supporting a legal name change application shall also verify that the applicant has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for identity fraud or does not have a duty to comply with section 2950.04 or 2950.041 of the Revised Code because the applicant was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense.</u>	1208
<u>Sec. 2717.07. A probate court by local rule or order may require an applicant to submit a copy of any or all of the applicant's official identity documents or other documentary evidence relating to the applicant's identity that the court deems relevant to the application.</u>	1209
<u>Sec. 2717.08. The probate court may hold a hearing on an application. Except as provided in sections 2717.11 and 2717.14 of the Revised Code, if the court requires a hearing, it shall set the manner, scope, and content of the hearing notice the applicant must serve.</u>	1210
<u>Sec. 2717.09. Except as provided under section 2717.16 of</u>	1211
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the Revised Code, upon proof that the facts set forth in the 1227  
application show reasonable and proper cause for changing the 1228  
name of the applicant and, if applicable, upon proof that proper 1229  
notice was served, the court may order the change of name. 1230

**Sec. 2717.10.** Upon proof that the facts set forth in the 1231  
application show that a misspelling, inconsistency, or other 1232  
error of the applicant's legal name on an official identity 1233  
document exists, and that reasonable and proper cause exists for 1234  
issuing an order that resolves the discrepancy and conforms the 1235  
applicant's legal name, the court may issue an order to conform 1236  
the name of the person. 1237

**Sec. 2717.11.** If an applicant submits to the court, along 1238  
with the application, satisfactory proof that open records of 1239  
the name change or conformity, or publication of the hearing 1240  
notice under section 2717.08 of the Revised Code, would 1241  
jeopardize the applicant's personal safety, both of the 1242  
following apply: 1243

(A) The court shall waive the hearing notice requirement. 1244

(B) If the court orders the change of name under section 1245  
2717.09 of the Revised Code or the name conformity under section 1246  
2717.10 of the Revised Code, the court shall order the records 1247  
of the proceeding to be sealed and to be opened only by order of 1248  
the court for good cause shown or at the request of the 1249  
applicant for any reason. 1250

**Sec. 2717.13.** An application for change of name under 1251  
section 2717.02 of the Revised Code or to conform a name under 1252  
section 2717.04 of the Revised Code may be made on behalf of a 1253  
minor by either of the minor's parents, a legal guardian, a 1254  
legal custodian, or a guardian ad litem. 1255

Sec. 2717.14. (A) When an application is made on behalf of 1256  
a minor, in addition to the proof required under sections 1257  
2717.03 or 2717.05 of the Revised Code and, if applicable, proof 1258  
of the notice given under section 2717.08 of the Revised Code, 1259  
the consent of both living, legal parents of the minor shall be 1260  
filed, or notice of the hearing shall be given to the parent or 1261  
parents not consenting by certified mail, return receipt 1262  
requested. 1263

(B) If there is no known father of the minor, the notice 1264  
shall be given to the person who the mother of the minor alleges 1265  
to be the father. 1266

(C) If no father is so alleged, or if either parent or the 1267  
address of either parent is unknown, notice by publication in a 1268  
newspaper of general circulation in the county at least thirty 1269  
days before the hearing shall be sufficient as to the father or 1270  
parent. 1271

(D) Any additional notice required by this section may be 1272  
waived in writing by any person entitled to the notice. 1273

Sec. 2717.16. (A) The court shall not order a change of 1274  
name under section 2717.09 of the Revised Code if the person 1275  
applying for a change of name has a duty to comply with section 1276  
2950.04 or 2950.041 of the Revised Code because the applicant 1277  
was convicted of, pleaded guilty to, or was adjudicated a 1278  
delinquent child for having committed a sexually oriented 1279  
offense or a child-victim oriented offense. 1280

(B) The court shall not order a change of name under 1281  
section 2717.09 of the Revised Code if the person applying for a 1282  
change of name has pleaded guilty to, been convicted of, or been 1283  
adjudicated a delinquent child for committing a violation of 1284

section 2913.49 of the Revised Code unless the guilty plea, 1285  
conviction, or adjudication has been reversed on appeal. 1286

Sec. 2717.18. An action to conform the legal name of a 1287  
person under section 2717.04 of the Revised Code shall not be 1288  
permitted in lieu of either of the following: 1289

(A) Correction of a birth record under section 3705.15 of 1290  
the Revised Code; 1291

(B) Changing a legal name to a name that is not used in 1292  
any existing official identity documents. 1293

Sec. 2717.19. (A) On receipt of an application, the 1294  
probate court may order a criminal records check. 1295

(B) Any fee required for the criminal records check shall 1296  
be paid by the applicant. 1297

Sec. 5122.15. (A) Full hearings shall be conducted in a 1298  
manner consistent with this chapter and with due process of law. 1299  
The hearings shall be conducted by a judge of the probate court 1300  
or a referee designated by a judge of the probate court and may 1301  
be conducted in or out of the county in which the respondent is 1302  
held. Any referee designated under this division shall be an 1303  
attorney. 1304

(1) With the consent of the respondent, the following 1305  
shall be made available to counsel for the respondent: 1306

(a) All relevant documents, information, and evidence in 1307  
the custody or control of the state or prosecutor; 1308

(b) All relevant documents, information, and evidence in 1309  
the custody or control of the hospital in which the respondent 1310  
currently is held, or in which the respondent has been held 1311  
pursuant to this chapter; 1312

(c) All relevant documents, information, and evidence in 1313  
the custody or control of any hospital, facility, or person not 1314  
included in division (A) (1) (a) or (b) of this section. 1315

(2) The respondent has the right to attend the hearing and 1316  
to be represented by counsel of the respondent's choice. The 1317  
right to attend the hearing may be waived only by the respondent 1318  
or counsel for the respondent after consultation with the 1319  
respondent. 1320

(3) If the respondent is not represented by counsel, is 1321  
absent from the hearing, and has not validly waived the right to 1322  
counsel, the court shall appoint counsel immediately to 1323  
represent the respondent at the hearing, reserving the right to 1324  
tax costs of appointed counsel to the respondent, unless it is 1325  
shown that the respondent is indigent. If the court appoints 1326  
counsel, or if the court determines that the evidence relevant 1327  
to the respondent's absence does not justify the absence, the 1328  
court shall continue the case. 1329

(4) The respondent shall be informed that the respondent 1330  
may retain counsel and have independent expert evaluation. If 1331  
the respondent is unable to obtain an attorney, the respondent 1332  
shall be represented by court-appointed counsel. If the 1333  
respondent is indigent, court-appointed counsel and independent 1334  
expert evaluation shall be provided as an expense under section 1335  
5122.43 of the Revised Code. 1336

