

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

**124th General Assembly**

**Regular Session**

**2001-2002**

**Am. Sub. H. B. No. 242**

**REPRESENTATIVES Salerno, Willamowski, Latta, Seitz, Flowers, Wolpert,**

**Hughes, G. Smith, Hagan, Damschroder, Buehrer, Sulzer, Coates, Sferra,**

**Carano, Wilson, Schmidt, Evans, Cirelli, Collier, Callender, Barrett,**

**Womer Benjamin**

**SENATOR Goodman**

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**A B I L L**

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.

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**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:

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**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.

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**Sec. 2105.04.** Permanent leasehold estates, renewable forever, 17  
are subject to ~~sections 2105.01 to 2105.21, inclusive, Chapter~~ 18  
2105. of the Revised Code. 19

**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  
creating or exercising a power of appointment or a power of  
attorney, or a dispositive, appointive, or nominative instrument  
of any similar type.

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(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.

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

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**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:

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(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;

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(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;

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(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;

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(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.

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(B) This section does not apply if its application would

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result in a taking of an intestate estate by the state.

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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.

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

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(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.

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(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.

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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.

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(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.

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(B) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place

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where the death of a person purportedly occurred is prima-facie 105  
evidence of the fact, place, date, and time of the person's death 106  
and the identity of the decedent. 107

(C) A certified or authenticated copy of any record or report 108  
of a domestic or foreign governmental agency that a person is 109  
missing, detained, dead, or alive is prima-facie evidence of the 110  
status and of the dates, circumstances, and places disclosed by 111  
the record or report. 112

(D) In the absence of prima-facie evidence of death under 113  
division (B) or (C) of this section, the fact of death may be 114  
established by clear and convincing evidence, including 115  
circumstantial evidence. 116

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

(1) When the person has disappeared and been continuously 119  
absent from the person's place of last domicile for a five-year 120  
period without being heard from during the period; 121

(2) When the person has disappeared and been continuously 122  
absent from the person's place of last domicile without being 123  
heard from and was at the beginning of the person's absence 124  
exposed to a specific peril of death, even though the absence has 125  
continued for less than a five-year period. 126

(F) When a person who is on active duty in the armed services 127  
of the United States has been officially determined to be absent 128  
in a status of "missing" or "missing in action," a presumption of 129  
death arises when the head of the federal department concerned has 130  
made a finding of death pursuant to the "Federal Missing Persons 131  
Act," 80 Stat. 625 (1966), 37 U.S.C.A. 551, as amended. 132  
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(G) In the absence of evidence disputing the time of death 134  
stipulated on a document described in division (B) or (C) of this 135

section, a document described in either of those divisions that 136  
stipulates a time of death one hundred twenty hours or more after 137  
the time of death of another person, however the time of death of 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) to (G) of this section 142  
are in addition to any other provisions of the Revised Code, the 143  
Rules of Criminal Procedure, or the Rules of Evidence that pertain 144  
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 170  
of survival to multiple governing instruments would result in an 171  
unintended failure or duplication of a disposition, and the 172  
person's survival of the other specified person is established by 173  
clear and convincing evidence. 174

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

(1) Making a payment, transferring an item of real or 177  
personal property, or otherwise transferring any other benefit to 178  
a person designated in a governing instrument who, under sections 179  
2105.31 to 2105.39 of the Revised Code, is not entitled to the 180  
payment or item of property, if the payment or transfer was made 181  
before the payor or other third party received written notice of a 182  
claimed lack of entitlement pursuant to sections 2105.31 to 183  
2105.39 of the Revised Code; 184

(2) Taking any other action not specified in division (A)(1) 185  
of this section in good faith reliance on the person's apparent 186  
entitlement under the terms of the governing instrument before the 187  
payor or other third party received written notice of a claimed 188  
lack of entitlement pursuant to sections 2105.31 to 2105.39 of the 189  
Revised Code. 190

(B) A payor or other third party is liable for a payment, 191  
transfer, or other action taken after the payor or other third 192  
party receives written notice of a claimed lack of entitlement 193  
pursuant to sections 2105.31 to 2105.39 of the Revised Code. 194

