

# AN ACT

To amend sections 1111.13, 1111.14, 1111.15, 1151.191, 1161.24, 1319.12, 1339.01, 1339.02, 1339.03, 1339.04, 1339.08, 1339.09, 1339.10, 1339.11, 1339.12, 1339.13, 1339.15, 1339.151, 1339.16, 1339.17, 1339.31, 1339.32, 1339.33, 1339.34, 1339.35, 1339.36, 1339.37, 1339.38, 1339.39, 1339.42, 1339.44, 1339.52, 1339.53, 1339.54, 1339.55, 1339.56, 1339.57, 1339.58, 1339.59, 1339.60, 1339.61, 1339.62, 1339.64, 1339.65, 1339.71, 1339.72, 1339.73, 1339.74, 1339.76, 1339.77, 1339.78, 1340.31, 1340.32, 1340.33, 1340.34, 1340.35, 1340.36, 1340.37, 1340.40, 1340.41, 1340.42, 1340.46, 1340.47, 1340.52, 1340.57, 1340.58, 1340.59, 1340.63, 1340.65, 1340.66, 1340.70, 1340.71, 1340.72, 1340.73, 1340.74, 1340.75, 1340.76, 1340.77, 1340.81, 1340.82, 1340.83, 1340.84, 1340.90, 1340.91, 1775.03, 1775.14, 1775.15, 1775.17, 1775.33, 1782.24, 2101.24, 2107.33, 2109.24, 2109.37, 2109.62, 2109.68, 2111.131, 2113.861, 2305.121, 2305.22, 5111.15, 5111.151, 5119.01, 5119.17, 5121.04, 5121.10, 5121.30, 5121.52, 5123.04, 5123.28, and 5123.40; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 1339.01 (5815.02), 1339.02 (5815.03), 1339.03 (5815.04), 1339.031 (5815.01), 1339.04 (5815.05), 1339.08 (5815.06), 1339.09 (5815.07), 1339.10 (5815.08), 1339.11 (5815.09), 1339.12 (5815.10), 1339.13 (5815.11), 1339.15 (5815.12), 1339.151 (5815.13), 1339.16 (5815.14), 1339.17 (5815.15), 1339.18 (5815.16), 1339.31 (5814.01), 1339.32

(5814.02), 1339.33 (5814.03), 1339.34 (5814.04),  
1339.35 (5814.05), 1339.36 (5814.06), 1339.37  
(5814.07), 1339.38 (5814.08), 1339.39 (5814.09),  
1339.41 (5815.21), 1339.411 (5815.22), 1339.412  
(5815.23), 1339.42 (5815.24), 1339.43 (5815.25),  
1339.44 (5815.26), 1339.45 (5815.27), 1339.51  
(5815.28), 1339.52 (5809.01), 1339.53 (5809.02),  
1339.54 (5809.03), 1339.55 (5808.03), 1339.56  
(5809.04), 1339.57 (5808.05), 1339.58 (5809.05),  
1339.59 (5808.07), 1339.60 (5809.07), 1339.61  
(5809.08), 1339.62 (5815.31), 1339.621 (5815.32),  
1339.63 (5815.33), 1339.64 (5815.34), 1339.65  
(5815.35), 1339.68 (5815.36), 1339.71 (5815.41),  
1339.72 (5815.42), 1339.73 (5815.43), 1339.74  
(5815.44), 1339.75 (5815.45), 1339.76 (5815.46),  
1339.77 (5815.47), 1339.78 (5815.48), 1340.31  
(5813.01), 1340.32 (5813.02), 1340.33 (5813.03),  
1340.34 (5813.04), 1340.35 (5813.05), 1340.36  
(5813.06), 1340.37 (5813.07), 1340.40 (5812.01),  
1340.41 (5812.02), 1340.42 (5812.03), 1340.46  
(5812.07), 1340.47 (5812.08), 1340.51 (5812.12),  
1340.52 (5812.13), 1340.53 (5812.14), 1340.57  
(5812.18), 1340.58 (5812.19), 1340.59 (5812.20),  
1340.63 (5812.24), 1340.64 (5812.25), 1340.65  
(5812.26), 1340.66 (5812.27), 1340.70 (5812.31),  
1340.71 (5812.32), 1340.72 (5812.33), 1340.73  
(5812.34), 1340.74 (5812.35), 1340.75 (5812.36),  
1340.76 (5812.37), 1340.77 (5812.38), 1340.81  
(5812.42), 1340.82 (5812.43), 1340.83 (5812.44),  
1340.84 (5812.45), 1340.85 (5812.46), 1340.86  
(5812.47), 1340.90 (5812.51), 1340.91 (5812.52), and  
2305.121 (5806.04); to enact sections 2109.69, 5801.01,

5801.011, 5801.02 to 5801.10, 5802.01 to 5802.03, 5803.01 to 5803.05, 5804.01 to 5804.18, 5805.01 to 5805.07, 5806.01 to 5806.03, 5807.01 to 5807.09, 5808.01, 5808.02, 5808.04, 5808.06, 5808.08 to 5808.17, 5809.06, 5810.01 to 5810.13, and 5811.01 to 5811.03; and to repeal sections 1335.01, 1339.14, 1339.66, 1339.67, 1339.69, 1340.21, 1340.22, and 1340.23 of the Revised Code to adopt an Ohio trust code to modify trust company collective investment fund requirements, and to remove an investment limitation in the Trust Company Fiduciary Law.

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

SECTION 1. That sections 1111.13, 1111.14, 1111.15, 1151.191, 1161.24, 1319.12, 1339.01, 1339.02, 1339.03, 1339.04, 1339.08, 1339.09, 1339.10, 1339.11, 1339.12, 1339.13, 1339.15, 1339.151, 1339.16, 1339.17, 1339.31, 1339.32, 1339.33, 1339.34, 1339.35, 1339.36, 1339.37, 1339.38, 1339.39, 1339.42, 1339.44, 1339.52, 1339.53, 1339.54, 1339.55, 1339.56, 1339.57, 1339.58, 1339.59, 1339.60, 1339.61, 1339.62, 1339.64, 1339.65, 1339.71, 1339.72, 1339.73, 1339.74, 1339.76, 1339.77, 1339.78, 1340.31, 1340.32, 1340.33, 1340.34, 1340.35, 1340.36, 1340.37, 1340.40, 1340.41, 1340.42, 1340.46, 1340.47, 1340.52, 1340.57, 1340.58, 1340.59, 1340.63, 1340.65, 1340.66, 1340.70, 1340.71, 1340.72, 1340.73, 1340.74, 1340.75, 1340.76, 1340.77, 1340.81, 1340.82, 1340.83, 1340.84, 1340.90, 1340.91, 1775.03, 1775.14, 1775.15, 1775.17, 1775.33, 1782.24, 2101.24, 2107.33, 2109.24, 2109.37, 2109.62, 2109.68, 2111.131, 2113.861, 2305.121, 2305.22, 5111.15, 5111.151, 5119.01, 5119.17, 5121.04, 5121.10, 5121.30, 5121.52, 5123.04, 5123.28, and 5123.40 be amended; that sections 1339.01 (5815.02), 1339.02 (5815.03), 1339.03 (5815.04), 1339.031 (5815.01), 1339.04 (5815.05), 1339.08 (5815.06), 1339.09 (5815.07), 1339.10 (5815.08), 1339.11 (5815.09), 1339.12 (5815.10), 1339.13 (5815.11), 1339.15 (5815.12), 1339.151 (5815.13), 1339.16 (5815.14), 1339.17 (5815.15), 1339.18 (5815.16), 1339.31 (5814.01), 1339.32 (5814.02), 1339.33 (5814.03), 1339.34 (5814.04), 1339.35 (5814.05), 1339.36 (5814.06), 1339.37 (5814.07), 1339.38 (5814.08), 1339.39 (5814.09), 1339.41 (5815.21), 1339.411 (5815.22), 1339.412 (5815.23), 1339.42

(5815.24), 1339.43 (5815.25), 1339.44 (5815.26), 1339.45 (5815.27), 1339.51 (5815.28), 1339.52 (5809.01), 1339.53 (5809.02), 1339.54 (5809.03), 1339.55 (5808.03), 1339.56 (5809.04), 1339.57 (5808.05), 1339.58 (5809.05), 1339.59 (5808.07), 1339.60 (5809.07), 1339.61 (5809.08), 1339.62 (5815.31), 1339.621 (5815.32), 1339.63 (5815.33), 1339.64 (5815.34), 1339.65 (5815.35), 1339.68 (5815.36), 1339.71 (5815.41), 1339.72 (5815.42), 1339.73 (5815.43), 1339.74 (5815.44), 1339.75 (5815.45), 1339.76 (5815.46), 1339.77 (5815.47), 1339.78 (5815.48), 1340.31 (5813.01), 1340.32 (5813.02), 1340.33 (5813.03), 1340.34 (5813.04), 1340.35 (5813.05), 1340.36 (5813.06), 1340.37 (5813.07), 1340.40 (5812.01), 1340.41 (5812.02), 1340.42 (5812.03), 1340.46 (5812.07), 1340.47 (5812.08), 1340.51 (5812.12), 1340.52 (5812.13), 1340.53 (5812.14), 1340.57 (5812.18), 1340.58 (5812.19), 1340.59 (5812.20), 1340.63 (5812.24), 1340.64 (5812.25), 1340.65 (5812.26), 1340.66 (5812.27), 1340.70 (5812.31), 1340.71 (5812.32), 1340.72 (5812.33), 1340.73 (5812.34), 1340.74 (5812.35), 1340.75 (5812.36), 1340.76 (5812.37), 1340.77 (5812.38), 1340.81 (5812.42), 1340.82 (5812.43), 1340.83 (5812.44), 1340.84 (5812.45), 1340.85 (5812.46), 1340.86 (5812.47), 1340.90 (5812.51), 1340.91 (5812.52), and 2305.121 (5806.04) be amended for the purpose of adopting new section numbers as indicated in parentheses; and that sections 2109.69, 5801.01, 5801.011, 5801.02, 5801.03, 5801.04, 5801.05, 5801.06, 5801.07, 5801.08, 5801.09, 5801.10, 5802.01, 5802.02, 5802.03, 5803.01, 5803.02, 5803.03, 5803.04, 5803.05, 5804.01, 5804.02, 5804.03, 5804.04, 5804.05, 5804.06, 5804.07, 5804.08, 5804.09, 5804.10, 5804.11, 5804.12, 5804.13, 5804.14, 5804.15, 5804.16, 5804.17, 5804.18, 5805.01, 5805.02, 5805.03, 5805.04, 5805.05, 5805.06, 5805.07, 5806.01, 5806.02, 5806.03, 5807.01, 5807.02, 5807.03, 5807.04, 5807.05, 5807.06, 5807.07, 5807.08, 5807.09, 5808.01, 5808.02, 5808.04, 5808.06, 5808.08, 5808.09, 5808.10, 5808.11, 5808.12, 5808.13, 5808.14, 5808.15, 5808.16, 5808.17, 5809.06, 5810.01, 5810.02, 5810.03, 5810.04, 5810.05, 5810.06, 5810.07, 5810.08, 5810.09, 5810.10, 5810.11, 5810.12, 5810.13, 5811.01, 5811.02, and 5811.03 of the Revised Code be enacted to read as follows:

Sec. 1111.13. (A)(1) Except as provided in divisions (A)(2) and (G) of this section or as otherwise provided by the instrument creating the trust, a trust company acting as fiduciary under any instrument and having funds of the trust which are to be invested may, in addition to any other investments authorized to a trust company by law, invest them in any of the following:

(a) Forms of investments enumerated or described in, or made eligible for investment by, the Ohio Uniform Prudent Investor Act and sections

~~1339.44, 1339.52 to 1339.61, 2109.37, 2109.371, and 2109.372, and 5815.26~~ of the Revised Code, including, but not limited to, securities, stocks, bonds, or certificates of deposit issued by the trust company or any bank owned or controlled by the bank holding company that owns or controls the trust company. ~~Investment authority granted under division (A)(1)(a) of this section is subject to the limitations on investments specified in division (B) of section 2109.371 of the Revised Code.~~

(b) Any collective investment fund established and maintained by the trust company or by an affiliate of the trust company;

(c) The securities of any investment company, including any affiliated investment company, whether or not the trust company has invested other funds held by it in an agency or other nonfiduciary capacity in the securities of the same investment company or affiliated investment company.