(5) The hearing shall be closed to the public, unless 1337  
counsel for the respondent, with the permission of the 1338  
respondent, requests that the hearing be open to the public. 1339

(6) If the hearing is closed to the public, the court, for 1340  
good cause shown, may admit persons who have a legitimate 1341

interest in the proceedings. If the respondent, the respondent's 1342  
counsel, or the designee of the director or of the chief 1343  
clinical officer objects to the admission of any person, the 1344  
court shall hear the objection and any opposing argument and 1345  
shall rule upon the admission of the person to the hearing. 1346

(7) The affiant under section 5122.11 of the Revised Code 1347  
shall be subject to subpoena by either party. 1348

(8) The court shall examine the sufficiency of all 1349  
documents filed and shall inform the respondent, if present, and 1350  
the respondent's counsel of the nature and content of the 1351  
documents and the reason for which the respondent is being 1352  
detained, or for which the respondent's placement is being 1353  
sought. 1354

(9) The court shall receive only reliable, competent, and 1355  
material evidence. 1356

(10) Unless proceedings are initiated pursuant to section 1357  
5120.17 or 5139.08 of the Revised Code, an attorney that the 1358  
board designates shall present the case demonstrating that the 1359  
respondent is a mentally ill person subject to court order. The 1360  
attorney shall offer evidence of the diagnosis, prognosis, 1361  
record of treatment, if any, and less restrictive treatment 1362  
plans, if any. In proceedings pursuant to section 5120.17 or 1363  
5139.08 of the Revised Code, the attorney general shall 1364  
designate an attorney who shall present the case demonstrating 1365  
that the respondent is a mentally ill person subject to court 1366  
order. The attorney shall offer evidence of the diagnosis, 1367  
prognosis, record of treatment, if any, and less restrictive 1368  
treatment plans, if any. 1369

(11) The respondent or the respondent's counsel has the 1370



right to subpoena witnesses and documents and to examine and 1371  
cross-examine witnesses. 1372

(12) The respondent has the right, but shall not be 1373  
compelled, to testify, and shall be so advised by the court. 1374

(13) On motion of the respondent or the respondent's 1375  
counsel for good cause shown, or on the court's own motion, the 1376  
court may order a continuance of the hearing. 1377

(14) If the respondent is represented by counsel and the 1378  
respondent's counsel requests a transcript and record, or if the 1379  
respondent is not represented by counsel, the court shall make 1380  
and maintain a full transcript and record of the proceeding. If 1381  
the respondent is indigent and the transcript and record is 1382  
made, a copy shall be provided to the respondent upon request 1383  
and be treated as an expense under section 5122.43 of the 1384  
Revised Code. 1385

(15) To the extent not inconsistent with this chapter, the 1386  
Rules of Civil Procedure are applicable. 1387

(B) Unless, upon completion of the hearing the court finds 1388  
by clear and convincing evidence that the respondent is a 1389  
mentally ill person subject to court order, it shall order the 1390  
respondent's discharge immediately. 1391

(C) If, upon completion of the hearing, the court finds by 1392  
clear and convincing evidence that the respondent is a mentally 1393  
ill person subject to court order, the court shall order the 1394  
respondent for a period not to exceed ninety days to any of the 1395  
following: 1396

(1) A hospital operated by the department of mental health 1397  
and addiction services if the respondent is committed pursuant 1398  
to section 5139.08 of the Revised Code; 1399

(2) A nonpublic hospital;	1400
(3) The veterans' administration or other agency of the United States government;	1401 1402
(4) A board of alcohol, drug addiction, and mental health services or services provider the board designates;	1403 1404
(5) Receive private psychiatric or psychological care and treatment;	1405 1406
(6) Any other suitable facility or person consistent with the diagnosis, prognosis, and treatment needs of the respondent. A jail or other local correctional facility is not a suitable facility.	1407 1408 1409 1410
(D) Any order made pursuant to division (C) (2), (3), (5), or (6) of this section shall be conditioned upon the receipt by the court of consent by the hospital, facility, agency, or person to accept the respondent and may include a requirement that a person or entity described in division (C) (2), (3), (5), or (6) of this section inform the board of alcohol, drug addiction, and mental health services or community mental health services provider the board designates about the progress of the respondent with the treatment plan.	1411 1412 1413 1414 1415 1416 1417 1418 1419
(E) In determining the entity or person to which the respondent is to be committed under division (C) of this section, the court shall consider <del>the</del> <u>all of the following:</u>	1420 1421 1422
<u>(1) The respondent's diagnosis, and prognosis, made by a psychiatrist, licensed clinical psychologist, clinical nurse specialist who is certified as a psychiatric-mental health clinical nurse specialist by the American nurses credentialing center, or certified nurse practitioner who is certified as a psychiatric-mental health nurse practitioner by the American</u>	1423 1424 1425 1426 1427 1428

nurses credentialing center; 1429

(2) The respondent's preferences of the respondent and 1430  
the; 1431

(3) The respondent's projected treatment plan for the 1432  
respondent and. 1433

The court shall order the implementation of the least 1434  
restrictive alternative available and consistent with treatment 1435  
goals. If the court determines that the least restrictive 1436  
alternative available that is consistent with treatment goals is 1437  
inpatient hospitalization, the court's order shall so state. 1438

(F) During the ninety-day period the entity or person 1439  
shall examine and treat the respondent. If the respondent is 1440  
receiving treatment in an outpatient setting, or receives 1441  
treatment in an outpatient setting during a subsequent period of 1442  
continued commitment under division (H) of this section, the 1443  
entity or person to whom the respondent is committed shall 1444  
determine the appropriate outpatient treatment for the 1445  
respondent. If, at any time prior to the expiration of the 1446  
ninety-day period, it is determined by the entity or person that 1447  
the respondent's treatment needs could be equally well met in an 1448  
available and appropriate less restrictive setting, both of the 1449  
following apply: 1450

(1) The respondent shall be released from the care of the 1451  
entity or person immediately and shall be referred to the court 1452  
together with a report of the findings and recommendations of 1453  
the entity or person; 1454

(2) The entity or person shall notify the respondent's 1455  
counsel or the attorney designated by a board of alcohol, drug 1456  
addiction, and mental health services or, if the respondent was 1457

committed to a board or a services provider designated by the 1458  
board, it shall place the respondent in the least restrictive 1459  
setting available consistent with treatment goals and notify the 1460  
court and the respondent's counsel of the placement. 1461