(C) Written notice of a claimed lack of entitlement under 195  
divisions (A) or (B) of this section must be mailed to the payor's 196  
or other third party's main office or home by registered or 197

certified mail, return receipt requested, or served upon the payor 198  
or other third party in the same manner as a summons in a civil 199  
action. Upon receipt of written notice of a claimed lack of 200  
entitlement pursuant to sections 2105.31 to 2105.39 of the Revised 201  
Code, a payor or other third party may pay any amount owed or 202  
transfer or deposit any item of real or personal property held by 203  
it to or with the probate court that has jurisdiction over the 204  
decedent's estate. If no probate proceedings have been commenced, 205  
upon receipt of written notice of a claimed lack of entitlement 206  
pursuant to sections 2105.31 to 2105.39 of the Revised Code, a 207  
payor or other third party may pay any amount owed or transfer or 208  
deposit any item of real or personal property held by it to or 209  
with the probate court located in the county of the decedent's 210  
residence. The court shall hold the funds or real or personal 211  
property until it is determined pursuant to sections 2105.31 to 212  
2105.39 of the Revised Code to whom the funds or real or personal 213  
property should be disbursed. The court then shall order 214  
disbursement of the funds or real or personal property in 215  
accordance with that determination. Payments, transfers, or 216  
deposits made to or with the court discharge the payor or other 217  
third party from all claims for the value of amounts paid to or 218  
items of property transferred to or deposited with the court. 219

**Sec. 2105.38.** (A) A person who purchases real or personal 220  
property that would otherwise be subject to sections 2105.31 to 221  
2105.39 of the Revised Code for value and without notice that the 222  
person selling or otherwise transferring the real or personal 223  
property is not entitled to the real or personal property pursuant 224  
to sections 2105.31 to 2105.39 of the Revised Code is neither 225  
obligated under sections 2105.31 to 2105.39 of the Revised Code to 226  
return the payment, item of property, or benefit nor liable under 227  
sections 2105.31 to 2105.39 of the Revised Code for the amount of 228  
the payment or the value of the item of property or benefit. 229



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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 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, 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 3105.31 to 3105.39 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~~

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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

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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 359  
presumed decedent and each of the following that do not join in 360  
the complaint: 361

(1) The presumed decedent's surviving spouse, if any; 362

(2) All persons known to the complainant who are entitled 363  
under the presumed decedent's last will and all persons who are 364  
entitled under ~~sections 2105.06 to 2105.21~~ Chapter 2105. of the 365  
Revised Code to any share of the presumed decedent's property; 366

(3) All persons or entities known to the complainant who have 367  
or would have by reason of the presumed decedent's death any right 368  
or interest under any contract, beneficiary designation, trust, or 369  
otherwise; 370

(4) All contract obligors known to the complainant whose 371  
rights or obligations would be affected by a determination that 372  
the presumed decedent is in fact dead. 373

(D) In the case of a presumed decedent who was not domiciled 374  
in this state but who owned real estate in this state, the 375  
complainant shall name as parties defendant each of the following 376  
that do not join in the complaint: 377

(1) The presumed decedent's surviving spouse, if any; 378

(2) All persons known to the complainant who are entitled 379  
under the presumed decedent's last will and all persons who are 380  
entitled under ~~sections 2105.06 to 2105.21~~ Chapter 2105. of the 381  
Revised Code to any share of the presumed decedent's real property 382  
within this state. 383

(E) All parties defendant, other than the presumed decedent, 384  
shall be served with summons in the same manner as provided by the 385

Rules of Civil Procedure. 386

(F) The complainant shall cause to be advertised once a week 387  
for four consecutive weeks in a newspaper published in the county, 388  
the fact that the complaint has been filed together with a notice 389  
that on a day certain, which shall be at least four weeks after 390  
the last appearance of the advertisement, or after the final 391  
publication where any defendant is being served by publication, 392  
whichever is later, the probate court will hear evidence relevant 393  
to the allegations of the complaint. 394

(G) No guardian ad litem, trustee for the suit, or other 395  
representative shall be required to be appointed to represent the 396  
presumed decedent in the proceeding. 397

**Sec. 2121.06.** Upon the signing of the decree establishing the 398  
death of the presumed decedent, the real estate of the presumed 399  
decedent passes and devolves as in the case of actual death and 400  
the persons entitled by will, or under ~~sections 2105.01 to~~ 401  
~~2105.21.~~ Chapter 2105. of the Revised Code, may enter and take 402  
possession. Persons taking the real estate may sell or mortgage it 403  
and the purchaser or mortgagee takes a good title, free and 404  
discharged of any interest or claim of the presumed decedent. The 405  
persons taking such real estate shall not sell, convey, or 406  
mortgage any part thereof within the three-year period specified 407  
in section 2121.08 of the Revised Code without first giving bond 408  
in an amount to be fixed by the probate court and with sureties to 409  
be approved by the court. In the discretion of the court the bond 410  
may be taken without sureties. Such bond shall be conditioned to 411  
account for and pay over to the presumed decedent, in case within 412  
the three-year period after the decree is entered by the court it 413  
is established that the presumed decedent is still alive, the 414  
value of the real estate sold or conveyed, or in the case of the 415  
making of a mortgage, to pay the amount of the mortgage and 416

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interest thereon, or in case of a foreclosure of such mortgage, to 417  
account for and pay over the value of the real estate mortgaged. 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