

**As Reported by the Senate Judiciary-Civil Justice Committee**

**124th General Assembly**

**Regular Session**

**2001-2002**

**Sub. H. B. No. 178**

**REPRESENTATIVES Salerno, Willamowski, Seitz, DePiero, Jerse, Sulzer,  
Flowers, Widowfield, Wolpert, Calvert, Coates, Schmidt, Jolivette, Perry,  
Goodman, D. Miller, Sferra, Carano, Peterson, Webster, Hollister, Niehaus,  
Hagan, Setzer, Britton, Patton, Wilson, Strahorn, Key, Krupinski, Clancy,  
Young, Cirelli, Collier, Aslanides, G. Smith, Lendrum, Woodard, Olman**

**SENATOR Fingerhut**

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**A B I L L**

To amend sections 1339.51, 5111.15, and 5121.04 of the  
Revised Code relative to the creation of trusts to  
fund supplemental services for certain  
beneficiaries with physical or mental disabilities.

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

**Section 1.** That sections 1339.51, 5111.15, and 5121.04 of the  
Revised be amended to read as follows:

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**Sec. 1339.51.** (A) As used in this section:

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(1) "Ascertainable standard" includes a standard in a trust  
instrument requiring the trustee to provide for the care, comfort,  
maintenance, welfare, education, or general well-being of the  
beneficiary.

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(2) "Disability" means any substantial, medically  
determinable impairment that can be expected to result in death or  
that has lasted or can be expected to last for a continuous period  
of at least twelve months, except that "disability" does not

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include an impairment that is the result of abuse of alcohol or  
drugs.

(3) "Political subdivision" and "state" have the same  
meanings as in section 2744.01 of the Revised Code.

(4) "Supplemental services" means services specified by rule  
of the department of mental health under section 5119.01 of the  
Revised Code or the department of mental retardation and  
developmental disabilities under section 5123.04 of the Revised  
Code that are provided to an individual with a disability in  
addition to services ~~he~~ the individual is eligible to receive  
under programs authorized by federal or state law.

(B) Any person may create a ~~testamentary~~ trust under this  
section to provide funding for supplemental services for the  
benefit of another individual who meets either of the following  
conditions:

(1) The individual has a physical or mental disability and is  
eligible to receive services through the department of mental  
retardation and developmental disabilities or a county board of  
mental retardation and developmental disabilities;

(2) The individual has a mental disability and is eligible to  
receive services through the department of mental health or a  
board of alcohol, drug addiction, and mental health services.

The trust may confer discretion upon the trustee and may  
contain specific instructions or conditions governing the exercise  
of the discretion.

(C) The general division of the court of common pleas and the  
probate court of the county in which the beneficiary of a trust  
authorized by division (B) of this section resides or is confined  
have concurrent original jurisdiction to hear and determine  
actions pertaining to the trust. In any action pertaining to the  
trust in a court of common pleas or probate court and in any

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appeal of the action, all of the following apply to the trial or  
appellate court:

(1) The court shall render determinations consistent with the  
testator's or other settlor's intent in creating the trust, as  
evidenced by the terms of the trust instrument.

(2) The court may order the trustee to exercise discretion  
that the trust instrument confers upon ~~him~~ the trustee only if the  
instrument contains specific instructions or conditions governing  
the exercise of that discretion and the trustee has failed to  
comply with the instructions or conditions. In issuing an order  
pursuant to this division, the court shall require the trustee to  
exercise ~~his~~ the trustee's discretion only in accordance with the  
instructions or conditions.

(3) The court may order the trustee to maintain the trust and  
distribute assets in accordance with rules adopted by the director  
of mental health under section 5119.01 of the Revised Code or the  
director of mental retardation and developmental disabilities  
under section 5123.04 of the Revised Code if the trustee has  
failed to comply with such rules.