The court shall dismiss the case or order placement in the 1462  
least restrictive setting. 1463

(G) (1) Except as provided in division (G) (2) of this 1464  
section, any person for whom proceedings for treatment have been 1465  
commenced pursuant to section 5122.11 of the Revised Code, may 1466  
apply at any time for voluntary admission or treatment to the 1467  
entity or person to which the person was committed. Upon 1468  
admission as a voluntary patient the chief clinical officer of 1469  
the entity or the person immediately shall notify the court, the 1470  
patient's counsel, and the attorney designated by the board, if 1471  
the attorney has entered the proceedings, in writing of that 1472  
fact, and, upon receipt of the notice, the court shall dismiss 1473  
the case. 1474

(2) A person who is found incompetent to stand trial or 1475  
not guilty by reason of insanity and who is committed pursuant 1476  
to section 2945.39, 2945.40, 2945.401, or 2945.402 of the 1477  
Revised Code shall not voluntarily commit the person pursuant to 1478  
this section until after the final termination of the 1479  
commitment, as described in division (J) of section 2945.401 of 1480  
the Revised Code. 1481

(H) If, at the end of the first ninety-day period or any 1482  
subsequent period of continued commitment, there has been no 1483  
disposition of the case, either by discharge or voluntary 1484  
admission or treatment, the entity or person shall discharge the 1485  
patient immediately, unless at least ten days before the 1486  
expiration of the period the attorney the board designates or 1487

the prosecutor files with the court an application for continued 1488  
commitment. The application of the attorney or the prosecutor 1489  
shall include a written report containing the diagnosis, 1490  
prognosis, past treatment, a list of alternative treatment 1491  
settings and plans, and identification of the treatment setting 1492  
that is the least restrictive consistent with treatment needs. 1493  
The attorney the board designates or the prosecutor shall file 1494  
the written report at least three days prior to the full 1495  
hearing. A copy of the application and written report shall be 1496  
provided to the respondent's counsel immediately. 1497

The court shall hold a full hearing on applications for 1498  
continued commitment at the expiration of the first ninety-day 1499  
period and at least every two years after the expiration of the 1500  
first ninety-day period. 1501

Hearings following any application for continued 1502  
commitment are mandatory and may not be waived. 1503

For a respondent who is ordered to receive treatment in an 1504  
outpatient setting, if at any time after the first ninety-day 1505  
period the entity or person to whom the respondent was ordered 1506  
determines that the respondent has demonstrated voluntary 1507  
consent for treatment, that entity or person shall immediately 1508  
notify the respondent, the respondent's counsel, the attorney 1509  
designated by the board, and the court. The entity or person 1510  
shall submit to the court a report of the findings and 1511  
recommendations. The court may dismiss the case upon review of 1512  
the facts. 1513

Upon request of a person who is involuntarily committed 1514  
under this section, or the person's counsel, that is made more 1515  
than one hundred eighty days after the person's last full 1516  
hearing, mandatory or requested, the court shall hold a full 1517

hearing on the person's continued commitment. Upon the 1518  
application of a person involuntarily committed under this 1519  
section, supported by an affidavit of a psychiatrist or licensed 1520  
clinical psychologist, alleging that the person no longer is a 1521  
mentally ill person subject to court order, the court for good 1522  
cause shown may hold a full hearing on the person's continued 1523  
commitment prior to the expiration of one hundred eighty days 1524  
after the person's last full hearing. Section 5122.12 of the 1525  
Revised Code applies to all hearings on continued commitment. 1526

If the court, after a hearing for continued commitment 1527  
finds by clear and convincing evidence that the respondent is a 1528  
mentally ill person subject to court order, the court may order 1529  
continued commitment at places or to persons specified in 1530  
division (C) of this section. 1531

(I) Unless the admission is pursuant to section 5120.17 or 1532  
5139.08 of the Revised Code, the chief clinical officer of the 1533  
entity admitting a respondent pursuant to a judicial proceeding, 1534  
within ten working days of the admission, shall make a report of 1535  
the admission to the board of alcohol, drug addiction, and 1536  
mental health services serving the respondent's county of 1537  
residence. 1538

(J) A referee appointed by the court may make all orders 1539  
that a judge may make under this section and sections 5122.11 1540  
and 5122.141 of the Revised Code, except an order of contempt of 1541  
court. The orders of a referee take effect immediately. Within 1542  
fourteen days of the making of an order by a referee, a party 1543  
may file written objections to the order with the court. The 1544  
filed objections shall be considered a motion, shall be 1545  
specific, and shall state their grounds with particularity. 1546  
Within ten days of the filing of the objections, a judge of the 1547

court shall hold a hearing on the objections and may hear and 1548  
consider any testimony or other evidence relating to the 1549  
respondent's mental condition. At the conclusion of the hearing, 1550  
the judge may ratify, rescind, or modify the referee's order. 1551

(K) An order of the court under division (C), (H), or (J) 1552  
of this section is a final order. 1553

(L) Before a board, or a services provider the board 1554  
designates, may place an unconsenting respondent in an inpatient 1555  
setting from a less restrictive placement, the board or services 1556  
provider shall do all of the following: 1557

(1) Determine that the respondent is in immediate need of 1558  
treatment in an inpatient setting because the respondent 1559  
represents a substantial risk of physical harm to the respondent 1560  
or others if allowed to remain in a less restrictive setting; 1561

(2) On the day of placement in the inpatient setting or on 1562  
the next court day, file with the court a motion for transfer to 1563  
an inpatient setting or communicate to the court by telephone 1564  
that the required motion has been mailed; 1565

(3) Ensure that every reasonable and appropriate effort is 1566  
made to take the respondent to the inpatient setting in the 1567  
least conspicuous manner possible; 1568

(4) Immediately notify the board's designated attorney and 1569  
the respondent's attorney. 1570

At the respondent's request, the court shall hold a 1571  
hearing on the motion and make a determination pursuant to 1572  
division (E) of this section within five days of the placement. 1573

(M) Before a board, or a services provider the board 1574  
designates, may move a respondent from one residential placement 1575

to another, the board or services provider shall consult with 1576  
the respondent about the placement. If the respondent objects to 1577  
the placement, the proposed placement and the need for it shall 1578  
be reviewed by a qualified mental health professional who 1579  
otherwise is not involved in the treatment of the respondent. 1580

