

AN ACT

To amend sections 2105.02, 2105.04, 2105.07, 2105.08, 2106.04, 2107.34, 2121.02, and 2121.06, to enact sections 2105.31 to 2105.39, and to repeal section 2105.21 of the Revised Code to enact the Uniform Simultaneous Death Act effective January 1, 2002.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2105.02, 2105.04, 2105.07, 2105.08, 2106.04, 2107.34, 2121.02, and 2121.06 be amended, and sections 2105.31, 2105.32, 2105.33, 2105.34, 2105.35, 2105.36, 2105.37, 2105.38, and 2105.39 of the Revised Code be enacted to read as follows:

Sec. 2105.02. When, in ~~sections 2105.01 to 2105.21, inclusive,~~ Chapter 2105. of the Revised Code, a person is described as living, it means that ~~he~~ the person was living at the time of the death of the intestate from whom the estate came, and when a person is described as having died, it means that ~~he~~ the person died before such intestate.

Sec. 2105.04. Permanent leasehold estates, renewable forever, are subject to ~~sections 2105.01 to 2105.21, inclusive,~~ Chapter 2105. of the Revised Code.

Sec. 2105.07. When, under ~~sections 2105.01 to 2105.21, inclusive,~~ Chapter 2105. of the Revised Code, personal property escheats to the state, the prosecuting attorney of the county in which letters of administration are granted upon such estate shall collect and pay it over to the county treasurer. Such estate shall be applied exclusively to the support of the common schools of the county in which collected.

Sec. 2105.08. ~~Sections 2105.01 to 2105.21, inclusive,~~ Chapter 2105. of the Revised Code ~~apply~~ applies to any escheating estate of which possession has not been taken, or which has not been collected by the proper officers of the state or those acting under their authority. Right or claim of the state thereto is hereby relinquished to the person who would have been entitled thereto had such sections been in force when the intestate died.

Sec. 2105.31. As used in sections 2105.31 to 2105.39 of the Revised Code:

(A) "Co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of real or personal property, insurance or other policies, or bank or other accounts held under circumstances that entitle one or more persons to the whole of the property or account on the death of the other person or persons.

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

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

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

Sec. 2105.32. (A) Except as provided in section 2105.36 of the Revised Code, a person who is not established by clear and convincing evidence to have survived another specified person by one hundred twenty hours is deemed to have predeceased the other person for the following purposes:

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

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

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

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

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

Sec. 2105.33. Except as provided in section 2105.36 of the Revised Code, a person who is not established by clear and convincing evidence to have survived a specified event by one hundred twenty hours is deemed to have predeceased the event for purposes of a provision of a governing instrument that relates to the person surviving an event.

Sec. 2105.34. Except as provided in section 2105.36 of the Revised Code:

(A) If it is not established by clear and convincing evidence that one of two co-owners with right of survivorship in specified real or personal property survived the other co-owner by one hundred twenty hours, that property shall pass as if each person had survived the other person by one hundred twenty hours.

(B) If there are more than two co-owners with right of survivorship in specified real or personal property and it is not established by clear and convincing evidence that at least one of the co-owners survived the others by one hundred twenty hours, that property shall pass in the proportion that each person owns.

Sec. 2105.35. (A)(1) A person is dead if the person has been determined to be dead pursuant to standards established under section 2108.30 of the Revised Code.

(2) A physician who makes a determination of death in accordance with section 2108.30 of the Revised Code and any person who acts in good faith in reliance on a determination of death made by a physician in accordance with that section is entitled to the immunity conveyed by that section.

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

(C) A certified or authenticated copy of any record or report of a domestic or foreign governmental agency that a person is missing, detained, dead, or alive is prima-facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

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

(E) Except as provided in division (F) of this section, a presumption of the death of a person arises:

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

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

(F) When a person who is on active duty in the armed services of the

United States has been officially determined to be absent in a status of "missing" or "missing in action," a presumption of death arises when the head of the federal department concerned has made a finding of death pursuant to the "Federal Missing Persons Act," 80 Stat. 625 (1966), 37 U.S.C.A. 551, as amended.