(D) To the extent permitted by federal law and subject to the  
provisions of division (C)(2) of this section pertaining to the  
enforcement of specific instructions or conditions governing a  
trustee's discretion, a trust authorized by division (B) of this  
section that confers discretion upon the trustee shall not be  
considered an asset or resource of the beneficiary, ~~his~~ the  
beneficiary's estate, the settlor, or the ~~testator's~~ settlor's  
estate and shall be exempt from the claims of creditors, political  
subdivisions, the state, other governmental entities, and other  
claimants against the beneficiary, ~~his~~ the beneficiary's estate,  
the settlor, or the ~~testator's~~ settlor's estate, including claims  
based on provisions of Chapters 5111., 5121., or 5123. of the  
Revised Code and claims sought to be satisfied by way of a civil

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action, subrogation, execution, garnishment, attachment, judicial 79  
sale, or other legal process, if all of the following apply: 80

(1) At the time the trust is created, the trust principal 81  
does not exceed the maximum amount determined under division (E) 82  
of this section; 83

(2) The trust instrument contains a statement of the 84  
~~testator's~~ settlor's intent, or otherwise clearly evidences ~~his~~ 85  
the settlor's intent, that the beneficiary does not have authority 86  
to compel the trustee under any circumstances to furnish the 87  
beneficiary with minimal or other maintenance or support, to make 88  
payments from the principal of the trust or from the income 89  
derived from the principal, or to convert any portion of the 90  
principal into cash, whether pursuant to an ascertainable standard 91  
specified in the instrument or otherwise; 92

(3) ~~The testator is deceased;~~ 93

~~(4)~~ The trust instrument provides that trust assets can be 94  
used only to provide supplemental services, as defined by rule of 95  
the director of mental health under section 5119.01 of the Revised 96  
Code or the director of mental retardation and developmental 97  
disabilities under section 5123.04 of the Revised Code, to the 98  
beneficiary; 99

~~(5)~~(4) The trust is maintained and assets are distributed in 100  
accordance with rules adopted by the director of mental health 101  
under section 5119.01 of the Revised Code or the director of 102  
mental retardation and developmental disabilities under section 103  
5123.04 of the Revised Code; 104

~~(6)~~(5) The trust instrument provides that on the death of the 105  
beneficiary, a portion of the remaining assets of the trust, which 106  
shall be not less than fifty per cent of such assets, will be 107  
deposited to the credit of the services fund for individuals with 108  
mental illness created by section 5119.17 of the Revised Code or 109

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the services fund for individuals with mental retardation and 110  
developmental disabilities created by section 5123.40 of the 111  
Revised Code. 112

(E) In 1994, the trust principal maximum amount for a trust 113  
created under this section shall be two hundred thousand dollars. 114  
The maximum amount for a trust created under this section prior to 115  
~~the effective date of this amendment~~ November 11, 1994, may be 116  
increased to two hundred thousand dollars. 117

In 1995, the maximum amount for a trust created under this 118  
section shall be two hundred two thousand dollars. Each year 119  
thereafter, the maximum amount shall be the prior year's amount 120  
plus two thousand dollars. 121

(F) This section does not limit or otherwise affect the 122  
creation, validity, interpretation, or effect of any trust that is 123  
not created under this section. 124

(G) Once a trustee takes action on a trust created by a 125  
settlor under this section and disburses trust funds on behalf of 126  
the beneficiary of the trust, then the trust may not be terminated 127  
or otherwise revoked by a particular event or otherwise without 128  
payment into the services fund created pursuant to section 5119.17 129  
or 5123.40 of the Revised Code of an amount that is equal to the 130  
disbursements made on behalf of the beneficiary for medical care 131  
by the state from the date the trust vests but that is not more 132  
than fifty per cent of the trust corpus. 133

**Sec. 5111.15.** If a recipient of medical assistance is the 134  
beneficiary of a trust created pursuant to section 1339.51 of the 135  
Revised Code, then, notwithstanding any contrary provision of this 136  
chapter or of a rule adopted pursuant to this chapter, divisions 137  
(C) and (D) of that section shall apply in determining the assets 138  
or resources of the recipient, his the recipient's estate, the 139  
settlor, or the ~~testator's~~ settlor's estate and to claims arising 140

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under this chapter against the recipient, his the recipient's 141  
estate, the settlor, or the ~~testator's~~ settlor's estate. 142