(N) The entity or person to whom the respondent was 1581  
ordered for treatment in an outpatient setting may submit a 1582  
report to the court indicating that the respondent has either 1583  
failed to comply with the treatment plan or begun to demonstrate 1584  
signs of decompensation that may be grounds for hospitalization. 1585  
On receipt of the report, the court shall promptly schedule a 1586  
hearing to review the case. The court shall conduct the hearing 1587  
in a manner consistent with this chapter and due process of law. 1588  
The board shall receive notice of the hearing and the board and 1589  
entity or person treating the respondent shall submit a report 1590  
to the court with a plan for appropriate alternative treatment, 1591  
if any, or recommend that the court discontinue the court- 1592  
ordered treatment. The court shall consider available and 1593  
appropriate alternative placements but shall not impose criminal 1594  
sanctions that result in confinement in a jail or other local 1595  
correctional facility based on the respondent's failure to 1596  
comply with the treatment plan. The court may not order the 1597  
respondent to a more restrictive placement unless the criteria 1598  
specified in division (L) of this section are met and may not 1599  
order the respondent to an inpatient setting unless the court 1600  
determines by clear and convincing evidence presented by the 1601  
board that the respondent meets the criteria specified in 1602  
divisions (A) and (B) (1), (2), (3), or (4) of section 5122.01 of 1603  
the Revised Code. 1604

**Sec. 5804.11.** (A) If upon petition the court finds that 1605  
the settlor and all beneficiaries consent to the modification or 1606



termination of a noncharitable irrevocable trust, that all 1607  
consents, including any given by representatives under Chapter 1608  
5803. of the Revised Code, are valid, and that all parties 1609  
giving consent are competent to do so, the court shall enter an 1610  
order approving the modification or termination even if the 1611  
modification or termination is inconsistent with a material 1612  
purpose of the trust. An agent under a power of attorney may 1613  
exercise a settlor's power to consent to a trust's modification 1614  
or termination only to the extent expressly authorized by both 1615  
the power of attorney and the terms of the trust. The settlor's 1616  
guardian of the estate may exercise a settlor's power to consent 1617  
to a trust's modification or termination with the approval of 1618  
the court supervising the guardianship if an agent is not so 1619  
authorized. The guardian of the settlor's person may exercise a 1620  
settlor's power to consent to a trust's modification or 1621  
termination with the approval of the court supervising the 1622  
guardianship if an agent is not so authorized and a guardian of 1623  
the estate has not been appointed. This division does not apply 1624  
to a noncharitable irrevocable trust described in 42 U.S.C. 1625  
1396p(d) (4) . 1626

(B) A noncharitable irrevocable trust may be terminated 1627  
upon consent of all of the beneficiaries if the court concludes 1628  
that continuance of the trust is not necessary to achieve any 1629  
material purpose of the trust. A noncharitable irrevocable trust 1630  
may be modified, but not to remove or replace the currently 1631  
serving trustee, upon consent of all of the beneficiaries if the 1632  
court concludes that modification is not inconsistent with a 1633  
material purpose of the trust. A spendthrift provision in the 1634  
terms of the trust may, but is not presumed to, constitute a 1635  
material purpose of the trust. In determining what constitutes a 1636  
material purpose of a trust, a court may but is not required to 1637

consider extrinsic evidence indicating a settlor's intent at the 1638  
time the instrument was executed. 1639

(C) Upon termination of a trust under division (A) or (B) 1640  
of this section, the trustee shall distribute the trust property 1641  
as agreed by the beneficiaries. 1642

(D) If not all of the beneficiaries consent to a proposed 1643  
modification or termination of the trust under division (A) or 1644  
(B) of this section, the court may approve the modification or 1645  
termination if the court is satisfied of both of the following: 1646

(1) That if all of the beneficiaries had consented, the 1647  
trust could have been modified or terminated under this section; 1648

(2) That the interests of a beneficiary who does not 1649  
consent will be adequately protected. 1650

**Sec. 5805.06.** (A) Whether or not the terms of a trust 1651  
contain a spendthrift provision, all of the following apply: 1652

(1) During the lifetime of the settlor, the property of a 1653  
revocable trust is subject to claims of the settlor's creditors. 1654

(2) Except to the extent that a trust is established 1655  
pursuant to, or otherwise is wholly or partially governed by or 1656  
subject to Chapter 5816. of the Revised Code, with respect to an 1657  
irrevocable trust, a creditor or assignee of the settlor may 1658  
reach the maximum amount that can be distributed to or for the 1659  
settlor's benefit. If an irrevocable trust has more than one 1660  
settlor, the amount distributable to or for a settlor's benefit 1661  
that the creditor or assignee of a particular settlor may reach 1662  
may not exceed that settlor's interest in the portion of the 1663  
trust attributable to that settlor's contribution. The right of 1664  
a creditor or assignee to reach a settlor's interest in an 1665  
irrevocable trust shall be subject to Chapter 5816. of the 1666

Revised Code to the extent that that chapter applies to that trust. 1667  
1668

(3) With respect to a trust described in 42 U.S.C. section 1669  
1396p(d)(4)(A) or (C), the court may limit the award of a 1670  
settlor's creditor under division (A)(1) or (2) of this section 1671  
to the relief that is appropriate under the circumstances, 1672  
considering among any other factors determined appropriate by 1673  
the court, the supplemental needs of the beneficiary. 1674

(B) For purposes of this section, all of the following 1675  
apply: 1676

(1) The holder of a power of withdrawal is treated in the 1677  
same manner as the settlor of a revocable trust to the extent of 1678  
the property subject to the power during the period the power 1679  
may be exercised. 1680

~~(2) Upon the lapse, release, or waiver of the power of 1681  
withdrawal, the holder is treated as the settlor of the trust 1682  
only to the extent the value of the property affected by the 1683  
lapse, release, or waiver exceeds the greatest of the following 1684  
amounts: 1685~~

~~(a) The amount specified in section 2041(b)(2) or 2514(c) 1686  
of the Internal Revenue Code; 1687~~

~~(b) If the donor of the property subject to the holder's 1688  
power of withdrawal is not married at the time of the transfer 1689  
of the property to the trust, the amount specified in section 1690  
2503(b) of the Internal Revenue Code; 1691~~

~~(c) If the donor of the property subject to the holder's 1692  
power of withdrawal is married at the time of the transfer of 1693  
the property to the trust, twice the amount specified in section 1694  
2503(b) of the Internal Revenue Code. 1695~~

~~(3)~~—None of the following shall be considered an amount 1696  
that can be distributed to or for the benefit of the settlor: 1697

(a) Trust property that could be, but has not yet been, 1698  
distributed to or for the benefit of the settlor only as a 1699  
result of the exercise of a power of appointment held in a 1700  
nonfiduciary capacity by any person other than the settlor; 1701