(G) In the absence of evidence disputing the time of death stipulated on a document described in division (B) or (C) of this section, a document described in either of those divisions that stipulates a time of death one hundred twenty hours or more after the time of death of another person, however the time of death of the other person is determined, establishes by clear and convincing evidence that the person survived the other person by one hundred twenty hours.

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

Sec. 2105.36. A person who is not established by clear and convincing evidence to have survived another specified person by one hundred twenty hours shall not be deemed to have predeceased the other person if any of the following apply:

(A) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster, and that language is operative under the situation in question.

(B) The governing instrument expressly indicates that a person is not required to survive an event by any specified period in order for any right or interest governed by the instrument to properly vest or transfer.

(C) The governing instrument expressly requires the person to survive the event for a specified period in order for any right or interest governed by the instrument to properly vest or transfer, and the survival of the event by the person or survival of the event by the person for the specified period is established by clear and convincing evidence.

(D) The imposition of a one-hundred-twenty-hour requirement of the person's survival of the other specified person causes a nonvested property interest or a power of appointment to be invalid under section 2131.08 of the Revised Code, and the person's survival of the other specified person is established by clear and convincing evidence.

(E) The application of a one-hundred-twenty-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition, and the person's survival of the other specified person is established by clear and convincing evidence.

Sec. 2105.37. (A) A payor or other third party is not liable for any of the following:

(1) Making a payment, transferring an item of real or personal property, or otherwise transferring any other benefit to a person designated in a governing instrument who, under sections 2105.31 to 2105.39 of the Revised Code, is not entitled to the payment or item of property, if the payment or transfer was made before the payor or other third party received written notice of a claimed lack of entitlement pursuant to sections 2105.31 to 2105.39 of the Revised Code;

(2) Taking any other action not specified in division (A)(1) of this section in good faith reliance on the person's apparent entitlement under the terms of the governing instrument before the payor or other third party received written notice of a claimed lack of entitlement pursuant to sections 2105.31 to 2105.39 of the Revised Code.

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

(C) Written notice of a claimed lack of entitlement under divisions (A) or (B) of this section must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement pursuant to sections 2105.31 to 2105.39 of the Revised Code, a payor or other third party may pay any amount owed or transfer or deposit any item of real or personal property held by it to or with the probate court that has jurisdiction over the decedent's estate. If no probate proceedings have been commenced, upon receipt of written notice of a claimed lack of entitlement pursuant to sections 2105.31 to 2105.39 of the Revised Code, a payor or other third party may pay any amount owed or transfer or deposit any item of real or personal property held by it to or with the probate court located in the county of the decedent's residence. The court shall hold the funds or real or personal property until it is determined pursuant to sections 2105.31 to 2105.39 of the Revised Code to whom the funds or real or personal property should be disbursed. The court then shall order disbursement of the funds or real or personal property in accordance with that determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

Sec. 2105.38. (A) A person who purchases real or personal property that would otherwise be subject to sections 2105.31 to 2105.39 of the Revised Code for value and without notice that the person selling or otherwise transferring the real or personal property is not entitled to the real or personal property pursuant to sections 2105.31 to 2105.39 of the Revised Code is neither obligated under sections 2105.31 to 2105.39 of the Revised Code to return the payment, item of property, or benefit nor liable under sections 2105.31 to 2105.39 of the Revised Code for the amount of the payment or the value of the item of property or benefit.

A person who receives a payment or other item of real or personal property in partial or full satisfaction of a legally enforceable obligation without notice that the person making the payment or otherwise transferring the real or personal property is not entitled to the real or personal property pursuant to sections 2105.31 to 2105.39 of the Revised Code is neither obligated under sections 2105.31 to 2105.39 of the Revised Code to return the payment, item of property, or benefit nor liable under sections 2105.31 to 2105.39 of the Revised Code for the amount of the payment or the value of the item of property or benefit.

(B) A person who, not for value, receives a payment, item of real or personal property, or any other benefit to which the person is not entitled under sections 2105.31 to 2105.39 of the Revised Code is obligated to return the payment, item of real or personal property, or benefit, and is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under sections 2105.31 to 2105.39 of the Revised Code.