**Sec. 5121.04.** (A) The department of mental health and the 143  
department of mental retardation and developmental disabilities 144  
shall investigate the financial condition of the patients in 145  
hospitals and residents in institutions, residents whose care or 146  
treatment is being paid for in a private facility or home under 147  
the control of the department of mental retardation and 148  
developmental disabilities, and of the relatives named in section 149  
5121.06 of the Revised Code as liable for the support of such 150  
patients or residents, in order to determine the ability of any 151  
patient, resident, or such relatives to pay for the support of the 152  
patient or resident and to provide suitable clothing as required 153  
by the superintendent of the institution. 154

The department of mental health shall investigate the 155  
financial condition of patients receiving state-operated community 156  
mental health services and of the liable relatives to determine 157  
the patient's or relative's ability to pay for the patient's 158  
support. In all cases, in determining ability to pay and the 159  
amount to be charged, due regard shall be had for others who may 160  
be dependent for support upon such relatives or the estate of the 161  
patient. 162

(B) The department shall follow the provisions of this 163  
division in determining the ability to pay of a patient or 164  
resident or the patient's or resident's liable relatives and the 165  
amount to be charged such patient or resident or liable relatives. 166

(1) Subject to divisions (B)(10) and (11) of this section, a 167  
patient or resident without dependents shall be liable for the 168  
full applicable cost. A patient or resident without dependents who 169  
has a gross annual income equal to or exceeding the sum of the 170  
full applicable cost, plus fifty dollars per month, regardless of 171

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the source of such income, shall pay currently the full amount of  
the applicable cost; if the patient's or resident's gross annual  
income is less than such sum, not more than fifty dollars per  
month shall be kept for personal use by or on behalf of the  
patient or resident, except as permitted in the state plan for  
providing medical assistance under Title XIX of the "Social  
Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, and  
the balance shall be paid currently on the patient's or resident's  
support. Subject to divisions (B)(10) and (11) of this section,  
the estate of a patient or resident without dependents shall pay  
currently any remaining difference between the applicable cost and  
the amounts prescribed in this section, or shall execute an  
agreement with the department for payment to be made at some  
future date under terms suitable to the department. However, no  
security interest, mortgage, or lien shall be taken, granted, or  
charged against any principal residence of a patient or resident  
without dependents under an agreement or otherwise to secure  
support payments, and no foreclosure actions shall be taken on  
security interests, mortgages, or liens taken, granted, or charged  
against principal residences of patients or residents prior to  
October 7, 1977.

(2) The ability to pay of a patient or resident with  
dependents, or of a liable relative of a patient or resident  
either with or without dependents, shall be determined in  
accordance with the patient's, resident's, or liable relative's  
income or other assets, the needs of others who are dependent on  
such income and other assets for support, and, if applicable,  
divisions (B)(10) and (11) of this section.

For the first thirty days of care and treatment of each  
admission and for the first thirty days of care and treatment from  
state-operated community mental health services, but in no event  
for more than thirty days in any calendar year, the mentally ill

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patient or mentally retarded resident with dependents or the  
 liable relative of a mentally ill patient or a mentally retarded  
 resident either with or without dependents shall be charged an  
 amount equal to the percentage of the average applicable cost  
 determined in accordance with the schedule of adjusted gross  
 annual income contained after this paragraph. After such first  
 thirty days of care and treatment, such mentally ill patient or  
 mentally retarded resident or such liable relative shall be  
 charged an amount equal to the percentage of a base support rate  
 of four dollars per day for mentally ill patients and mentally  
 retarded residents, as determined in accordance with the schedule  
 of gross annual income contained after this paragraph, or in  
 accordance with division (B)(5) of this section. Beginning January  
 1, 1978, the department shall increase the base rate when the  
 consumer price index average is more than 4.0 for the preceding  
 calendar year by not more than the average for such calendar year.