(2) A trust company acting as fiduciary may not invest its trust funds in stock issued by the fiduciary itself except under one of the following circumstances:

(a) In the case of a testamentary instrument, when expressly permitted by the instrument creating the relationship and authorized by court order;

(b) In the case of an inter vivos instrument, when expressly permitted by the instrument or authorized by court order and in either case, only when directed to purchase or invest in the stock by a cofiduciary or other person other than the trust company who has the right under the terms of the instrument to direct the investment;

(c) When exercising rights to purchase its own stock or to purchase or convert securities convertible into its own stock if the rights were offered pro rata to the shareholders;

(d) To complement fractional shares acquired when the exercise of rights or receipt of a stock dividend results in fractional shareholdings.

(3) If the law or the instrument creating a trust expressly permits investment in direct obligations of the United States or an agency or instrumentality of the United States, unless expressly prohibited by the instrument, a trust company also may invest in no front end load money market mutual funds consisting exclusively of obligations of the United States or an agency or instrumentality of the United States and in repurchase agreements, including those issued by the trust company itself, secured by obligations of the United States or an agency or instrumentality of the United States, or in securities of other no load money market mutual funds whose portfolios are similarly restricted; and in collective investment funds established in accordance with section 1111.14 of the Revised Code or by an affiliate of the trust company and consisting exclusively of any direct

obligations of the United States or an agency or instrumentality of the United States, notwithstanding division (A)(1)(c) of that section.

(B) A trust company acting in any fiduciary capacity or under any instrument has the right to retain any part of the trust or estate it receives, whether from the creator of the trust or the estate, at its inception or by later addition, or by addition by any other person who is authorized to make additions to the trust or estate, and any investments the trust company makes.

(C) Except as otherwise expressly provided by the instrument creating the fiduciary relationship, any trust company may exercise all voting, consenting, and dissenting rights, including the right to vote for the election of directors, pertaining to stocks, bonds, or other securities held by it in any fiduciary capacity, including rights pertaining to stocks, bonds, or other securities issued by the trust company in its individual corporate capacity and held by it in any fiduciary capacity, provided:

(1) In the case of any fiduciary relationship created prior to January 1, 1968, voting rights pertaining to any shares of a trust company's own stock held by it in a fiduciary relationship, if exercised, shall be exercised with respect to the election of directors, only in accordance with any provisions of law applicable to that election and without regard to the first paragraph of division (C) and divisions (C)(2)(a), (b), and (c) of this section, and those portions of division (C) of this section shall not be construed to be determinative of the voting rights or to be declaratory of a public policy with respect to the voting rights.

(2) In the case of any fiduciary relationship created on or after January 1, 1968, voting rights pertaining to any shares of a trust company's own stock held by it in a fiduciary relationship shall be exercised by it with respect to the election of directors, only if and as directed in writing by any person described in division (C)(2)(a), (b), or (c) of this section, provided that the person may not be the trust company, or a director, officer, or employee of the trust company except as to fiduciary relationships in which the director, officer, or employee is a settlor or beneficiary, or a nominee, agent, attorney, or subsidiary of the trust company:

(a) Any person, including a settlor or beneficiary, who has the right under the terms of the instrument under which shares are held to determine the manner in which shares shall be voted, or if there is no such person;

(b) Any person acting as cofiduciary under the instrument under which such shares are held, or if there is no such person;

(c) Any person, having the right of revocation or amendment of the instrument under which the shares are held.

(D) If there is more than one person having power to direct voting under division (C)(2)(a), (b), or (c) of this section and they fail to agree, each person shall have the right to direct voting with respect to the election of directors as to an equal number of shares.

(E) As used in this section:

(1) "Affiliated investment company" means any investment company that is any of the following:

(a) Sponsored by the trust company that is acting as fiduciary or by a trust company, bank, bank subsidiary corporation, or other corporation owned or controlled by the bank holding company that owns or controls the trust company that is acting as fiduciary;

(b) The result of any agreement with a trust company, bank, bank subsidiary corporation, or other corporation owned or controlled by the bank holding company that owns or controls the trust company that is acting as fiduciary;

(c) Established exclusively for the customers or accounts of the trust company that is acting as fiduciary or of a trust company, bank, bank subsidiary corporation, or other corporation owned or controlled by the bank holding company that owns or controls the trust company that is acting as fiduciary;

(d) Provided with investment advisory, brokerage, transfer agency, registrar, management, shareholder servicing, custodian, or any related services by the trust company that is acting as fiduciary or by a trust company, bank, bank subsidiary corporation, or other corporation owned or controlled by the bank holding company that owns or controls the trust company that is acting as fiduciary.

(2) "Cofiduciary" includes, but is not limited to, a cotrustee, coexecutor, coadministrator, coguardian, co-agent, and any person who, under the terms of the instrument creating the fiduciary relationship, has the right or power to direct, approve or consent to, or be consulted with respect to, the making, retention, or sale of investments under the instrument.

(3) "Instrument" includes, but is not limited to, any will, declaration of trust, agreement of trust, agency, or custodianship, or court order creating a fiduciary relationship.

(4) "Reasonable fee" means compensation or payment, the receipt of which would not constitute a breach of fiduciary duty under section 36 of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-35.

(F) Shares as to which the voting rights with respect to the election of directors may not be exercised under this section shall not be considered as outstanding for the purpose of computing the voting power of the

corporation or of its shares of any class with respect to the election of directors.

(G) This section does not authorize a trust company acting as a probate fiduciary to perform any act prohibited by section 2109.44 of the Revised Code, unless the act is authorized by the instrument creating the trust.

(H) A trust company making an investment of trust funds in an affiliated investment company, or a bank or other corporation owned or controlled by the bank holding company that owns or controls the trust company, may charge a reasonable fee for investment advisory, brokerage, transfer agency, registrar, management, shareholder servicing, custodian, or any related services provided to an affiliated investment company. The fee may be in addition to the compensation that the trust company is otherwise entitled to receive from the trust, provided that the fee is charged as a percentage of either asset value or income earned or actual amount charged and is disclosed at least annually by prospectus, account statement, or any other written means to all persons entitled to receive statements of account activity.

(I) A trust company making an investment of trust funds in the securities of an affiliated investment company pursuant to division (A)(1)(c) of this section shall, when providing any periodic account statements to the trust fund, report the net asset value of the shares comprising the investment of the trust fund in the affiliated investment company.

(J) If a trust company making an investment of trust funds in the securities of an affiliated investment company pursuant to division (A)(1)(c) of this section invests the funds in any mutual fund, the trust company shall disclose, in at least ten-point boldface type, by prospectus, account statement, or any other written means to all persons entitled to receive statements of account activity, that the mutual fund is not insured or guaranteed by the federal deposit insurance corporation or by any other government agency or government-sponsored agency of the federal government or of this state.

Sec. 1111.14. A trust company may do any of the following:

(A) Collectively invest assets it holds in any fiduciary capacity in any investment authorized by the superintendent of financial institutions, subject to all of the following conditions that apply:

(1) The collective investment is not prohibited by the instrument, judgment, decree, or order creating the fiduciary relationship for any of the following reasons:

- (a) The investment is being made collectively;
- (b) The character of some or all of the other fiduciary relationships for

which assets are also invested;

(c) Any relationship, other than as an investing fiduciary, the trust company or any affiliate of the trust company has to the investment;

(d) Any relationship any other person has to the collective investment.

(2) The collective investment is a proper investment for the assets. In determining whether the collective investment is a proper investment for the assets, the collective investment shall be considered as a whole, with consideration being given to all assets held in the collective investment, and the inclusion of any asset that would not independently be a proper investment shall not be determinative.

(3) If the trust company is not the sole fiduciary of the assets, the trust company has procured the written consent of the cofiduciaries to the investment. Any person serving with a trust company as a cofiduciary of property in this state has the authority to consent to the investment of the property in a collective investment vehicle that either is established or managed by the cofiduciary trust company or an affiliate of the cofiduciary trust company or in which the cofiduciary participates in the formation, ownership, or operation.

(B) Establish and maintain one or more collective investment funds, consistent with regulations adopted by the comptroller of the currency and rules adopted by the superintendent, for the collective investment of assets held by the trust company or any of its affiliates in any fiduciary capacity, to which funds both of the following apply:

(1) The trust company may charge a reasonable fee for the management of a collective investment fund, provided that the ~~fractional part amount~~ amount of the fee ~~proportionate to the interest of each participant shall not, when added to any other compensation charged to the participant by the managing trust company or another trust company under common control of a bank holding company, exceed the total amount of compensation that would have been charged to the participant~~ an amount commensurate with the value of legitimate services of tangible benefit to the participant that the participant would not have received if no assets of the participant had been invested in participations in the fund. However, in the case of investments by a collective investment fund in an affiliated investment company, the trust company may charge a fee as provided in division (B)(2) of this section. Any fee received by the trust company may be charged either to the income or principal of the fund or apportioned between them. The trust company may ~~reimburse itself out of a collective investment fund~~ charge a fee for reasonable expenses incurred in the administration of the fund ~~that would have been charged to the respective participating accounts if incurred in the~~

~~separate administration of the participating accounts. A trust company shall not charge a fee for expenses incurred in establishing or reorganizing the fund.~~

(2) A collective investment fund may invest in any affiliated investment company, provided that any fee that is paid to the trust company or person owned or controlled by the bank holding company that owns or controls the trust company is a reasonable fee for the services provided. Any such fee may be in addition to compensation ~~to which~~ that the trust company ~~or person~~ is otherwise entitled to receive ~~from the trust~~.