(b) Trust property that could be, but has not yet been, 1702  
distributed to or for the benefit of the settlor of a trust 1703  
pursuant to the power of the trustee to make distributions or 1704  
pursuant to the power of another in a fiduciary capacity to 1705  
direct distributions, if and to the extent that the 1706  
distributions could be made from trust property the value of 1707  
which was included in the gross estate of the settlor's spouse 1708  
for federal estate tax purposes under section 2041 or 2044 of 1709  
the Internal Revenue Code or that was treated as a transfer by 1710  
the settlor's spouse under section 2514 or 2519 of the Internal 1711  
Revenue Code; 1712

(c) Trust property that, pursuant to the exercise of a 1713  
discretionary power by a person other than the settlor, could be 1714  
paid to a taxing authority or to reimburse the settlor for any 1715  
income tax on trust income or principal that is payable by the 1716  
settlor under the law imposing the tax. 1717

**Sec. 5816.02.** As used in this chapter, unless the context 1718  
otherwise requires: 1719

(A) (1) "Advisor" means a person to whom both of the 1720  
following apply: 1721

(a) The person satisfies the eligibility criteria 1722  
specified in division (A) of section 5816.11 of the Revised 1723  
Code. 1724

(b) The person is given the authority by the terms of a legacy trust to remove or appoint one or more trustees of the trust or to direct, consent to, or disapprove a trustee's actual or proposed investment, distribution, or other decisions.

(2) Any person to whom division (A)(1) of this section applies is considered an advisor even if that person is denominated by another title, such as protector.

(B) "Asset" means property of a transferor but does not include any of the following:

(1) Property to the extent it is encumbered by a valid lien;

(2) Property to the extent it is exempt at the time of a qualified disposition under any applicable nonbankruptcy law, including, but not limited to, section 2329.66 of the Revised Code;

(3) Property held in the form of a tenancy by the entireties to the extent that, under the law governing the entireties estate at the time of a qualified disposition, it is not subject to process by a creditor holding a claim against only one tenant;

(4) Any property transferred from a nonlegacy trust to a legacy trust to the extent that the property would not be subject to attachment under the applicable nonbankruptcy law governing that nonlegacy trust.

(C) "Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. Chapter 11, as amended.

(D) "Beneficiary" has the same meaning as in section 5801.01 of the Revised Code.

(E) "Claim" means a right to payment, whether or not the right is reduced to judgment or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(F) "Creditor" means a person who has a claim against a transferor and any transferee or assignee of, or successor to, that claim.

(G) "Debt" means a liability on a claim.

(H) "Disposition" means a direct or indirect transfer, conveyance, or assignment of property, including, but not limited to, a partial, contingent, undivided, or co-ownership interest in property. "Disposition" includes the exercise of a general power so as to cause a transfer of property to a trustee or trustees but does not include any of the following:

(1) The release or relinquishment of an interest in property that, until the release or relinquishment, was the subject of a qualified disposition;

(2) The exercise of a limited power so as to cause a transfer of property to a trustee or trustees;

(3) A disclaimer of an interest in a trust, bequest, devise, or inheritance.

(I) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended.

(J) "Investment decision" means any participation in any decision regarding the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of or rights in investments.

(K) (1) "Legacy trust" means a trust evidenced by a written

trust instrument to which all of the following apply:	1781
(a) The trust has, names, or appoints at least one	1782
qualified trustee for or in connection with the property that is	1783
the subject of a qualified disposition.	1784
(b) The trust expressly incorporates the laws of this	1785
state to wholly or partially govern its validity, construction,	1786
and administration.	1787
(c) The trust expressly states that it is irrevocable.	1788
(d) The trust has a spendthrift provision applicable to	1789
the interests of any beneficiary in the trust property,	1790
including any interests of a transferor in the trust property.	1791
(2) A trust that satisfies the criteria specified in	1792
division (K) (1) of this section is considered a legacy trust	1793
even if the trust instrument also allows for one or more	1794
nonqualified trustees and regardless of the language used to	1795
satisfy those criteria.	1796
(L) "Lien" has the same meaning as in section 1336.01 of	1797
the Revised Code.	1798
(M) "Nonlegacy trust" means any trust other than a legacy	1799
trust.	1800
(N) "Nonqualified trustee" means any trustee other than a	1801
qualified trustee.	1802
(O) "Person" has the same meaning as in section 5801.01 of	1803
the Revised Code.	1804
(P) "Property" has the same meaning as in section 5801.01	1805
of the Revised Code.	1806
(Q) "Qualified affidavit" means an affidavit that meets	1807

the requirements of section 5816.06 of the Revised Code. 1808

(R) "Qualified disposition" means a disposition by or from 1809  
a transferor to any trustee of a trust that is, was, or becomes 1810  
a legacy trust. 1811

(S) "Qualified trustee" means a person who is not a 1812  
transferor and to whom both of the following apply: 1813

(1) (a) The person, if a natural person, is a resident of 1814  
this state. 1815

(b) The person, if not a natural person, is authorized by 1816  
the law of this state or by a court of competent jurisdiction of 1817  
this state to act as a trustee and ~~whose~~ either of the following  
applies: 1818  
1819

(i) The activities of that person are subject to 1820  
supervision by the Ohio superintendent of ~~banks~~ financial  
institutions, the federal deposit insurance corporation, the 1821  
comptroller of the currency, or the office of thrift supervision 1822  
or a successor of any of them. 1823  
1824

(ii) That person is a "family trust company," as defined 1825  
in section 1112.01 of the Revised Code, and that family trust 1826  
company may be licensed or unlicensed for purposes of Chapter 1827  
1112. of the Revised Code, provided that all of the following 1828  
also apply regardless of the family trust company's licensing 1829  
status: 1830

(I) The family trust company shall maintain an office in 1831  
this state, on either an exclusive basis or on a shared basis 1832  
with one or more other persons. 1833

(II) The family trust company shall open and maintain at 1834  
least one bank or brokerage account in this state. 1835



(III) The family trust company shall maintain in this 1836  
state, on an exclusive or nonexclusive basis, electronic or 1837  
physical records for the legacy trust. 1838

(IV) The family trust company shall satisfy all of the 1839  
requirements imposed by divisions (B), (C), (D), and (E) (1) of 1840  
section 1112.14 of the Revised Code. 1841

