

As Reported by the House Civil and Commercial Law

124th General Assembly
Regular Session
2001-2002

Sub. H. B. No. 242

REPRESENTATIVES Salerno, Willamowski, Latta, Seitz

A BILL

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,~~ 20
~~inclusive,~~ Chapter 2105. of the Revised Code, personal property 21
escheats to the state, the prosecuting attorney of the county in 22
which letters of administration are granted upon such estate shall 23
collect and pay it over to the county treasurer. Such estate shall 24
be applied exclusively to the support of the common schools of the 25
county in which collected. 26

Sec. 2105.08. ~~Sections 2105.01 to 2105.21, inclusive,~~ Chapter 27
~~2105.~~ of the Revised Code ~~apply~~ applies to any escheating estate 28
of which possession has not been taken, or which has not been 29
collected by the proper officers of the state or those acting 30
under their authority. Right or claim of the state thereto is 31
hereby relinquished to the person who would have been entitled 32
thereto had such sections been in force when the intestate died. 33

Sec. 2105.31. As used in sections 2105.31 to 2105.39 of the 34
Revised Code: 35

(A) "Co-owners with right of survivorship" includes joint 36
tenants, tenants by the entireties, and other co-owners of real or 37
personal property, insurance or other policies, or bank or other 38
accounts held under circumstances that entitle one or more persons 39
to the whole of the property or account on the death of the other 40
person or persons. 41

(B) "Governing instrument" means a deed, will, trust, 42
insurance or annuity policy, account with a transfer-on-death 43
designation or the abbreviation TOD, account with a 44
payable-on-death designation or the abbreviation POD, pension, 45
profit-sharing, retirement, or similar benefit plan, instrument 46
creating or exercising a power of appointment or a power of 47
attorney, or a dispositive, appointive, or nominative instrument 48
of any similar type. 49

(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. 50
51
52
53

(D) "Event" includes the death of another person. 54

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: 55
56
57
58
59

(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; 60
61
62

(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; 63
64
65
66

(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; 67
68
69
70

(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. 71
72
73
74

(B) This section does not apply if its application would result in a taking of an intestate estate by the state. 75
76

Sec. 2105.33. Except as provided in section 2105.36 of the Revised Code, a person who is not established by clear and 77
78

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.

79
80
81
82

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

83
84

(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.

85
86
87
88
89

(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.

90
91
92
93
94

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.

95
96
97

(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.

98
99
100
101
102

(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.

103
104
105
106
107

(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. 108
109
110
111
112

(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. 113
114
115
116

(E) Except as provided in division (F) of this section, a presumption of the death of a person arises: 117
118

(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; 119
120
121

(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. 122
123
124
125
126

(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. 127
128
129
130
131
132

(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 133
134
135
136
137
138

the other person is determined, establishes by clear and 139
convincing evidence that the person survived the other person by 140
one hundred twenty hours. 141

(H) The provisions of divisions (A) through (G) of this 142
section are in addition to any other provisions of the Revised 143
Code, the Rules of Criminal Procedure, or the Rules of Evidence 144
that pertain to the determination of death and status of a person. 145

Sec. 2105.36. A person who is not established by clear and 146
convincing evidence to have survived another specified person by 147
one hundred twenty hours shall not be deemed to have predeceased 148
the other person if any of the following apply: 149

(A) The governing instrument contains language dealing 150
explicitly with simultaneous deaths or deaths in a common 151
disaster, and that language is operative under the situation in 152
question. 153

(B) The governing instrument expressly indicates that a 154
person is not required to survive an event by any specified period 155
in order for any right or interest governed by the instrument to 156
properly vest or transfer. 157

(C) The governing instrument expressly requires the person to 158
survive the event for a specified period in order for any right or 159
interest governed by the instrument to properly vest or transfer, 160
and the survival of the event by the person or survival of the 161
event by the person for the specified period is established by 162
clear and convincing evidence. 163

(D) The imposition of a one-hundred-twenty-hour requirement 164
of the person's survival of the other specified person causes a 165
nonvested property interest or a power of appointment to be 166
invalid under section 2131.08 of the Revised Code, and the 167
person's survival of the other specified person is established by 168
clear and convincing evidence. 169

(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. 170
171
172
173
174

Sec. 2105.37. (A) A payor or other third party is not liable for any of the following: 175
176

(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; 177
178
179
180
181
182
183
184

(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. 185
186
187
188
189
190

(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. 191
192
193
194

(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 195
196
197
198
199
200

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.

201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219

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.

220
221
222
223
224
225
226
227
228
229

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

230
231
232

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.

233
234
235
236
237
238
239

(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.

240
241
242
243
244
245
246
247

(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.