A collective investment fund that invests in an affiliated investment company shall, when providing any periodic account statements to the trust fund, report the net asset value of the shares comprising the investment of the trust fund in the affiliated investment company.

If a collective investment fund ~~that~~ invests in an affiliated investment company ~~invests in any mutual fund~~, the collective investment fund shall disclose, in at least ten-point boldface type, by prospectus, by annual account statement, or by any other written means to all persons entitled to receive statements of account activity, that the ~~mutual fund~~ affiliated investment company is not insured or guaranteed by the federal deposit insurance corporation or by any other government agency or government-sponsored agency of the federal government or of this state.

(C) Participate in the formation, ownership, or operation of one or more fiduciary investment companies established and operated in accordance with rules adopted by the superintendent.

Sec. 1111.15. (A) A trust company acting in any fiduciary capacity, including, but not limited to, the capacities described in section 1111.11 of the Revised Code, may purchase any service or product, including, but not limited to, insurance or securities underwritten or otherwise distributed by the trust company or by an affiliate, through or directly from the trust company or an affiliate or from a syndicate or selling group that includes the trust company or an affiliate, provided that the purchase is otherwise prudent under ~~sections 1339.52 to 1339.61 of the Revised Code~~ Ohio Uniform Prudent Investor Act and the compensation for the service or product is reasonable and is not prohibited by the instrument governing the fiduciary relationship. The compensation for the service or product may be in addition to the compensation that the trust company is otherwise entitled to receive from the fiduciary account.

(B) A trust company shall disclose at least annually any purchase authorized by this section that was made by the trust company during that reporting period. The disclosure shall be given, in writing or electronically,

to all persons entitled to receive statements of account activity, and shall include any capacities in which the trust company or an affiliate acts for the issuer of the securities or the provider of the products or services and the fact that the trust company or an affiliate may have an interest in the products or services.

(C) This section shall apply to the purchase of securities made at the time of the initial offering of the securities or at any time thereafter.

Sec. 1151.191. (A) A building and loan association may serve as trustee of any trust which qualifies, at the time the association becomes trustee, for tax treatment under section 401 or 408 of the Internal Revenue Code. The association may invest the funds of any such trust in savings accounts or deposits of a domestic building and loan association or in equity or debt securities issued by a domestic building and loan association.

(B) Whenever any deposit or stock deposit is made in a building and loan association by any person in trust for another and no further notice of the existence and terms of a legal and valid trust is given in writing to such association, such deposit or stock deposit or any part thereof together with the dividends or interest thereon may in the event of the death of the trustee be paid to the person for whom the deposit or stock deposit was made.

~~Whenever any deposit or stock deposit is made in the name of another as trustee for the depositor accompanied by a declaration of trust, any trust created thereby shall not be invalid by reason of section 1335.01 of the Revised Code.~~

(C) Any funds held in trust as authorized by division (A) or (B) of this section may be commingled by the trustee association in one or more accounts. Whenever individual trust funds are commingled, separate records shall be maintained by the trustee association for each trust account comprising the commingled fund.

(D) Exercise of the limited trust power granted associations by this section shall not be subject to regulation other than by the superintendent of building and loan associations pursuant to Chapters 1151., 1153., 1155., and 1157. of the Revised Code.

Sec. 1161.24. (A) A savings bank may serve as trustee of any trust that qualifies, at the time the savings bank becomes trustee, for tax treatment under section 401 or 408 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. The savings bank may invest the funds of any such trust in savings accounts or deposits of a domestic savings bank or in equity or debt securities issued by a domestic savings bank.

~~(B)(4)~~ Whenever any deposit or stock deposit is made in a savings bank by any person in trust for another and no further notice of the existence and

terms of a legal and valid trust is given in writing to the savings bank, the deposit or stock deposit or any part thereof together with the dividends or interest thereon, in the event of the death of the trustee, may be paid to the person for whom the deposit or stock deposit was made.

~~(2) Whenever any deposit or stock deposit is made in the name of another as trustee for the depositor accompanied by a declaration of trust, any trust created thereby shall not be invalid by reason of section 1335.01 of the Revised Code.~~

(C) Any funds held in trust as authorized by division (A) or (B) of this section may be commingled by the trustee savings bank in one or more accounts. Whenever individual trust funds are commingled, separate records shall be maintained by the trustee savings bank for each trust account comprising the commingled fund.

(D) Exercise of the limited trust power granted savings banks by this section is not subject to regulation other than by the superintendent of savings banks pursuant to this chapter and Chapters 1163. and 1165. of the Revised Code.

Sec. 1319.12. (A)(1) As used in this section, "collection agency" means any person who, for compensation, contingent or otherwise, or for other valuable consideration, offers services to collect an alleged debt asserted to be owed to another.

(2) "Collection agency" does not mean a person whose collection activities are confined to and directly related to the operation of another business, including, but not limited to, the following:

(a) Any bank, including the trust department of a bank, trust company, savings and loan association, savings bank, credit union, or fiduciary as defined in section ~~1339.03~~ 5815.04 of the Revised Code, except those that own or operate a collection agency;

(b) Any real estate broker or real estate salesperson, as defined in section 4735.01 of the Revised Code;

(c) Any retail seller collecting its own accounts;

(d) Any insurance company authorized to do business in this state under Title XXXIX of the Revised Code or a health insuring corporation authorized to operate in this state under Chapter 1751. of the Revised Code;

(e) Any public officer or judicial officer acting under order of a court;

(f) Any licensee as defined either in section 1321.01 or 1321.71 of the Revised Code, or any registrant as defined in section 1321.51 of the Revised Code;

(g) Any public utility;

(h) Any person registered to sell interment rights under section

4767.031 of the Revised Code.

(B) A collection agency with a place of business in this state may take assignment of another person's accounts, bills, or other evidences of indebtedness in its own name for the purpose of billing, collecting, or filing suit in its own name as the real party in interest.

(C) No collection agency shall commence litigation for the collection of an assigned account, bill, or other evidence of indebtedness unless it has taken the assignment in accordance with all of the following requirements:

(1) The assignment was voluntary, properly executed, and acknowledged by the person transferring title to the collection agency.

(2) The collection agency did not require the assignment as a condition to listing the account, bill, or other evidence of indebtedness with the collection agency for collection.

(3) The assignment was manifested by a written agreement separate from and in addition to any document intended for the purpose of listing the account, bill, or other evidence of indebtedness with the collection agency. The written agreement shall state the effective date of the assignment and the consideration paid or given, if any, for the assignment and shall expressly authorize the collection agency to refer the assigned account, bill, or other evidence of indebtedness to an attorney admitted to the practice of law in this state for the commencement of litigation. The written agreement also shall disclose that the collection agency may consolidate, for purposes of filing an action, the assigned account, bill, or other evidence of indebtedness with those of other creditors against an individual debtor or co-debtors.

(4) Upon the effective date of the assignment to the collection agency, the creditor's account maintained by the collection agency in connection with the assigned account, bill, or other evidence of indebtedness was canceled.

(D) A collection agency shall commence litigation for the collection of an assigned account, bill, or other evidence of indebtedness in a court of competent jurisdiction located in the county in which the debtor resides, or in the case of co-debtors, a county in which at least one of the co-debtors resides.

(E) No collection agency shall commence any litigation authorized by this section unless the agency appears by an attorney admitted to the practice of law in this state.

(F) This section does not affect the powers and duties of any person described in division (A)(2) of this section.

(G) Nothing in this section relieves a collection agency from complying

with the "Fair Debt Collection Practices Act," 91 Stat. 874 (1977), 15 U.S.C. 1692, as amended, or deprives any debtor of the right to assert defenses as provided in section 1317.031 of the Revised Code and 16 C.F.R. 433, as amended.

(H) For purposes of filing an action, a collection agency that has taken an assignment or assignments pursuant to this section may consolidate the assigned accounts, bills, or other evidences of indebtedness of one or more creditors against an individual debtor or co-debtors. Each separate assigned account, bill, or evidence of indebtedness must be separately identified and pled in any consolidated action authorized by this section. If a debtor or co-debtor raises a good faith dispute concerning any account, bill, or other evidence of indebtedness, the court shall separate each disputed account, bill, or other evidence of indebtedness from the action and hear the disputed account, bill, or other evidence of indebtedness on its own merits in a separate action. The court shall charge the filing fee of the separate action to the losing party.

Sec. 1775.03. (A) The rule that statutes in derogation of the common law are to be strictly construed has no application to ~~section~~ sections 1775.01 to 1775.42 of the Revised Code.

(B) The law of estoppel applies under such sections.

(C) The law of agency applies under this chapter, but, if a provision of section ~~1339.65~~ 5815.35 of the Revised Code conflicts with that law, the provision of that section controls.

(D) Such sections shall be interpreted and construed so as to effectuate their general purpose to make the law of this state uniform with the law of those states which enact similar legislation.

(E) Sections 1775.01 to 1775.42 of the Revised Code do not impair the obligations of any contract existing on September 14, 1949, or affect any action or proceedings begun or right accrued before such date.

Sec. 1775.14. (A) Subject to section ~~1339.65~~ 5815.35 of the Revised Code and except as provided in division (B) of this section, all partners are liable as follows:

(1) Jointly and severally for everything chargeable to the partnership under sections 1775.12 and 1775.13 of the Revised Code. This joint and several liability is not subject to section 2307.22 or 2315.36 of the Revised Code with respect to a tort claim that otherwise is subject to either of those sections.

(2) Jointly for all other debts and obligations of the partnership, but any partner may enter into a separate obligation to perform a partnership contract.

(B) Subject to divisions (C)(1) and (2) of this section or as otherwise provided in a written agreement between the partners of a registered limited liability partnership, a partner in a registered limited liability partnership is not liable, directly or indirectly, by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, or other liabilities of any kind of, or chargeable to, the partnership or another partner or partners arising from negligence or from wrongful acts, errors, omissions, or misconduct, whether or not intentional or characterized as tort, contract, or otherwise, committed or occurring while the partnership is a registered limited liability partnership and committed or occurring in the course of the partnership business by another partner or an employee, agent, or representative of the partnership.

(C)(1) Division (B) of this section does not affect the liability of a partner in a registered limited liability partnership for that partner's own negligence, wrongful acts, errors, omissions, or misconduct, including that partner's own negligence, wrongful acts, errors, omissions, or misconduct in directly supervising any other partner or any employee, agent, or representative of the partnership.

(2) Division (B) of this section shall not affect the liability of a partner for liabilities imposed by Chapters 5735., 5739., 5743., and 5747. and section 3734.908 of the Revised Code.

(D) A partner in a registered limited liability partnership is not a proper party to an action or proceeding by or against a registered limited liability partnership with respect to any debt, obligation, or other liability of any kind described in division (B) of this section, unless the partner is liable under divisions (C)(1) and (2) of this section.