## Adjusted Gross Annual

## Income of Patient or Resident

or Liable Relative (FN a)

Number of Dependents (FN b)

8 or

1 2 3 4 5 6 7 more

Rate of Support (In Percentages)

\$15,000 or less	--	--	--	--	--	--	--	--	227
15,001 to 17,500	20	--	--	--	--	--	--	--	228
17,501 to 20,000	25	20	--	--	--	--	--	--	229
20,001 to 21,000	30	25	20	--	--	--	--	--	230
21,001 to 22,000	35	30	25	20	--	--	--	--	231
22,001 to 23,000	40	35	30	25	20	--	--	--	232
23,001 to 24,000	45	40	35	30	25	20	--	--	233
24,001 to 25,000	50	45	40	35	30	25	20	--	234
25,001 to 26,000	55	50	45	40	35	30	25	20	235
26,001 to 27,000	60	55	50	45	40	35	30	25	236



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27,001 to 28,000	70	60	55	50	45	40	35	30	237
28,001 to 30,000	80	70	60	55	50	45	40	35	238
30,001 to 40,000	90	80	70	60	55	50	45	40	239
40,001 and over	100	90	80	70	60	55	50	45	240

Footnote a. The patient or resident or relative shall furnish 241  
a copy of the patient's, resident's, or relative's federal income 242  
tax return as evidence of gross annual income. 243

Footnote b. The number of dependents includes the liable 244  
relative but excludes the patient or resident in the hospital or 245  
institution. "Dependent" includes any person who receives more 246  
than half the person's support from the patient or the patient's 247  
liable relative. 248

(3) A patient or resident or liable relative having medical, 249  
funeral, or related expenses in excess of four per cent of the 250  
adjusted gross annual income, which expenses were not covered by 251  
insurance, may adjust such gross annual income by reducing the 252  
adjusted gross annual income by the full amount of such expenses. 253  
Proof of such expenses satisfactory to the department must be 254  
furnished. 255

(4) Additional dependencies may be claimed if: 256

(a) The liable relative is blind; 257

(b) The liable relative is over sixty-five; 258

(c) A child is a college student with expenses in excess of 259  
fifty dollars per month; 260

(d) The services of a housekeeper, costing in excess of fifty 261  
dollars per month, are required if the person who normally keeps 262  
house for minor children is the patient or resident. 263

(5) If with respect to any patient or resident with 264  
dependents there is chargeable under division (B)(2) of this 265  
section less than fifty per cent of the applicable cost or, if the 266

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base support rate was used, less than fifty per cent of the amount  
determined by use of the base support rate, and if with respect to  
such patient or resident there is a liable relative who has an  
estate having a value in excess of fifteen thousand dollars or if  
such patient or resident has a dependent and an estate having a  
value in excess of fifteen thousand dollars, there shall be paid  
with respect to such patient or resident a total of fifty per cent  
of the applicable cost or the base support rate amount, as the  
case may be, on a current basis or there shall be executed with  
respect to such patient or resident an agreement with the  
department for payment to be made at some future date under terms  
suitable to the department.

(6) When a person has been a patient or resident for fifteen  
years and the support charges for which a relative is liable have  
been paid for the fifteen-year period, the liable relative shall  
be relieved of any further support charges.

(7) The department shall accept voluntary payments from  
patients or residents or liable relatives whose incomes are below  
the minimum shown in the schedule set forth in this division. The  
department also shall accept voluntary payments in excess of  
required amounts from both liable and nonliable relatives.

(8) If a patient or resident is covered by an insurance  
policy, or other contract that provides for payment of expenses  
for care and treatment for mental illness or mental retardation at  
or from an institution, facility (including a hospital or  
community service unit under the jurisdiction of the department),  
or state-operated community mental health service, the other  
provisions of this section, except divisions (B)(8), (10), and  
(11) of this section, and of section 5121.03 of the Revised Code  
shall be suspended to the extent that such insurance policy or  
other contract is in force, and such patient or resident shall be  
charged the full amount of the applicable cost. Any insurance