(C) If sections 2105.31 to 2105.39 of the Revised Code or any provision of sections 2105.31 to 2105.39 of the Revised Code are preempted by federal law with respect to a payment, an item of real or personal property, or any other benefit covered by sections 2105.31 to 2105.39 of the Revised Code, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under sections 2105.31 to 2105.39 of the Revised Code is obligated to return the payment, item of property, or benefit, and is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were sections 2105.31 to 2105.39 of the Revised Code or any provision of sections 2105.31 to 2105.39 of the Revised Code not preempted.

Sec. 2105.39. (A) Sections 2105.31 to 2105.39 of the Revised Code do not impair any act done in any proceeding, or any right that accrued, before January 1, 2002. If a right is acquired, extinguished, or barred upon the

expiration of a prescribed period of time that has commenced to run prior to January 1, 2002, under any provision of the Revised Code, the provision of the applicable section of the Revised Code applies with respect to that right.

(B) Any rule of construction or presumption that is provided in sections 2105.31 to 2105.39 of the Revised Code applies to any governing instrument that is executed, or any multiple-party account that is opened, prior to January 1, 2002, unless there is a clear indication of a contrary intent in the governing instrument or multiple-party account.

(C) If any provision of sections 2105.31 to 2105.39 of the Revised Code or the application of those sections to any persons or circumstance is held invalid, the invalidity does not affect other provisions or applications of sections 2105.31 to 2105.39 of the Revised Code that can be given effect without the invalid provision or application.

Sec. 2106.04. If the surviving spouse dies before probate of the will, or, having survived the probate, thereafter either fails to make the election provided by section 2106.01 of the Revised Code or dies without having made an election within the times described in division (E) of that section, the surviving spouse shall be conclusively presumed to have elected to take under the will, and the surviving spouse and the heirs, devisees, and legatees of the surviving spouse, and those claiming through or under them, shall be bound by the conclusive presumption, and persons may deal with the property of the decedent accordingly; provided that, if applicable, the provisions of ~~section 2105.21~~ sections 2105.31 to 2105.39 of the Revised Code shall prevail over the provisions relating to the right of election of a surviving spouse.

Sec. 2107.34. If, after making a last will and testament, a testator has a child born alive, or adopts a child, or designates an heir in the manner provided by section 2105.15 of the Revised Code, or if a child or designated heir who is absent and reported to be dead proves to be alive, and no provision has been made in such will or by settlement for such pretermitted child or heir, or for the issue thereof, the will shall not be revoked; but unless it appears by such will that it was the intention of the testator to disinherit such pretermitted child or heir, the devises and legacies granted by such will, except those to a surviving spouse, shall be abated proportionately, or in such other manner as is necessary to give effect to the intention of the testator as shown by the will, so that such pretermitted child or heir will receive a share equal to that which such person would have been entitled to receive out of the estate if such testator had died intestate with no surviving spouse, owning only that portion of ~~his~~ the testator's estate not devised or bequeathed to or for the use and benefit of a surviving spouse. If

such child or heir dies prior to the death of the testator, the issue of such deceased child or heir shall receive the share the parent would have received if living.

If such pretermitted child or heir supposed to be dead at the time of executing the will has lineal descendants, provision for whom is made by the testator, the other legatees and devisees need not contribute, but such pretermitted child or heir shall take the provision made for ~~his~~ the pretermitted child's or heir's lineal descendants or such part of it as, in the opinion of the probate judge, may be equitable. In settling the claim of a pretermitted child or heir, any portion of the testator's estate received by a party interested, by way of advancement, is a portion of the estate and shall be charged to the party who has received it.

Though measured by ~~sections 2105.01 to 2105.21, inclusive, Chapter 2105.~~ of the Revised Code, the share taken by a pretermitted child or heir shall be considered as a testate succession. This section does not prejudice the right of any fiduciary to act under any power given by the will, nor shall the title of innocent purchasers for value of any of the property of the testator's estate be affected by any right given by this section to a pretermitted child or heir.