Sec. 1775.15. (A) Subject to section ~~1339.65~~ 5815.35 of the Revised Code, when a person, by words spoken or written or by conduct, represents ~~himself~~ self, or consents to another representing ~~him~~ the person to anyone, as a partner in an existing partnership or with one or more persons not actual partners, ~~he~~ that person is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if ~~he~~ the person has made such representation or consented to its being made in a public manner ~~he~~ the person is liable to ~~such~~ the person to whom such representation has been made, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(1) When a partnership liability results, ~~he~~ the person who represented

self as a partner or consented to another's making such representation is liable as though ~~he~~ the person were an actual member of the partnership.

(2) When no partnership liability results, ~~he~~ the person who represented self as a partner or consented to another's making such representation is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(B) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, ~~he~~ the person so represented is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though ~~he~~ the person so represented were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

Sec. 1775.17. The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(A) Each partner shall be repaid the partner's contribution, whether by way of capital or advances, to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and each partner, subject to section ~~1339.65~~ 5815.35 of the Revised Code and to division (B) of section 1775.14 of the Revised Code, must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to the partner's share in the profits.

(B) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by the partner in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(C) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which the partner agreed to contribute, shall be paid interest from the date of the payment or advance.

(D) A partner shall receive interest on the capital contributed by the partner only from the date when repayment should be made.

(E) All partners have equal rights in the management and conduct of the partnership business.

(F) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for the partner's services in winding up the partnership affairs.

(G) No person can become a member of a partnership without the

consent of all the partners.

(H) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

Sec. 1775.33. Where the dissolution is caused by the act, death, or bankruptcy of a partner, but subject to section ~~1339.65~~ 5815.35 of the Revised Code and to division (B) of section 1775.14 of the Revised Code, each partner is liable to the other partners for the partner's share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(A) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution;

(B) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

Sec. 1782.24. (A) Except as otherwise provided in this chapter, the partnership agreement, or section ~~1339.65~~ 5815.35 of the Revised Code, a general partner of a limited partnership shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners.

(B) Except as otherwise provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as otherwise provided in this chapter or the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

Sec. 2101.24. (A)(1) Except as otherwise provided by law, the probate court has exclusive jurisdiction:

(a) To take the proof of wills and to admit to record authenticated copies of wills executed, proved, and allowed in the courts of any other state, territory, or country. If the probate judge is unavoidably absent, any judge of the court of common pleas may take proof of wills and approve bonds to be given, but the record of these acts shall be preserved in the usual records of the probate court.

(b) To grant and revoke letters testamentary and of administration;

(c) To direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates;

(d) To appoint the attorney general to serve as the administrator of an

estate pursuant to section 2113.06 of the Revised Code;

(e) To appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts;

(f) To grant marriage licenses;

(g) To make inquests respecting persons who are so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that they are unable to manage their property and affairs effectively, subject to guardianship;

(h) To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts;

(i) To authorize the sale of lands, equitable estates, or interests in lands or equitable estates, and the assignments of inchoate dower in such cases of sale, on petition by executors, administrators, and guardians;

(j) To authorize the completion of real estate contracts on petition of executors and administrators;

(k) To construe wills;

(l) To render declaratory judgments, including, but not limited to, those rendered pursuant to section 2107.084 of the Revised Code;

(m) To direct and control the conduct of fiduciaries and settle their accounts;

(n) To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee;

(o) To terminate a testamentary trust in any case in which a court of equity may do so;

(p) To hear and determine actions to contest the validity of wills;

(q) To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption;

(r) To hear and determine an action commenced pursuant to section 3107.41 of the Revised Code to obtain the release of information pertaining to the birth name of the adopted person and the identity of the adopted person's biological parents and biological siblings;

(s) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;

(t) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;

(u) To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;

(v) To hear and determine actions relating to durable powers of attorney

for health care as described in division (D) of section 1337.16 of the Revised Code;

(w) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;

(x) To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with certain patients allegedly in a terminal condition or in a permanently unconscious state pursuant to division (E) of section 2133.08 of the Revised Code, in accordance with that division;

(y) To hear and determine applications that pertain to the withholding or withdrawal of nutrition and hydration from certain patients allegedly in a permanently unconscious state pursuant to section 2133.09 of the Revised Code, in accordance with that section;

(z) To hear and determine applications of attending physicians in accordance with division (B) of section 2133.15 of the Revised Code;

(aa) To hear and determine actions relative to the use or continuation of comfort care in connection with certain principals under durable powers of attorney for health care, declarants under declarations, or patients in accordance with division (E) of either section 1337.16 or 2133.12 of the Revised Code;

(bb) To hear and determine applications for an order relieving an estate from administration under section 2113.03 of the Revised Code;

(cc) To hear and determine applications for an order granting a summary release from administration under section 2113.031 of the Revised Code.

(2) In addition to the exclusive jurisdiction conferred upon the probate court by division (A)(1) of this section, the probate court shall have exclusive jurisdiction over a particular subject matter if both of the following apply:

(a) Another section of the Revised Code expressly confers jurisdiction over that subject matter upon the probate court.

(b) No section of the Revised Code expressly confers jurisdiction over that subject matter upon any other court or agency.

(B)(1) The probate court has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the court of common pleas to issue writs and orders, and to hear and determine actions as follows:

(a) If jurisdiction relative to a particular subject matter is stated to be concurrent in a section of the Revised Code or has been construed by judicial decision to be concurrent, any action that involves that subject matter;

(b) Any action that involves an inter vivos trust; a trust created pursuant to section ~~4339.51~~ 5815.28 of the Revised Code; a charitable trust or foundation; subject to divisions (A)(1)(u) and (z) of this section, a power of attorney, including, but not limited to, a durable power of attorney; the medical treatment of a competent adult; or a writ of habeas corpus.

(2) Any action that involves a concurrent jurisdiction subject matter and that is before the probate court may be transferred by the probate court, on its order, to the general division of the court of common pleas.

(C) The probate court has plenary power at law and in equity to dispose fully of any matter that is properly before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code.

(D) The jurisdiction acquired by a probate court over a matter or proceeding is exclusive of that of any other probate court, except when otherwise provided by law.

Sec. 2107.33. (A) A will shall be revoked in the following manners:

(1) By the testator by tearing, canceling, obliterating, or destroying it with the intention of revoking it;

(2) By some person, at the request of the testator and in the testator's presence, by tearing, canceling, obliterating, or destroying it with the intention of revoking it;

(3) By some person tearing, canceling, obliterating, or destroying it pursuant to the testator's express written direction;

(4) By some other written will or codicil, executed as prescribed by this chapter;

(5) By some other writing that is signed, attested, and subscribed in the manner provided by this chapter.

(B) A will that has been declared valid and is in the possession of a probate judge also may be revoked according to division (C) of section 2107.084 of the Revised Code.

(C) If a testator removes a will that has been declared valid and is in the possession of a probate judge pursuant to section 2107.084 of the Revised Code from the possession of the judge, the declaration of validity that was rendered no longer has any effect.

(D) If after executing a will, a testator is divorced, obtains a dissolution of marriage, has the testator's marriage annulled, or, upon actual separation from the testator's spouse, enters into a separation agreement pursuant to which the parties intend to fully and finally settle their prospective property rights in the property of the other, whether by expected inheritance or otherwise, any disposition or appointment of property made by the will to the former spouse or to a trust with powers created by or available to the

former spouse, any provision in the will conferring a general or special power of appointment on the former spouse, and any nomination in the will of the former spouse as executor, trustee, or guardian shall be revoked unless the will expressly provides otherwise.

(E) Property prevented from passing to a former spouse or to a trust with powers created by or available to the former spouse because of revocation by this section shall pass as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse shall be interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they shall be deemed to be revived by the testator's remarriage with the former spouse or upon the termination of a separation agreement executed by them.

(F) A bond, agreement, or covenant made by a testator, for a valuable consideration, to convey property previously devised or bequeathed in a will does not revoke the devise or bequest. The property passes by the devise or bequest, subject to the remedies on the bond, agreement, or covenant, for a specific performance or otherwise, against the devisees or legatees, that might be had by law against the heirs of the testator, or the testator's next of kin, if the property had descended to them.

(G) A testator's revocation of a will shall be valid only if the testator, at the time of the revocation, has the same capacity as the law requires for the execution of a will.

(H) As used in this section:

(1) "Trust with powers created by or available to the former spouse" means a trust that is revocable by the former spouse, with respect to which the former spouse has a power of withdrawal, or with respect to which the former spouse may take a distribution that is not subject to an ascertainable standard but does not mean a trust in which those powers of the former spouse are revoked by section ~~4339.62~~ 5815.31 of the Revised Code or similar provisions in the law of another state.

(2) "Ascertainable standard" means a standard that is related to a trust beneficiary's health, maintenance, support, or education.

Sec. 2109.24. The probate court at any time may accept the resignation of any fiduciary upon the fiduciary's proper accounting, if the fiduciary was appointed by, is under the control of, or is accountable to the court.

If a fiduciary fails to make and file an inventory as required by sections 2109.58, 2111.14, and 2115.02 of the Revised Code or to render a just and true account of the fiduciary's administration at the times required by section 2109.301, 2109.302, or 2109.303 of the Revised Code, and if the failure continues for thirty days after the fiduciary has been notified by the court of

the expiration of the relevant time, the fiduciary forthwith may be removed by the court and shall receive no allowance for the fiduciary's services unless the court enters upon its journal its findings that the delay was necessary and reasonable.

The court may remove any ~~such~~ fiduciary, after giving the fiduciary not less than ten days' notice, for habitual drunkenness, neglect of duty, incompetency, or fraudulent conduct, because the interest of the property, testamentary trust, or estate that the fiduciary is responsible for administering demands it, or for any other cause authorized by law.

The court may remove a testamentary trustee upon the written application of more than one-half of the persons having an interest in the estate controlled by the testamentary trustee, but the testamentary trustee is not to be considered as a person having an interest in the estate under the proceedings; except that no testamentary trustee appointed under a will shall be removed upon such written application unless for a good cause.