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carrier or other third party payor providing coverage for such  
care and treatment shall pay for this support obligation in an  
amount equal to the lesser of either the applicable cost or the  
benefits provided under the policy or other contract. Whether or  
not an insured, owner of, or other person having an interest in  
such policy or other contract is liable for support payments under  
other provisions of this chapter, the insured, policy owner, or  
other person shall assign payment directly to the department of  
all assignable benefits under the policy or other contract and  
shall pay over to the department, within ten days of receipt, all  
insurance or other benefits received as reimbursement or payment  
for expenses incurred by the patient or resident or for any other  
reason. If the insured, policy owner, or other person refuses to  
assign such payment to the department or refuses to pay such  
received reimbursements or payments over to the department within  
ten days of receipt, the insured's, policy owners', or other  
person's total liability for the services equals the applicable  
statutory liability for payment for the services as determined  
under other provisions of this chapter, plus the amounts payable  
under the terms of the policy or other contract. In no event shall  
this total liability exceed the full amount of the applicable  
cost. Upon its request, the department is entitled to a court  
order that compels the insured, owner of, or other person having  
an interest in the policy or other contract to comply with the  
assignment requirements of this division or that itself serves as  
a legally sufficient assignment in compliance with such  
requirements. Notwithstanding section 5122.31 of the Revised Code  
and any other law relating to confidentiality of records, the  
managing officer of the institution or facility where a person is  
or has been a patient or resident, or the managing officer of the  
state-operated community mental health services from which the  
patient receives services, shall disclose pertinent medical  
information concerning the patient or resident to the insurance

carrier or other third party payor in question, in order to effect  
collection from the carrier or payor of the state's claim for care  
and treatment under this division. For such disclosure, the  
managing officer is not subject to any civil or criminal  
liability.

(9) The rate to be charged for pre-admission care,  
after-care, day-care, or routine consultation and treatment  
services shall be based upon the ability of the patient or  
resident or the patient's or resident's liable relatives to pay.  
When it is determined by the department that a charge shall be  
made, such charge shall be computed as provided in divisions  
(B)(1) and (2) of this section.

(10) If a patient or resident with or without dependents is  
the beneficiary of a trust created pursuant to section 1339.51 of  
the Revised Code, then, notwithstanding any contrary provision of  
this chapter or of a rule adopted pursuant to this chapter,  
divisions (C) and (D) of that section shall apply in determining  
the assets or resources of the patient or resident, the patient's  
or resident's estate, the settlor, or the ~~testator's~~ settlor's  
estate and to claims arising under this chapter against the  
patient or resident, the patient's or resident's estate, the  
settlor, or the ~~testator's~~ settlor's estate.

(11) If the department of mental retardation and  
developmental disabilities waives the liability of an individual  
and the individual's liable relatives pursuant to section 5123.194  
of the Revised Code, the liability of the individual and relative  
ceases in accordance with the waiver's terms.

(C) The department may enter into agreements with a patient  
or resident or a liable relative for support payments to be made  
in the future. However, no security interest, mortgage, or lien  
shall be taken, granted, or charged against any principal family  
residence of a patient or resident with dependents or a liable

relative under an agreement or otherwise to secure support  
payments, and no foreclosure actions shall be taken on security  
interests, mortgages or liens taken, granted, or charged against  
principal residences of patients or residents or liable relatives  
prior to October 7, 1977.

(D) The department shall make all investigations and  
determinations required by this section within ninety days after a  
patient or resident is admitted to an institution under the  
department's control or a patient begins to receive state-operated  
community mental health services, and immediately shall notify by  
mail the persons liable of the amount to be charged.

(E) All actions to enforce the collection of payments agreed  
upon or charged by the department shall be commenced within six  
years after the date of default of an agreement to pay support  
charges or the date such payment becomes delinquent. If a payment  
is made pursuant to an agreement which is in default, a new  
six-year period for actions to enforce the collection of payments  
under such agreement shall be computed from the date of such  
payment. For purposes of this division an agreement is in default  
or a payment is delinquent if a payment is not made within thirty  
days after it is incurred or a payment, pursuant to an agreement,  
is not made within thirty days after the date specified for such  
payment. In all actions to enforce the collection of payment for  
the liability for support, every court of record shall receive  
into evidence the proof of claim made by the state together with  
all debts and credits, and it shall be prima-facie evidence of the  
facts contained in it.

**Section 2.** That existing sections 1339.51, 5111.15, and  
5121.04 of the Revised Code are hereby repealed.