(V) No beneficiary of a legacy trust, when acting for or 1842  
on behalf of a family trust company, or when acting as an 1843  
officer, manager, director, employee, or other agent or 1844  
representative of a family trust company, may have any vote or 1845  
authority regarding any decision to make or withhold any 1846  
distribution from such legacy trust to or for the benefit of 1847  
that beneficiary. 1848

Nothing in division (S) (1) (b) (ii) of this section shall 1849  
prohibit a beneficiary from exercising any rights, powers, 1850  
privileges, or authority granted to that beneficiary by or in 1851  
any trust instrument governing a legacy trust. 1852

(2) The person maintains or arranges for custody in this 1853  
state of some or all of the property that is the subject of the 1854  
qualified disposition, maintains electronic or physical records 1855  
for the legacy trust on an exclusive or nonexclusive basis, 1856  
prepares or arranges for the preparation of required income tax 1857  
returns for the legacy trust, or otherwise materially 1858  
participates in the administration of the legacy trust. 1859

(T) "Spendthrift provision" has the same meaning as in 1860  
section 5801.01 of the Revised Code. 1861

(U) "Spouse" and "former spouse" means only the person to 1862  
whom a transferor was married on or before a qualified 1863  
disposition is made. 1864

(V) "Transferor" means a person who directly or indirectly makes a disposition. 1865  
1866

(W) "Valid lien" has the same meaning as in section 1336.01 of the Revised Code. 1867  
1868

**Sec. 5816.05.** A legacy trust may allow or provide for any or all of the following rights, powers, interests, or provisions, none of which grants, or is considered to be, either alone or in any combination, a right or power to revoke a trust or to voluntarily or involuntarily transfer an interest in that trust: 1869  
1870  
1871  
1872  
1873  
1874

(A) A provision that, upon the happening of a defined event or a stated contingency, results in the termination of a transferor's right to mandatory income or principal; 1875  
1876  
1877

(B) The power of a transferor to veto a distribution from the trust; 1878  
1879

(C) A power of appointment, other than a power to appoint to a transferor, a creditor of the transferor, the estate of the transferor, or a creditor of the transferor's estate, that is exercisable by will or by other written instrument of a transferor effective upon the death of the transferor or during the lifetime of the transferor; 1880  
1881  
1882  
1883  
1884  
1885

(D) The right of a transferor to receive trust income as set forth in the trust instrument. 1886  
1887

(E) Both of the following: 1888

(1) A transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in section 664 of the Internal Revenue Code; 1889  
1890  
1891  
1892

(2) The transferor's right, at any time and from time to 1893  
time by written instrument delivered to the trustee, to release 1894  
the transferor's retained interest in that unitrust or annuity 1895  
trust, in whole or in part, in favor of one or more charitable 1896  
organizations that have a succeeding beneficial interest in that 1897  
unitrust or annuity trust; 1898

(F) The power of a transferor to consume, invade, or 1899  
appropriate property of the trust, but only if limited in each 1900  
calendar year to five per cent of the value of the trust 1901  
principal at the time of the exercise of the power; 1902

(G) A transferor's potential or actual receipt or use of 1903  
principal or income of the trust if the potential or actual 1904  
receipt or use is or would be the result of any of the following 1905  
that applies with respect to one or more of the qualified 1906  
trustees: 1907

(1) A qualified trustee's acting in the trustee's 1908  
discretion. For purposes of division (G) (1) of this section, a 1909  
qualified trustee shall have discretion with respect to the 1910  
distribution or use of principal or income unless the discretion 1911  
is expressly denied to the trustee by the terms of the trust 1912  
instrument. 1913

(2) A qualified trustee's acting pursuant to a standard in 1914  
the trust instrument that governs the distribution or use of 1915  
principal or income; 1916

(3) A qualified trustee's acting at the direction of an 1917  
advisor who is acting in the advisor's discretion or pursuant to 1918  
a standard in the trust instrument that governs the distribution 1919  
or use of principal or income. If an advisor is authorized to 1920  
direct that distribution or use, the advisor's authority shall 1921

be discretionary unless otherwise expressly stated in the trust instrument. 1922  
1923

(H) The right of a transferor to remove any advisor and appoint a new advisor who satisfies the eligibility criteria set forth in division (A) of section 5816.11 of the Revised Code; 1924  
1925  
1926

(I) The right of a transferor to remove any trustee and appoint a new trustee; 1927  
1928

(J) A transferor's potential or actual use of real property or tangible personal property, including, but not limited to, property held under a qualified personal residence trust as described in section 2702(c) of the Internal Revenue Code and regulations promulgated under that section, or a transferor's possession and enjoyment of a qualified interest as defined in section 2702(b) of the Internal Revenue Code; 1929  
1930  
1931  
1932  
1933  
1934  
1935

(K) Any provision requiring or permitting the potential or actual use of trust income or principal to pay, in whole or in part, income taxes due on the income of the trust, including, but not limited to, any provision permitting that use in the discretion of any one or more of the qualified trustees acting in the qualified trustee's discretion or at the direction of an advisor who is acting in the advisor's discretion; 1936  
1937  
1938  
1939  
1940  
1941  
1942

(L) The ability of a qualified trustee, whether pursuant to the qualified trustee's discretion or the terms of the legacy trust instrument or at the direction of an advisor, to pay after the death of a transferor all or any part of the debts of the transferor outstanding on or before the transferor's death, the expenses of administering the transferor's estate, or any estate, gift, generation skipping transfer, or inheritance tax; 1943  
1944  
1945  
1946  
1947  
1948  
1949

(M) Any provision that pours back after the death of a 1950

transferor all or part of the trust property to the transferor's estate or any trust; 1951  
1952

(N) A power held by a transferor allowing the transferor, while acting in a nonfiduciary capacity, to substitute property of equivalent value for any property that is part of the principal of the legacy trust; 1953  
1954  
1955  
1956

(O) Any other rights, powers, interests, or provisions permitted or allowed by any other section of this chapter. 1957  
1958

**Sec. 5816.06.** (A) Except as otherwise provided in this section, a transferor shall sign a qualified affidavit before or substantially contemporaneously with making a qualified disposition. 1959  
1960  
1961  
1962

(B) A qualified affidavit shall be notarized and shall contain all of the following statements under oath: 1963  
1964

(1) The property being transferred to the trust was not derived from unlawful activities. 1965  
1966

(2) The transferor has full right, title, and authority to transfer the property to the legacy trust. 1967  
1968

(3) The transferor will not be rendered insolvent immediately after the transfer of the property to the legacy trust. 1969  
1970  
1971

(4) The transferor does not intend to defraud any creditor by transferring the property to the legacy trust. 1972  
1973