Sec. 2109.37. (A) Except as otherwise provided by law, including division (D) of this section, or by the instrument creating the trust, a fiduciary having funds belonging to a trust which are to be invested may invest them in the following:

(1) Bonds or other obligations of the United States or of this state;

(2) Bonds or other interest-bearing obligations of any county, municipal corporation, school district, or other legally constituted political taxing subdivision within the state, provided that such county, municipal corporation, school district, or other subdivision has not defaulted in the payment of the interest on any of its bonds or interest-bearing obligations, for more than one hundred twenty days during the ten years immediately preceding the investment by the fiduciary in the bonds or other obligations, and provided that such county, municipal corporation, school district, or other subdivision, is not, at the time of the investment, in default in the payment of principal or interest on any of its bonds or other interest-bearing obligations;

(3) Bonds or other interest-bearing obligations of any other state of the United States which, within twenty years prior to the making of such investment, has not defaulted for more than ninety days in the payment of principal or interest on any of its bonds or other interest-bearing obligations;

(4) Any bonds issued by or for federal land banks and any debentures issued by or for federal intermediate credit banks under the "Federal Farm Loan Act of 1916," 39 Stat. 360, 12 U.S.C.A. 641, as amended; or any debentures issued by or for banks for cooperatives under the "Farm Credit Act of 1933," 48 Stat. 257, 12 U.S.C.A. 131, as amended;

(5) Notes which are: (a) secured by a first mortgage on real estate held in fee and located in the state, improved by a unit designed principally for residential use for not more than four families or by a combination of such dwelling unit and business property, the area designed or used for nonresidential purposes not to exceed fifty per cent of the total floor area; (b) secured by a first mortgage on real estate held in fee and located in the state, improved with a building designed for residential use for more than four families or with a building used primarily for business purposes, if the unpaid principal of the notes secured by such mortgage does not exceed ten per cent of the value of the estate or trust or does not exceed five thousand dollars, whichever is greater; or (c) secured by a first mortgage on an improved farm held in fee and located in the state, provided that such mortgage requires that the buildings on the mortgaged property shall be well insured against loss by fire, and so kept, for the benefit of the mortgagee, until the debt is paid, and provided that the unpaid principal of the notes secured by the mortgage shall not exceed fifty per cent of the fair value of the mortgaged real estate at the time the investment is made, and the notes shall be payable not more than five years after the date on which the investment in them is made; except that the unpaid principal of the notes may equal sixty per cent of the fair value of the mortgaged real estate at the time the investment is made, and may be payable over a period of fifteen years following the date of the investment by the fiduciary if regular installment payments are required sufficient to amortize four per cent or more of the principal of the outstanding notes per annum and if the unpaid principal and interest become due and payable at the option of the holder upon any default in the payment of any installment of interest or principal upon the notes, or of taxes, assessments, or insurance premiums upon the mortgaged premises or upon the failure to cure any such default within any grace period provided therein not exceeding ninety days in duration;

(6) Life, endowment, or annuity contracts of legal reserve life insurance companies regulated by sections 3907.01 to 3907.21, 3909.01 to 3909.17, 3911.01 to 3911.24, 3913.01 to 3913.10, 3915.01 to 3915.15, and 3917.01 to 3917.05 of the Revised Code, and licensed by the superintendent of insurance to transact business within the state, provided that the purchase of contracts authorized by this division shall be limited to executors or the successors to their powers when specifically authorized by will and to guardians and trustees, which contracts may be issued on the life of a ward, a beneficiary of a trust fund, or according to a will, or upon the life of a person in whom such ward or beneficiary has an insurable interest and the contracts shall be drawn by the insuring company so that the proceeds shall

be the sole property of the person whose funds are so invested;

(7) Notes or bonds secured by mortgages and insured by the federal housing administrator or debentures issued by such administrator;

(8) Obligations issued by a federal home loan bank created under the "Federal Home Loan Bank Act of 1932," 47 Stat. 725, 12 U.S.C.A. 1421, as amended;

(9) Shares and certificates or other evidences of deposits issued by a federal savings and loan association organized and incorporated under the "Home Owners' Loan Act of 1933," 48 Stat. 128, 12 U.S.C.A. 1461, as amended, to the extent and only to the extent that those shares or certificates or other evidences of deposits are insured pursuant to the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as amended;

(10) Bonds issued by the home owners' loan corporation created under the "Home Owners' Act of 1933," 48 Stat. 128, 12 U.S.C.A. 1461, as amended;

(11) Obligations issued by the national mortgage association created under the "National Housing Act," 48 Stat. 1246 (1934), 12 U.S.C.A. 1701, as amended;

(12) Shares and certificates or other evidences of deposits issued by a domestic savings and loan association organized under the laws of the state, which association has obtained insurance of accounts pursuant to the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as amended, or as may be otherwise provided by law, only to the extent that such evidences of deposits are insured under that act, as amended;

(13) Shares and certificates or other evidences of deposits issued by a domestic savings and loan association organized under the laws of the state, provided that no fiduciary may invest such deposits except with the approval of the probate court, and then in an amount not to exceed the amount which the fiduciary is permitted to invest under division (A)(12) of this section;

(14) In savings accounts in, or certificates or other evidences of deposits issued by, a national bank located in the state or a state bank located in and organized under the laws of the state by depositing the funds in the bank, and such national or state bank when itself acting in a fiduciary capacity may deposit the funds in savings accounts in, or certificates or other evidences of deposits issued by, its own savings department or any bank subsidiary corporation owned or controlled by the bank holding company that owns or controls such national or state bank; provided that no deposit shall be made by any fiduciary, individual, or corporate, unless the deposits

of the depository bank are insured by the federal deposit insurance corporation created under the "Federal Deposit Insurance Corporation Act of 1933," 48 Stat. 162, 12 U.S.C. 264, as amended, and provided that the deposit of the funds of any one trust in any such savings accounts in, or certificates or other evidences of deposits issued by, any one bank shall not exceed the sum insured under that act, as amended;

(15) Obligations consisting of notes, bonds, debentures, or equipment trust certificates issued under an indenture, which are the direct obligations, or in the case of equipment trust certificates are secured by direct obligations, of a railroad or industrial corporation, or a corporation engaged directly and primarily in the production, transportation, distribution, or sale of electricity or gas, or the operation of telephone or telegraph systems or waterworks, or in some combination of them; provided that the obligor corporation is one which is incorporated under the laws of the United States, any state, or the District of Columbia, and the obligations are rated at the time of purchase in the highest or next highest classification established by at least two standard rating services selected from a list of the standard rating services which shall be prescribed by the superintendent of financial institutions; provided that every such list shall be certified by the superintendent to the clerk of each probate court in the state, and shall continue in effect until a different list is prescribed and certified as provided in this division;

(16) Obligations issued, assumed, or guaranteed by the international finance corporation or by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the African development bank, or other similar development bank in which the president, as authorized by congress and on behalf of the United States, has accepted membership, provided that the obligations are rated at the time of purchase in the highest or next highest classification established by at least one standard rating service selected from a list of standard rating services which shall be prescribed by the superintendent of financial institutions;

(17) Securities of any investment company, as defined in and registered under sections 3 and 8 of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8, that are invested exclusively in forms of investment or in instruments that are fully collateralized by forms of investment in which the fiduciary is permitted to invest pursuant to divisions (A)(1) to (16) of this section, provided that, in addition to such forms of investment, the investment company may, for the purpose of reducing risk of loss or of stabilizing investment returns, engage in hedging transactions.

(B) No administrator or executor may invest funds belonging to an estate in any asset other than a direct obligation of the United States that has a maturity date not exceeding one year from the date of investment, or other than in a short-term investment fund that is invested exclusively in obligations of the United States or of its agencies, or primarily in such obligations and otherwise only in variable demand notes, corporate money market instruments including, but not limited to, commercial paper, or fully collateralized repurchase agreements or other evidences of indebtedness that are payable on demand or generally have a maturity date not exceeding ninety-one days from the date of investment, except with the approval of the probate court or with the permission of the instruments creating the trust.

(C)(1) In addition to the investments allowed by this section, a guardian or trustee, with the approval of the court, may invest funds belonging to the trust in productive real estate located within the state, provided that neither the guardian nor the trustee nor any member of the family of either has any interest in such real estate or in the proceeds of the purchase price. The title to any real estate so purchased by a guardian must be taken in the name of the ward.

(2) Notwithstanding the provisions of division (C)(1) of this section, the court may permit the funds to be used to purchase or acquire a home for the ward or an interest in a home for the ward in which a member of the ward's family may have an interest.

(D) If the fiduciary is a trustee appointed by and accountable to the probate court, the fiduciary shall invest the trust's assets pursuant to the requirements and standards set forth in ~~sections 1339.52 to 1339.61 of the Revised Code~~ Ohio Uniform Prudent Investor Act.

Sec. 2109.62. (A)(1) Upon the filing of a motion by a trustee with the court that has jurisdiction over the trust, upon the provision of reasonable notice to all beneficiaries who are known and in being and who have vested or contingent interests in the trust, and after holding a hearing, the court may terminate the trust, in whole or in part, if it determines that all of the following apply:

- (a) It is no longer economically feasible to continue the trust.
- (b) The termination of the trust is for the benefit of the beneficiaries.
- (c) The termination of the trust is equitable and practical.
- (d) The current value of the trust is less than one hundred thousand dollars.

(2) The existence of a spendthrift or similar provision in a trust instrument or will does not preclude the termination of a trust pursuant to this section.

(B) If property is to be distributed from an estate being probated to a trust and the termination of the trust pursuant to this section does not clearly defeat the intent of the testator, the probate court has jurisdiction to order the outright distribution of the property or to make the property custodial property under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code. A probate court may so order whether the application for the order is made by an inter vivos trustee named in the will of the decedent or by a testamentary trustee.

(C) Upon the termination of a trust pursuant to this section, the probate court shall order the distribution of the trust estate in accordance with any provision specified in the trust instrument for the premature termination of the trust. If there is no provision of that nature in the trust instrument, the probate court shall order the distribution of the trust estate among the beneficiaries of the trust in accordance with their respective beneficial interests and in a manner that the court determines to be equitable. For purposes of ordering the distribution of the trust estate among the beneficiaries of the trust under this division, the court shall consider all of the following:

(1) The existence of any agreement among the beneficiaries with respect to their beneficial interests;

(2) The actuarial values of the separate beneficial interests of the beneficiaries;

(3) Any expression of preference of the beneficiaries that is contained in the trust instrument.

~~(D) Unless otherwise represented or bound, a minor, an incapacitated or unborn person, or a person whose identity or location is unknown and is not reasonably ascertainable may be represented by or bound by another person who has a substantially identical interest in the trust as that minor, incapacitated or unborn person, or person whose identity or location is unknown and is not reasonably ascertainable, but only to the extent that there is no conflict of interest between the person who is represented or bound and the person who represents or binds that person. As used in this division, "minor" means a person who is under eighteen years of age.~~

Sec. 2109.68. Allocation of receipts and expenditures between principal and income by an executor, administrator, or testamentary trustee shall be as prescribed in sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code.

Sec. 2109.69. (A) Subject to division (B) of this section, the provisions of Chapters 5801. to 5811. of the Revised Code apply to testamentary trusts except to the extent that any provision of those chapters conflicts with any

provision of Chapter 2109. of the Revised Code, or with any other provision of the Revised Code, that applies specifically to testamentary trusts and except to the extent that any provision of Chapters 5801. to 5811. of the Revised Code is clearly inapplicable to testamentary trusts.

(B) Section 5808.13 of the Revised Code applies to testamentary trusts whether or not that section conflicts with any provision of Chapter 2109. of the Revised Code or any other provision of the Revised Code that applies specifically to testamentary trusts.