Sec. 2121.02. (A) When such a presumption of death arises under section 2121.01 of the Revised Code with respect to a person who at the time of disappearance was domiciled in this state, the attorney general of this state or any person entitled under the last will of such presumed decedent or under ~~sections 2105.06 to 2105.21 Chapter 2105.~~ of the Revised Code to any share in the presumed decedent's property within this state, or any person or entity who, under the terms of any contract, beneficiary designation, trust, or otherwise, may be entitled to any property, right, or interest by reason of the death of the presumed decedent, may file a complaint setting forth the facts which raise the presumption of death in the probate court of the county of the presumed decedent's last residence.

(B) When a presumption of death arises pursuant to section 2121.01 of the Revised Code with respect to a person who at the time of ~~his~~ the person's disappearance was domiciled at a place other than within the state, and the presumed decedent owns real property within this state, the complaint may be filed in the county where any part of the real property of the presumed decedent is located by any of the persons or entities referred to in division (A) of this section, or by any domiciliary executor or administrator of the decedent. A foreign fiduciary shall include with the complaint an exemplified copy of the domiciliary proceedings pursuant to which the foreign fiduciary was appointed.

(C) In the case of a presumed decedent who was domiciled in this state, the complainant shall name as parties defendant the presumed decedent and each of the following that do not join in the complaint:

- (1) The presumed decedent's surviving spouse, if any;
- (2) All persons known to the complainant who are entitled under the presumed decedent's last will and all persons who are entitled under ~~sections 2105.06 to 2105.21~~ Chapter 2105. of the Revised Code to any share of the presumed decedent's property;
- (3) All persons or entities known to the complainant who have or would have by reason of the presumed decedent's death any right or interest under any contract, beneficiary designation, trust, or otherwise;
- (4) All contract obligors known to the complainant whose rights or obligations would be affected by a determination that the presumed decedent is in fact dead.

(D) In the case of a presumed decedent who was not domiciled in this state but who owned real estate in this state, the complainant shall name as parties defendant each of the following that do not join in the complaint:

- (1) The presumed decedent's surviving spouse, if any;
- (2) All persons known to the complainant who are entitled under the presumed decedent's last will and all persons who are entitled under ~~sections 2105.06 to 2105.21~~ Chapter 2105. of the Revised Code to any share of the presumed decedent's real property within this state.

(E) All parties defendant, other than the presumed decedent, shall be served with summons in the same manner as provided by the Rules of Civil Procedure.

(F) The complainant shall cause to be advertised once a week for four consecutive weeks in a newspaper published in the county, the fact that the complaint has been filed together with a notice that on a day certain, which shall be at least four weeks after the last appearance of the advertisement, or after the final publication where any defendant is being served by publication, whichever is later, the probate court will hear evidence relevant to the allegations of the complaint.

(G) No guardian ad litem, trustee for the suit, or other representative shall be required to be appointed to represent the presumed decedent in the proceeding.

Sec. 2121.06. Upon the signing of the decree establishing the death of the presumed decedent, the real estate of the presumed decedent passes and devolves as in the case of actual death and the persons entitled by will, or under ~~sections 2105.01 to 2105.21~~ Chapter 2105. of the Revised Code, may enter and take possession. Persons taking the real estate may sell or

mortgage it and the purchaser or mortgagee takes a good title, free and discharged of any interest or claim of the presumed decedent. The persons taking such real estate shall not sell, convey, or mortgage any part thereof within the three-year period specified in section 2121.08 of the Revised Code without first giving bond in an amount to be fixed by the probate court and with sureties to be approved by the court. In the discretion of the court the bond may be taken without sureties. Such bond shall be conditioned to account for and pay over to the presumed decedent, in case within the three-year period after the decree is entered by the court it is established that the presumed decedent is still alive, the value of the real estate sold or conveyed, or in the case of the making of a mortgage, to pay the amount of the mortgage and interest thereon, or in case of a foreclosure of such mortgage, to account for and pay over the value of the real estate mortgaged.

SECTION 2. That existing sections 2105.02, 2105.04, 2105.07, 2105.08, 2106.04, 2107.34, 2121.02, and 2121.06, and section 2105.21 of the Revised Code are hereby repealed.

SECTION 3. Sections 1 and 2 of this act shall take effect on January 1, 2002.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____