(5) There are no pending or threatened court actions against the transferor, except for any court action identified by the affidavit or an attachment to the affidavit. 1974  
1975  
1976

(6) The transferor is not involved in any administrative 1977

proceeding, except for any proceeding identified by the affidavit or an attachment to the affidavit.	1978 1979
(7) The transferor does not contemplate at the time of the transfer the filing for relief under the Bankruptcy Code.	1980 1981
(C) A qualified affidavit is considered defective if it materially fails to meet the requirements set forth in division (B) of this section, but a qualified affidavit is not considered defective due to any one or more of the following:	1982 1983 1984 1985
(1) Any nonsubstantive variances from the language set forth in division (B) of this section;	1986 1987
(2) Any statements or representations in addition to those set forth in division (B) of this section if the statements or representations do not materially contradict the statements or representations required by that division;	1988 1989 1990 1991
(3) Any technical errors in the form, substance, or method of administering an oath if those errors were not the fault of the affiant, and the affiant reasonably relied upon another person to prepare or administer the oath.	1992 1993 1994 1995
(D) (1) A qualified affidavit is not required from a transferor who is not a beneficiary of the legacy trust that receives the disposition.	1996 1997 1998
(2) A subsequent qualified affidavit is not required in connection with any qualified disposition made after the execution of an earlier qualified affidavit if that disposition is a part of, is required by, or is the direct result of, a prior qualified disposition that was made in connection with that earlier qualified affidavit.	1999 2000 2001 2002 2003 2004
(E) If a qualified affidavit is required by this section	2005

and a transferor fails to timely sign a qualified affidavit or 2006  
signs a defective qualified affidavit, then, subject to the 2007  
normal rules of evidence, that failure or defect may be 2008  
considered as evidence in any proceeding commenced pursuant to 2009  
section 5816.07 of the Revised Code, but the legacy trust or the 2010  
validity of any attempted qualified disposition shall not be 2011  
affected in any other way due to that failure or defect. 2012

**Sec. 5816.09.** Any successor or replacement trustees of a 2013  
legacy trust shall be determined or selected in the following 2014  
manners: 2015

(A) (1) Division (A) (2) of this section applies if in any 2016  
action involving a legacy trust or any trustee of the legacy 2017  
trust a court ~~takes an action~~ enters or issues any order in 2018  
which or by which the court declines to apply the law of this 2019  
state in determining any of the following matters: 2020

(a) The validity, construction, or administration of the 2021  
trust; 2022

(b) The effect of any term or condition of the trust, 2023  
including, but not limited to, a spendthrift provision; 2024

(c) The rights and remedies of any creditor or other 2025  
suitor in connection with a qualified disposition. 2026

(2) Immediately upon the court's ~~action under entry or~~ 2027  
issuance of an order referred to in division (A) (1) of this 2028  
section, and without the need for any other order of any court, 2029  
any qualified trustee who is a party to that action shall cease 2030  
in all respects to be a trustee of the legacy trust, and the 2031  
position of trustee shall be occupied in accordance with the 2032  
terms of the trust instrument that governed the legacy trust 2033  
immediately before that cessation, or, if the terms of the trust 2034

instrument do not provide for another trustee and the trust 2035  
would otherwise be without a trustee, any court of this state, 2036  
upon the application of any beneficiary of the legacy trust, 2037  
shall appoint a successor qualified trustee upon the terms and 2038  
conditions that it determines to be consistent with the purposes 2039  
of the trust and this chapter. Upon a qualified trustee ceasing 2040  
to be a trustee pursuant to division (A) (2) of this section, 2041  
that qualified trustee shall have no power or authority other 2042  
than to convey trust property to any other trustee that is 2043  
appointed, installed, or serving in accordance with that 2044  
division. 2045

(3) For purposes of division (A) of this section, ~~"court":~~ 2046

(a) "Court" includes a judicial tribunal, an 2047  
administrative tribunal, or other adjudicative body or panel. 2048

(b) "Order" includes any order, writ, judgment, entry, 2049  
edict, mandate, directive, instruction, or decree issued or 2050  
entered by any court. 2051

(B) In all cases other than the situation described in 2052  
division (A) of this section, both of the following apply: 2053

(1) If a legacy trust ceases to have at least one 2054  
qualified trustee, the vacancy in the qualified trusteeship 2055  
shall be filled pursuant to section 5807.04 of the Revised Code 2056  
except to the extent that the legacy trust expressly provides 2057  
otherwise. 2058

(2) If a legacy trust ceases to have at least one trustee, 2059  
the vacancy in the trusteeship shall be filled pursuant to 2060  
section 5807.04 of the Revised Code, and the successor trustee 2061  
shall be a qualified trustee unless the legacy trust instrument 2062  
expressly provides otherwise. 2063



Sec. 5816.10. (A) In the event of any conflict between any 2064  
provision of this chapter and any provision of Chapter 1336. of 2065  
the Revised Code, including, but not limited to, any similar 2066  
provision of law adopted, promulgated, or enacted by a 2067  
jurisdiction other than this state, or any other provision of 2068  
law similar to any provision of Chapter 1336. of the Revised 2069  
Code, the provision of this chapter shall control and prevail to 2070  
the maximum extent permitted by the Ohio Constitution and the 2071  
United States Constitution. When determining whether a provision 2072  
of law is similar to any provision of Chapter 1336. of the 2073  
Revised Code, a court shall be liberal in finding that such 2074  
similarity exists. 2075

(B) A statement in a trust instrument stating that it 2076  
"shall be governed by the laws of Ohio" or other statement to 2077  
similar effect or of similar import is considered to expressly 2078  
incorporate the laws of this state to govern the validity, 2079  
construction, and administration of that trust instrument and to 2080  
satisfy division (K) (1) (b) of section 5816.02 of the Revised 2081  
Code. 2082

(C) A disposition by a nonqualified trustee to a qualified 2083  
trustee shall not be treated as other than a qualified 2084  
disposition solely because the nonqualified trustee is a trustee 2085  
of a nonlegacy trust. 2086

(D) A disposition to any nonqualified trustee of a legacy 2087  
trust shall be treated as a qualified disposition if at the time 2088  
of the disposition any of the following applies: 2089

(1) There is at least one qualified trustee serving 2090  
pursuant to the terms of that legacy trust. 2091

(2) There is no qualified trustee serving but the 2092

circumstances require the appointment or installation of a 2093  
qualified trustee pursuant to division (A) (2) of section 5816.09 2094  
of the Revised Code. 2095