Sec. 2111.131. (A) The probate court may enter an order that authorizes a person under a duty to pay or deliver money or personal property to a minor who does not have a guardian of the person and estate or a guardian of the estate, to perform that duty in amounts not exceeding five thousand dollars annually, by paying or delivering the money or property to any of the following:

- (1) The guardian of the person only of the minor;
- (2) The minor's natural guardians, if any, as determined pursuant to section 2111.08 of the Revised Code;
- (3) The ~~minor himself~~ minor's own self;
- (4) Any person who has the care and custody of the minor and with whom the minor resides, other than a guardian of the person only or a natural guardian;
- (5) A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor;
- (6) A custodian designated by the court in its order, for the minor under sections ~~4339.34~~ 5814.01 to ~~4339.39~~ 5814.09 of the Revised Code.

(B) An order entered pursuant to division (A) of this section authorizes the person or entity specified in it, to receive the money or personal property on behalf of the minor from the person under the duty to pay or deliver it, in amounts not exceeding five thousand dollars annually. Money or personal property so received by guardians of the person only, natural guardians, and custodians as described in division (A)(4) of this section may be used by them only for the support, maintenance, or education of the minor involved. The order of the court is prima-facie evidence that a guardian of the person only, a natural guardian, or a custodian as described in division (A)(4) of this section has the authority to use the money or personal property received.

(C) A person who pays or delivers moneys or personal property in accordance with a court order entered pursuant to division (A) of this section is not responsible for the proper application of the moneys or property by the recipient.

Sec. 2113.861. Except as provided in section ~~4339.45~~ 5815.27 of the

Revised Code, the generation-skipping transfer tax imposed by Chapter 13 of subtitle B of the Internal Revenue Code of 1986, 100 Stat. 2718, 26 U.S.C. 2601-2624, as amended, and the generation-skipping tax levied by division (B) of section 5731.181 of the Revised Code shall be apportioned in the manner described in section 2113.86 of the Revised Code.

Sec. 2305.22. Sections 2305.03 to 2305.21, 1302.98, and 1304.35 of the Revised Code, respecting lapse of time as a bar to suit, do not apply in the case of ~~a continuing and subsisting trust, nor to an action by a vendee of real property, in possession thereof, to obtain a conveyance of #~~ the real property.

Sec. 5111.15. If a recipient of medical assistance is the beneficiary of a trust created pursuant to section ~~1339.51~~ 5815.28 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 recipient, the recipient's estate, the settlor, or the settlor's estate and to claims arising under this chapter against the recipient, the recipient's estate, the settlor, or the settlor's estate.

Sec. 5111.151. (A) This section applies to eligibility determinations for all cases involving medicaid provided pursuant to this chapter, qualified medicare beneficiaries, specified low-income medicare beneficiaries, qualifying individuals-1, qualifying individuals-2, and medical assistance for covered families and children.

(B) As used in this section:

(1) "Trust" means any arrangement in which a grantor transfers real or personal property to a trust with the intention that it be held, managed, or administered by at least one trustee for the benefit of the grantor or beneficiaries. "Trust" includes any legal instrument or device similar to a trust.

(2) "Legal instrument or device similar to a trust" includes, but is not limited to, escrow accounts, investment accounts, partnerships, contracts, and other similar arrangements that are not called trusts under state law but are similar to a trust and to which all of the following apply:

(a) The property in the trust is held, managed, retained, or administered by a trustee.

(b) The trustee has an equitable, legal, or fiduciary duty to hold, manage, retain, or administer the property for the benefit of the beneficiary.

(c) The trustee holds identifiable property for the beneficiary.

(3) "Grantor" is a person who creates a trust, including all of the following:

(a) An individual;

(b) An individual's spouse;

(c) A person, including a court or administrative body, with legal authority to act in place of or on behalf of an individual or an individual's spouse;

(d) A person, including a court or administrative body, that acts at the direction or on request of an individual or the individual's spouse.

(4) "Beneficiary" is a person or persons, including a grantor, who benefits in some way from a trust.

(5) "Trustee" is a person who manages a trust's principal and income for the benefit of the beneficiaries.

(6) "Person" has the same meaning as in section 1.59 of the Revised Code and includes an individual, corporation, business trust, estate, trust, partnership, and association.

(7) "Applicant" is an individual who applies for medicaid or the individual's spouse.

(8) "Recipient" is an individual who receives medicaid or the individual's spouse.

(9) "Revocable trust" is a trust that can be revoked by the grantor or the beneficiary, including all of the following, even if the terms of the trust state that it is irrevocable:

(a) A trust that provides that the trust can be terminated only by a court;

(b) A trust that terminates on the happening of an event, but only if the event occurs at the direction or control of the grantor, beneficiary, or trustee.

(10) "Irrevocable trust" is a trust that cannot be revoked by the grantor or terminated by a court and that terminates only on the occurrence of an event outside of the control or direction of the beneficiary or grantor.

(11) "Payment" is any disbursement from the principal or income of the trust, including actual cash, noncash or property disbursements, or the right to use and occupy real property.

(12) "Payments to or for the benefit of the applicant or recipient" is a payment to any person resulting in a direct or indirect benefit to the applicant or recipient.

(13) "Testamentary trust" is a trust that is established by a will and does not take effect until after the death of the person who created the trust.

(C) If an applicant or recipient is a beneficiary of a trust, the county department of job and family services shall determine what type of trust it is and shall treat the trust in accordance with the appropriate provisions of this section and rules adopted by the department of job and family services governing trusts. The county department of job and family services may determine that the trust or portion of the trust is one of the following:

- (1) A countable resource;
- (2) Countable income;
- (3) A countable resource and countable income;
- (4) Not a countable resource or countable income.

(D)(1) A trust or legal instrument or device similar to a trust shall be considered a medicaid qualifying trust if all of the following apply:

- (a) The trust was established on or prior to August 10, 1993.
- (b) The trust was not established by a will.
- (c) The trust was established by an applicant or recipient.

(d) The applicant or recipient is or may become the beneficiary of all or part of the trust.

(e) Payment from the trust is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the applicant or recipient.

(2) If a trust meets the requirement of division (D)(1) of this section, the amount of the trust that is considered by the county department of job and family services as an available resource to the applicant or recipient shall be the maximum amount of payments permitted under the terms of the trust to be distributed to the applicant or recipient, assuming the full exercise of discretion by the trustee or trustees. The maximum amount shall include only amounts that are permitted to be distributed but are not distributed from either the income or principal of the trust.

(3) Amounts that are actually distributed from a medicaid qualifying trust to a beneficiary for any purpose shall be treated in accordance with rules adopted by the department of job and family services governing income.

(4) Availability of a medicaid qualifying trust shall be considered without regard to any of the following:

(a) Whether or not the trust is irrevocable or was established for purposes other than to enable a grantor to qualify for medicaid, medical assistance for covered families and children, or as a qualified medicare beneficiary, specified low-income medicare beneficiary, qualifying individual-1, or qualifying individual-2;

(b) Whether or not the trustee actually exercises discretion.

(5) If any real or personal property is transferred to a medicaid qualifying trust that is not distributable to the applicant or recipient, the transfer shall be considered an improper disposition of assets and shall be subject to section 5111.0116 of the Revised Code and rules to implement that section adopted under section 5111.011 of the Revised Code.

(6) The baseline date for the look-back period for disposition of assets

involving a medicaid qualifying trust shall be the date on which the applicant or recipient is both institutionalized and first applies for medicaid.

(E)(1) A trust or legal instrument or device similar to a trust shall be considered a self-settled trust if all of the following apply:

(a) The trust was established on or after August 11, 1993.

(b) The trust was not established by a will.

(c) The trust was established by an applicant or recipient, spouse of an applicant or recipient, or a person, including a court or administrative body, with legal authority to act in place of or on behalf of an applicant, recipient, or spouse, or acting at the direction or on request of an applicant, recipient, or spouse.

(2) A trust that meets the requirements of division (E)(1) of this section and is a revocable trust shall be treated by the county department of job and family services as follows:

(a) The corpus of the trust shall be considered a resource available to the applicant or recipient.

(b) Payments from the trust to or for the benefit of the applicant or recipient shall be considered unearned income of the applicant or recipient.

(c) Any other payments from the trust shall be considered an improper disposition of assets and shall be subject to section 5111.0116 of the Revised Code and rules to implement that section adopted under section 5111.011 of the Revised Code.

(3) A trust that meets the requirements of division (E)(1) of this section and is an irrevocable trust shall be treated by the county department of job and family services as follows:

(a) If there are any circumstances under which payment from the trust could be made to or for the benefit of the applicant or recipient, including a payment that can be made only in the future, the portion from which payments could be made shall be considered a resource available to the applicant or recipient. The county department of job and family services shall not take into account when payments can be made.

(b) Any payment that is actually made to or for the benefit of the applicant or recipient from either the corpus or income shall be considered unearned income.

(c) If a payment is made to someone other than to the applicant or recipient and the payment is not for the benefit of the applicant or recipient, the payment shall be considered an improper disposition of assets and shall be subject to section 5111.0116 of the Revised Code and rules to implement that section adopted under section 5111.011 of the Revised Code.

(d) The date of the disposition shall be the later of the date of

establishment of the trust or the date of the occurrence of the event.

(e) When determining the value of the disposed asset under this provision, the value of the trust shall be its value on the date payment to the applicant or recipient was foreclosed.

(f) Any income earned or other resources added subsequent to the foreclosure date shall be added to the total value of the trust.

(g) Any payments to or for the benefit of the applicant or recipient after the foreclosure date but prior to the application date shall be subtracted from the total value. Any other payments shall not be subtracted from the value.

(h) Any addition of assets after the foreclosure date shall be considered a separate disposition.

(4) If a trust is funded with assets of another person or persons in addition to assets of the applicant or recipient, the applicable provisions of this section and rules adopted by the department of job and family services governing trusts shall apply only to the portion of the trust attributable to the applicant or recipient.

(5) The availability of a self-settled trust shall be considered without regard to any of the following:

(a) The purpose for which the trust is established;

(b) Whether the trustees have exercised or may exercise discretion under the trust;

(c) Any restrictions on when or whether distributions may be made from the trust;

(d) Any restrictions on the use of distributions from the trust.

(6) The baseline date for the look-back period for dispositions of assets involving a self-settled trust shall be the date on which the applicant or recipient is both institutionalized and first applies for medicaid.

(F) The principal or income from any of the following shall be exempt from being counted as a resource by a county department of job and family services:

(1)(a) A special needs trust that meets all of the following requirements:

(i) The trust contains assets of an applicant or recipient under sixty-five years of age and may contain the assets of other individuals.

(ii) The applicant or recipient is disabled as defined in rules adopted by the department of job and family services.

(iii) The trust is established for the benefit of the applicant or recipient by a parent, grandparent, legal guardian, or a court.

(iv) The trust requires that on the death of the applicant or recipient the state will receive all amounts remaining in the trust up to an amount equal to the total amount of medicaid paid on behalf of the applicant or recipient.

(b) If a special needs trust meets the requirements of division (F)(1)(a) of this section and has been established for a disabled applicant or recipient under sixty-five years of age, the exemption for the trust granted pursuant to division (F) of this section shall continue after the disabled applicant or recipient becomes sixty-five years of age if the applicant or recipient continues to be disabled as defined in rules adopted by the department of job and family services. Except for income earned by the trust, the grantor shall not add to or otherwise augment the trust after the applicant or recipient attains sixty-five years of age. An addition or augmentation of the trust by the applicant or recipient with the applicant's own assets after the applicant or recipient attains sixty-five years of age shall be treated as an improper disposition of assets.