248
249
250
251
252
253
254
255
256
257
258
259
260

Sec. 2105.39. (A) Sections 3105.31 to 3105.39 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,

261
262
263

extinguished, or barred upon the expiration of a prescribed period 264
of time that has commenced to run prior to January 1, 2002, under 265
any provision of the Revised Code, the provision of the applicable 266
section of the Revised Code applies with respect to that right. 267

(B) Any rule of construction or presumption that is provided 269
in sections 3105.31 to 3105.39 of the Revised Code applies to any 270
governing instrument that is executed, or any multiple-party 271
account that is opened, prior to January 1, 2002, unless there is 272
a clear indication of a contrary intent in the governing 273
instrument or multiple-party account. 274

(C) If any provision of sections 2105.31 to 2105.39 of the 275
Revised Code or the application of those sections to any persons 276
or circumstance is held invalid, the invalidity does not affect 277
other provisions or applications of sections 2105.31 to 2105.39 of 278
the Revised Code that can be given effect without the invalid 279
provision or application. 280

Sec. 2106.04. If the surviving spouse dies before probate of 281
the will, or, having survived the probate, thereafter either fails 282
to make the election provided by section 2106.01 of the Revised 283
Code or dies without having made an election within the times 284
described in division (E) of that section, the surviving spouse 285
shall be conclusively presumed to have elected to take under the 286
will, and the surviving spouse and the heirs, devisees, and 287
legatees of the surviving spouse, and those claiming through or 288
under them, shall be bound by the conclusive presumption, and 289
persons may deal with the property of the decedent accordingly; 290
provided that, if applicable, the provisions of ~~section 2105.21~~ 291
sections 2105.31 to 2105.39 of the Revised Code shall prevail over 292
the provisions relating to the right of election of a surviving 293
spouse. 294

Sec. 2107.34. If, after making a last will and testament, a 295
testator has a child born alive, or adopts a child, or designates 296
an heir in the manner provided by section 2105.15 of the Revised 297
Code, or if a child or designated heir who is absent and reported 298
to be dead proves to be alive, and no provision has been made in 299
such will or by settlement for such pretermitted child or heir, or 300
for the issue thereof, the will shall not be revoked; but unless 301
it appears by such will that it was the intention of the testator 302
to disinherit such pretermitted child or heir, the devises and 303
legacies granted by such will, except those to a surviving spouse, 304
shall be abated proportionately, or in such other manner as is 305
necessary to give effect to the intention of the testator as shown 306
by the will, so that such pretermitted child or heir will receive 307
a share equal to that which such person would have been entitled 308
to receive out of the estate if such testator had died intestate 309
with no surviving spouse, owning only that portion of ~~his~~ the 310
testator's estate not devised or bequeathed to or for the use and 311
benefit of a surviving spouse. If such child or heir dies prior to 312
the death of the testator, the issue of such deceased child or 313
heir shall receive the share the parent would have received if 314
living. 315

If such pretermitted child or heir supposed to be dead at the 316
time of executing the will has lineal descendants, provision for 317
whom is made by the testator, the other legatees and devisees need 318
not contribute, but such pretermitted child or heir shall take the 319
provision made for ~~his~~ the pretermitted child's or heir's lineal 320
descendants or such part of it as, in the opinion of the probate 321
judge, may be equitable. In settling the claim of a pretermitted 322
child or heir, any portion of the testator's estate received by a 323
party interested, by way of advancement, is a portion of the 324
estate and shall be charged to the party who has received it. 325

Though measured by ~~sections 2105.01 to 2105.21, inclusive,~~ 326

Chapter 2105. of the Revised Code, the share taken by a 327
pretermitted child or heir shall be considered as a testate 328
succession. This section does not prejudice the right of any 329
fiduciary to act under any power given by the will, nor shall the 330
title of innocent purchasers for value of any of the property of 331
the testator's estate be affected by any right given by this 332
section to a pretermitted child or heir. 333

Sec. 2121.02. (A) When such a presumption of death arises 334
under section 2121.01 of the Revised Code with respect to a person 335
who at the time of disappearance was domiciled in this state, the 336
attorney general of this state or any person entitled under the 337
last will of such presumed decedent or under ~~sections 2105.06 to~~ 338
~~2105.21~~ Chapter 2105. of the Revised Code to any share in the 339
presumed decedent's property within this state, or any person or 340
entity who, under the terms of any contract, beneficiary 341
designation, trust, or otherwise, may be entitled to any property, 342
right, or interest by reason of the death of the presumed 343
decedent, may file a complaint setting forth the facts which raise 344
the presumption of death in the probate court of the county of the 345
presumed decedent's last residence. 346

(B) When a presumption of death arises pursuant to section 347
2121.01 of the Revised Code with respect to a person who at the 348
time of ~~his~~ the person's disappearance was domiciled at a place 349
other than within the state, and the presumed decedent owns real 350
property within this state, the complaint may be filed in the 351
county where any part of the real property of the presumed 352
decedent is located by any of the persons or entities referred to 353
in division (A) of this section, or by any domiciliary executor or 354
administrator of the decedent. A foreign fiduciary shall include 355
with the complaint an exemplified copy of the domiciliary 356
proceedings pursuant to which the foreign fiduciary was appointed. 357

(C) In the case of a presumed decedent who was domiciled in 358

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.

389
390
391
392
393
394

(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.

395
396
397

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.

398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418

Section 2. That existing sections 2105.02, 2105.04, 2105.07,

419

2105.08, 2106.04, 2107.34, 2121.02, and 2121.06, and section 420
2105.21 of the Revised Code are hereby repealed. 421

Section 3. Sections 1 and 2 of this act shall take effect on 422
January 1, 2002. 423