(3) There is no qualified trustee serving but within one 2096  
hundred eighty days after the date of disposition a qualified 2097  
trustee fills the vacancy in the qualified trusteeship or an 2098  
application to appoint a qualified trustee is filed pursuant to 2099  
division (B) of section 5816.09 of the Revised Code. 2100

(E) If a disposition is made by a trustee of a nonlegacy 2101  
trust to a trustee of a legacy trust, both of the following 2102  
apply: 2103

(1) Except to the extent expressly stated otherwise by the 2104  
terms of that disposition, the disposition shall be considered a 2105  
qualified disposition for the benefit of all of the persons who 2106  
are the beneficiaries of both the nonlegacy trust and the legacy 2107  
trust. 2108

(2) The date of the disposition to the legacy trust shall 2109  
be considered to be the date on which the property that was part 2110  
of the nonlegacy trust was first continuously subject to any law 2111  
of a jurisdiction other than this state that is similar to this 2112  
chapter. ~~A court shall liberally construe and apply division (E)~~ 2113  
~~(2) of this section~~ When applying division (E) (2) of this 2114  
section, a court shall be liberal in finding that such 2115  
continuity and similarity exist. 2116

(F) A legacy trust may contain any terms or conditions 2117  
that provide for changes in or to the place of administration, 2118  
situs, governing law, trustees or advisors, or the terms or 2119  
conditions of the legacy trust or for other changes permitted by 2120  
law. 2121

(G) Any valid lien attaching to property before a 2122  
disposition of that property to a trustee of a legacy trust 2123  
shall survive the disposition, and the trustee shall take title 2124  
to the property subject to the valid lien and subject to any 2125  
agreements that created or perfected the valid lien. Nothing in 2126  
this chapter shall be construed to authorize any disposition 2127  
that is prohibited by the terms of any agreements, notes, 2128  
guaranties, mortgages, indentures, instruments, undertakings, or 2129  
other documents. In the event of any conflict between this 2130  
division and any other provision of this chapter, this division 2131  
shall control. 2132

(H) To the maximum extent permitted by the Ohio 2133  
Constitution and the United States Constitution, the courts of 2134  
this state shall exercise jurisdiction over any legacy trust, any 2135  
legacy trust matter, or any qualified disposition and shall 2136  
adjudicate any case or controversy brought before them 2137  
regarding, arising out of, or related to, any legacy trust, any 2138  
legacy trust matter, or any qualified disposition if that case 2139  
or controversy is otherwise within the subject matter 2140  
jurisdiction of the court. Subject to the Ohio Constitution and 2141  
the United States Constitution, no court of this state shall 2142  
dismiss or otherwise decline to adjudicate any case or 2143  
controversy described in this division on the ground that a 2144  
court of another jurisdiction has acquired or may acquire proper 2145  
jurisdiction over, or may provide proper venue for, that case or 2146  
controversy or the parties to the case or controversy. Nothing 2147  
in this division shall be construed to do either of the 2148  
following: 2149

(1) Prohibit a transfer or other reassignment of any case 2150  
or controversy from one court of this state to another court of 2151  
this state; 2152

(2) Expand or limit the subject matter jurisdiction of any court of this state.

(I)(1) If any disposition is made by a trustee of a legacy trust, referred to in division (I) of this section as the "first legacy trust," to a trustee of a second legacy trust, referred to in division (I) of this section as the "second legacy trust," whether pursuant to section 5808.18 of the Revised Code or any other applicable law, then all of the following apply to any property involved in such disposition:

(a) Except to the extent expressly stated otherwise by the terms of that disposition, the disposition shall be considered a qualified disposition for the benefit of all persons who are the beneficiaries of both the first legacy trust and the second legacy trust.

(b) An item of property shall be treated as having been transferred to a trustee of the second legacy trust on the earlier of any of the following:

(i) The date of the original qualified disposition of the item to a trustee of the first legacy trust;

(ii) If, before being held by the trustee of the first legacy trust, the item previously was held by a trustee of a predecessor legacy trust, or by one or more trustees of a consecutive and uninterrupted series of predecessor legacy trusts, then the date of the original qualified disposition to the first trustee to hold that item as part of any such predecessor legacy trust;

(iii) If, before being held by the trustee of the first legacy trust, that item was held by a trustee of a nonlegacy trust referred to in division (E)(2) of this section, then the

date determined pursuant to that division; 2182

(iv) The earliest date determined by any combination of 2183  
divisions (I) (1) (b) (i) to (iii) of this section. 2184

(2) For purposes of division (I) (1) (b) of this section, 2185  
any reference to an item of property shall include any proceeds 2186  
of or substitutes for that item. 2187

(3) Notwithstanding division (S) of section 5816.02 of the 2188  
Revised Code, a qualified trustee of the first legacy trust may 2189  
serve as a qualified trustee of the second legacy trust. 2190

(4) The dispositions covered by division (I) of this 2191  
section include, but are not limited to, any disposition that is 2192  
made by a trustee of the first legacy trust acting pursuant to a 2193  
direction issued by a person having the power to direct a 2194  
distribution of trust property pursuant to the trust instrument 2195  
governing the first legacy trust, including, but not limited to, 2196  
a power to direct as provided in division (G) of section 5808.18 2197  
of the Revised Code. 2198

(J) Any reference in this chapter to an "action" or a 2199  
"proceeding" shall be broadly construed to encompass any suit or 2200  
proceeding in any jurisdiction or before any judicial tribunal, 2201  
administrative tribunal, or other adjudicative body or panel. 2202

(K) This chapter and its provisions reflect and embody the 2203  
strong public policy of this state. 2204

**Sec. 5816.14.** This chapter applies to qualified 2205  
dispositions made on or after ~~the effective date of this section~~ 2206  
March 27, 2013, except that division (S) (1) (b) (ii) of section 2207  
5816.02 of the Revised Code applies to any legacy trust settled 2208  
or administered on or after the effective date of this 2209  
amendment. 2210

**Section 2.** That existing sections 1721.21, 1901.123, 2211  
1907.143, 2106.13, 2108.05, 2108.06, 2108.07, 2108.23, 2108.24, 2212  
2108.34, 2111.10, 2111.50, 2133.07, 2701.10, 2717.01, 5122.15, 2213  
5804.11, 5805.06, 5816.02, 5816.05, 5816.06, 5816.09, 5816.10, 2214  
and 5816.14 of the Revised Code are hereby repealed. 2215

**Section 3.** That section 2133.16 of the Revised Code is 2216  
hereby repealed. 2217