(c) Cash distributions to the applicant or recipient shall be counted as unearned income. All other distributions from the trust shall be treated as provided in rules adopted by the department of job and family services governing in-kind income.

(d) Transfers of assets to a special needs trust shall not be treated as an improper transfer of resources. Assets held prior to the transfer to the trust shall be considered as countable assets or countable income or countable assets and income.

(2)(a) A qualifying income trust that meets all of the following requirements:

(i) The trust is composed only of pension, social security, and other income to the applicant or recipient, including accumulated interest in the trust.

(ii) The income is received by the individual and the right to receive the income is not assigned or transferred to the trust.

(iii) The trust requires that on the death of the applicant or recipient the state will receive all amounts remaining in the trust up to an amount equal to the total amount of medicaid paid on behalf of the applicant or recipient.

(b) No resources shall be used to establish or augment the trust.

(c) If an applicant or recipient has irrevocably transferred or assigned the applicant's or recipient's right to receive income to the trust, the trust shall not be considered a qualifying income trust by the county department of job and family services.

(d) Income placed in a qualifying income trust shall not be counted in determining an applicant's or recipient's eligibility for medicaid. The recipient of the funds may place any income directly into a qualifying income trust without those funds adversely affecting the applicant's or recipient's eligibility for medicaid. Income generated by the trust that

remains in the trust shall not be considered as income to the applicant or recipient.

(e) All income placed in a qualifying income trust shall be combined with any countable income not placed in the trust to arrive at a base income figure to be used for spend down calculations.

(f) The base income figure shall be used for post-eligibility deductions, including personal needs allowance, monthly income allowance, family allowance, and medical expenses not subject to third party payment. Any income remaining shall be used toward payment of patient liability. Payments made from a qualifying income trust shall not be combined with the base income figure for post-eligibility calculations.

(g) The base income figure shall be used when determining the spend down budget for the applicant or recipient. Any income remaining after allowable deductions are permitted as provided under rules adopted by the department of job and family services shall be considered the applicant's or recipient's spend down liability.

(3)(a) A pooled trust that meets all of the following requirements:

(i) The trust contains the assets of the applicant or recipient of any age who is disabled as defined in rules adopted by the department of job and family services.

(ii) The trust is established and managed by a nonprofit association.

(iii) A separate account is maintained for each beneficiary of the trust but, for purposes of investment and management of funds, the trust pools the funds in these accounts.

(iv) Accounts in the trust are established by the applicant or recipient, the applicant's or recipient's parent, grandparent, or legal guardian, or a court solely for the benefit of individuals who are disabled.

(v) The trust requires that, to the extent that any amounts remaining in the beneficiary's account on the death of the beneficiary are not retained by the trust, the trust pay to the state the amounts remaining in the trust up to an amount equal to the total amount of medicaid paid on behalf of the beneficiary.

(b) Cash distributions to the applicant or recipient shall be counted as unearned income. All other distributions from the trust shall be treated as provided in rules adopted by the department of job and family services governing in-kind income.

(c) Transfers of assets to a pooled trust shall not be treated as an improper disposition of assets. Assets held prior to the transfer to the trust shall be considered as countable assets, countable income, or countable assets and income.

(4) A supplemental services trust that meets the requirements of section ~~1339.51~~ 5815.28 of the Revised Code and to which all of the following apply:

(a) A person may establish a supplemental services trust pursuant to section ~~1339.51~~ 5815.28 of the Revised Code only for another person who is eligible to receive services through one of the following agencies:

- (i) The department of mental retardation and developmental disabilities;
- (ii) A county board of mental retardation and developmental disabilities;
- (iii) The department of mental health;
- (iv) A board of alcohol, drug addiction, and mental health services.

(b) A county department of job and family services shall not determine eligibility for another agency's program. An applicant or recipient shall do one of the following:

(i) Provide documentation from one of the agencies listed in division (F)(4)(a) of this section that establishes that the applicant or recipient was determined to be eligible for services from the agency at the time of the creation of the trust;

(ii) Provide an order from a court of competent jurisdiction that states that the applicant or recipient was eligible for services from one of the agencies listed in division (F)(4)(a) of this section at the time of the creation of the trust.

(c) At the time the trust is created, the trust principal does not exceed the maximum amount permitted. The maximum amount permitted in calendar year 2006 is two hundred twenty-two thousand dollars. Each year thereafter, the maximum amount permitted is the prior year's amount plus two thousand dollars.

(d) A county department of job and family services shall review the trust to determine whether it complies with the provisions of section ~~1339.51~~ 5815.28 of the Revised Code.

(e) Payments from supplemental services trusts shall be exempt as long as the payments are for supplemental services as defined in rules adopted by the department of job and family services. All supplemental services shall be purchased by the trustee and shall not be purchased through direct cash payments to the beneficiary.

(f) If a trust is represented as a supplemental services trust and a county department of job and family services determines that the trust does not meet the requirements provided in division (F)(4) of this section and section ~~1339.51~~ 5815.28 of the Revised Code, the county department of job and family services shall not consider it an exempt trust.

(G)(1) A trust or legal instrument or device similar to a trust shall be

considered a trust established by an individual for the benefit of the applicant or recipient if all of the following apply:

- (a) The trust is created by a person other than the applicant or recipient.
- (b) The trust names the applicant or recipient as a beneficiary.
- (c) The trust is funded with assets or property in which the applicant or recipient has never held an ownership interest prior to the establishment of the trust.

(2) Any portion of a trust that meets the requirements of division (G)(1) of this section shall be an available resource only if the trust permits the trustee to expend principal, corpus, or assets of the trust for the applicant's or recipient's medical care, care, comfort, maintenance, health, welfare, general well being, or any combination of these purposes.

(3) A trust that meets the requirements of division (G)(1) of this section shall be considered an available resource even if the trust contains any of the following types of provisions:

- (a) A provision that prohibits the trustee from making payments that would supplant or replace medicaid or other public assistance;
- (b) A provision that prohibits the trustee from making payments that would impact or have an effect on the applicant's or recipient's right, ability, or opportunity to receive medicaid or other public assistance;
- (c) A provision that attempts to prevent the trust or its corpus or principal from being counted as an available resource.

(4) A trust that meets the requirements of division (G)(1) of this section shall not be counted as an available resource if at least one of the following circumstances applies:

- (a) If a trust contains a clear statement requiring the trustee to preserve a portion of the trust for another beneficiary or remainderman, that portion of the trust shall not be counted as an available resource. Terms of a trust that grant discretion to preserve a portion of the trust shall not qualify as a clear statement requiring the trustee to preserve a portion of the trust.
- (b) If a trust contains a clear statement requiring the trustee to use a portion of the trust for a purpose other than medical care, care, comfort, maintenance, welfare, or general well being of the applicant or recipient, that portion of the trust shall not be counted as an available resource. Terms of a trust that grant discretion to limit the use of a portion of the trust shall not qualify as a clear statement requiring the trustee to use a portion of the trust for a particular purpose.
- (c) If a trust contains a clear statement limiting the trustee to making fixed periodic payments, the trust shall not be counted as an available resource and payments shall be treated in accordance with rules adopted by

the department of job and family services governing income. Terms of a trust that grant discretion to limit payments shall not qualify as a clear statement requiring the trustee to make fixed periodic payments.

(d) If a trust contains a clear statement that requires the trustee to terminate the trust if it is counted as an available resource, the trust shall not be counted as an available resource. Terms of a trust that grant discretion to terminate the trust do not qualify as a clear statement requiring the trustee to terminate the trust.

(e) If a person obtains a judgment from a court of competent jurisdiction that expressly prevents the trustee from using part or all of the trust for the medical care, care, comfort, maintenance, welfare, or general well being of the applicant or recipient, the trust or that portion of the trust subject to the court order shall not be counted as a resource.

(f) If a trust is specifically exempt from being counted as an available resource by a provision of the Revised Code, rules, or federal law, the trust shall not be counted as a resource.

(g) If an applicant or recipient presents a final judgment from a court demonstrating that the applicant or recipient was unsuccessful in a civil action against the trustee to compel payments from the trust, the trust shall not be counted as an available resource.

(h) If an applicant or recipient presents a final judgment from a court demonstrating that in a civil action against the trustee the applicant or recipient was only able to compel limited or periodic payments, the trust shall not be counted as an available resource and payments shall be treated in accordance with rules adopted by the department of job and family services governing income.

(i) If an applicant or recipient provides written documentation showing that the cost of a civil action brought to compel payments from the trust would be cost prohibitive, the trust shall not be counted as an available resource.

(5) Any actual payments to the applicant or recipient from a trust that meet the requirements of division (G)(1) of this section, including trusts that are not counted as an available resource, shall be treated as provided in rules adopted by the department of job and family services governing income. Payments to any person other than the applicant or recipient shall not be considered income to the applicant or recipient. Payments from the trust to a person other than the applicant or recipient shall not be considered an improper disposition of assets.

Sec. 5119.01. The director of mental health is the chief executive and administrative officer of the department of mental health. The director may

establish procedures for the governance of the department, conduct of its employees and officers, performance of its business, and custody, use, and preservation of departmental records, papers, books, documents, and property. Whenever the Revised Code imposes a duty upon or requires an action of the department or any of its institutions, the director shall perform the action or duty in the name of the department, except that the medical director appointed pursuant to section 5119.07 of the Revised Code shall be responsible for decisions relating to medical diagnosis, treatment, rehabilitation, quality assurance, and the clinical aspects of the following: licensure of hospitals and residential facilities, research, community mental health plans, and delivery of mental health services.

The director shall:

(A) Adopt rules for the proper execution of the powers and duties of the department with respect to the institutions under its control, and require the performance of additional duties by the officers of the institutions as necessary to fully meet the requirements, intents, and purposes of this chapter. In case of an apparent conflict between the powers conferred upon any managing officer and those conferred by such sections upon the department, the presumption shall be conclusive in favor of the department.

(B) Adopt rules for the nonpartisan management of the institutions under the department's control. An officer or employee of the department or any officer or employee of any institution under its control who, by solicitation or otherwise, exerts influence directly or indirectly to induce any other officer or employee of the department or any of its institutions to adopt the exerting officer's or employee's political views or to favor any particular person, issue, or candidate for office shall be removed from the exerting officer's or employee's office or position, by the department in case of an officer or employee, and by the governor in case of the director.

(C) Appoint such employees, including the medical director, as are necessary for the efficient conduct of the department, and prescribe their titles and duties;

(D) Prescribe the forms of affidavits, applications, medical certificates, orders of hospitalization and release, and all other forms, reports, and records that are required in the hospitalization or admission and release of all persons to the institutions under the control of the department, or are otherwise required under this chapter or Chapter 5122. of the Revised Code;

(E) Contract with hospitals licensed by the department under section 5119.20 of the Revised Code for the care and treatment of mentally ill patients, or with persons, organizations, or agencies for the custody, supervision, care, or treatment of mentally ill persons receiving services

elsewhere than within the enclosure of a hospital operated under section 5119.02 of the Revised Code;

(F) Exercise the powers and perform the duties relating to community mental health facilities and services that are assigned to the director under this chapter and Chapter 340. of the Revised Code;

(G) Develop and implement clinical evaluation and monitoring of services that are operated by the department;

(H) At the director's discretion, adopt rules establishing standards for the adequacy of services provided by community mental health facilities, and certify the compliance of such facilities with the standards for the purpose of authorizing their participation in the health care plans of health insuring corporations under Chapter 1751. and sickness and accident insurance policies issued under Chapter 3923. of the Revised Code. The director shall cease to certify such compliance two years after ~~the effective date of this amendment~~ June 6, 2001. The director shall rescind the rules after the date the director ceases to certify such compliance.

(I) Adopt rules establishing standards for the performance of evaluations by a forensic center or other psychiatric program or facility of the mental condition of defendants ordered by the court under section 2919.271, or 2945.371 of the Revised Code, and for the treatment of defendants who have been found incompetent to stand trial and ordered by the court under section 2945.38, 2945.39, 2945.401, or 2945.402 of the Revised Code to receive treatment in facilities;

(J) On behalf of the department, have the authority and responsibility for entering into contracts and other agreements;

(K) Prepare and publish regularly a state mental health plan that describes the department's philosophy, current activities, and long-term and short-term goals and activities;

(L) Adopt rules in accordance with Chapter 119. of the Revised Code specifying the supplemental services that may be provided through a trust authorized by section ~~4339.51~~ 5815.28 of the Revised Code;

(M) Adopt rules in accordance with Chapter 119. of the Revised Code establishing standards for the maintenance and distribution to a beneficiary of assets of a trust authorized by section ~~4339.51~~ 5815.28 of the Revised Code.

Sec. 5119.17. (A) As used in this section, "supplemental services" has the same meaning as in section ~~4339.51~~ 5815.28 of the Revised Code.

(B) There is hereby created in the state treasury the services fund for individuals with mental illness. On the death of the beneficiary of a trust created pursuant to section ~~4339.51~~ 5815.28 of the Revised Code, the

portion of the remaining assets of the trust specified in the trust instrument shall be deposited to the credit of the fund. Money credited to the fund shall be used for individuals with mental illness.

Supplemental services may be provided through the department or boards of alcohol, drug addiction, and mental health services. In accordance with Chapter 119. of the Revised Code, the department of mental health may adopt any rules necessary to implement this section.

Sec. 5121.04. (A) The department of mental retardation and developmental disabilities shall investigate the financial condition of the residents in institutions, residents whose care or treatment is being paid for in a private facility or home under the control of the department, and of the relatives named in section 5121.06 of the Revised Code as liable for the support of such residents, in order to determine the ability of any resident or liable relatives to pay for the support of the resident and to provide suitable clothing as required by the superintendent of the institution.

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

(1) Subject to divisions (B)(10) and (11) of this section, a resident without dependents shall be liable for the full applicable cost. A resident without dependents who has a gross annual income equal to or exceeding the sum of the full applicable cost, plus fifty dollars per month, regardless of the source of such income, shall pay currently the full amount of the applicable cost; if the 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 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 resident's support. Subject to divisions (B)(10) and (11) of this section, the estate of a 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 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 residents prior to October 7, 1977.

(2) The ability to pay of a resident with dependents, or of a liable

relative of a resident either with or without dependents, shall be determined in accordance with the 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, but in no event for more than thirty days in any calendar year, the resident with dependents or the liable relative of a 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 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 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 Resident

or Liable Relative (FN a)	Number of Dependents (FN b)							
	1	2	3	4	5	6	7	8 or more
	Rate of Support (In Percentages)							
\$15,000 or less	--	--	--	--	--	--	--	--
15,001 to 17,500	20	--	--	--	--	--	--	--
17,501 to 20,000	25	20	--	--	--	--	--	--
20,001 to 21,000	30	25	20	--	--	--	--	--
21,001 to 22,000	35	30	25	20	--	--	--	--
22,001 to 23,000	40	35	30	25	20	--	--	--
23,001 to 24,000	45	40	35	30	25	20	--	--
24,001 to 25,000	50	45	40	35	30	25	20	--
25,001 to 26,000	55	50	45	40	35	30	25	20
26,001 to 27,000	60	55	50	45	40	35	30	25
27,001 to 28,000	70	60	55	50	45	40	35	30
28,001 to 30,000	80	70	60	55	50	45	40	35
30,001 to 40,000	90	80	70	60	55	50	45	40
40,001 and over	100	90	80	70	60	55	50	45

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

Footnote b. The number of dependents includes the liable relative but excludes a resident in an institution. "Dependent" includes any person who receives more than half the person's support from the resident or the resident's liable relative.

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

(4) Additional dependencies may be claimed if:

(a) The liable relative is blind;

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

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

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

(5) If with respect to any resident with dependents there is chargeable under division (B)(2) of this section less than fifty per cent of the applicable cost or, if the 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 resident there is a liable relative who has an estate having a value in excess of fifteen thousand dollars or if such resident has a dependent and an estate having a value in excess of fifteen thousand dollars, there shall be paid with respect to such 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 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 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 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 resident is covered by an insurance policy, or other contract that provides for payment of expenses for care and treatment for mental

retardation or other developmental disability at or from an institution or facility (including a community service unit under the jurisdiction of the department), the other provisions of this section, except divisions (B)(8), (10), and (11) of this section, and of section 5121.01 of the Revised Code shall be suspended to the extent that such insurance policy or other contract is in force, and such resident shall be charged the full amount of the applicable cost. Any insurance 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 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 5123.89 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 resident shall disclose pertinent medical information concerning the 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 resident or the 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 resident with or without dependents is the beneficiary of a trust created pursuant to section ~~1339.51~~ 5815.28 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 resident, the resident's estate, the settlor, or the settlor's estate and to claims arising under this chapter against the resident, the resident's estate, the settlor, or the settlor's estate.

(11) If the department 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 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 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 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 resident is admitted to an institution under the department's control 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.

Sec. 5121.10. Upon the death of a resident or former resident of any institution under the jurisdiction of the department of mental retardation and

developmental disabilities, or upon the death of a person responsible under section 5121.06 of the Revised Code for the support of a resident, the department may waive the presentation of any claim for support against the estate of such decedent, when in its judgment an otherwise dependent person will be directly benefited by the estate. Claims against an estate for support of a resident are subject to section ~~1339.51~~ 5815.28 and Chapter 2117. of the Revised Code, and shall be treated, and may be barred, the same as the claims of other creditors of the estate, pursuant to that section or chapter.

The department may accept from a guardian or trustee of a resident a contract agreeing to pay to the state from the property of the guardian's or trustee's ward before or at the death of the ward a fixed annual amount for the support of the ward while the ward is a resident, with interest at four per cent per annum. A copy of the contract shall be filed in the probate court of the proper county and duly entered as a part of the records concerning the ward.

Sec. 5121.30. As used in sections 5121.30 to 5121.56 of the Revised Code:

(A) "Community mental health services client" or "client" means a person receiving state-operated community mental health services.

(B) "Countable assets" means all of the following:

- (1) Cash;
- (2) Bank deposits;
- (3) Securities;
- (4) Individual retirement accounts;
- (5) Qualified employer plans, including 401(k) and Keogh plans;
- (6) Annuities;
- (7) Funds in a trust created under section ~~1339.51~~ 5815.28 of the

Revised Code;

- (8) Investment property and income;
- (9) The cash surrender values of life insurance policies;
- (10) Assets acquired by gift, bequest, devise, or inheritance;
- (11) Any other asset determined by the department of mental health to be equivalent to the assets enumerated in this division.

(C) "Federal poverty level" or "FPL" means the income level represented by the poverty guidelines as revised annually by the United States department of health and human services in accordance with section 673(2) of the "Omnibus Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, for a family size equal to the size of the family of the person whose income is being determined.

(D) "Federal poverty guidelines" means the poverty guidelines as revised annually by the United States department of health and human services in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, for a family size equal to the size of the family of the person whose income is being determined.

(E) "Hospital" means an institution, hospital, or other place established, controlled, or supervised by the department of mental health under Chapter 5119. of the Revised Code.

(F) "Liable relative" means all of the following:

- (1) A patient's spouse;
- (2) A patient's mother or father, or both, if the patient is under eighteen years of age;
- (3) A patient's guardian.

(G) "Patient" means a person admitted to a hospital for inpatient care or treatment, including a person transferred to a hospital from a state correctional institution or a person under indictment or conviction who has been transferred to a hospital.

Sec. 5121.52. On the death of a person who is a patient, or has been a patient in a hospital, or on the death of a person responsible under section 5121.34 of the Revised Code for the support of a patient, the department of mental health may waive the presentation of any claim for support against the estate of such decedent, when in its judgment an otherwise dependent person will be directly benefited by the estate. Claims against an estate for support of a patient are subject to section ~~4339.54~~ 5815.28 and Chapter 2117. of the Revised Code, and shall be treated, and may be barred, the same as the claims of other creditors of the estate, pursuant to that section or chapter.

The department of mental health may accept from a guardian or trustee of a patient a contract agreeing to pay to the state from the property of the guardian's or trustee's ward before or at the death of the ward a fixed annual amount for the support of the ward while the ward is a patient, with interest at four per cent per annum. A copy of the contract shall be filed in the probate court of the proper county and duly entered as a part of the records concerning the ward.

Sec. 5123.04. (A) The director of mental retardation and developmental disabilities is the executive head of the department of mental retardation and developmental disabilities. All duties conferred on the department and its institutions by law or by order of the director shall be performed under such rules as the director prescribes, and shall be under the director's control. The

director shall establish bylaws for the government of all institutions under the jurisdiction of the department. Except as otherwise is provided as to appointments by chiefs of divisions, the director shall appoint such employees as are necessary for the efficient conduct of the department, and shall prescribe their titles and duties. If the director is not a licensed physician, decisions relating to medical diagnosis and treatment shall be the responsibility of a licensed physician appointed by the director.

(B) The director shall adopt rules for the proper execution of the powers and duties of the department.

(C) The director shall adopt rules establishing standards that mental retardation programs and facilities shall follow when performing evaluations of the mental condition of defendants ordered by the court under section 2919.271 or 2945.371 of the Revised Code, and for the treatment of defendants who have been found incompetent to stand trial under section 2945.38 of the Revised Code, and certify the compliance of such programs and facilities with the standards.

(D) On behalf of the department, the director has the authority to, and responsibility for, entering into contracts and other agreements.

(E) The director shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(1) Specify the supplemental services that may be provided through a trust authorized by section ~~1339.51~~ 5815.28 of the Revised Code;

(2) Establish standards for the maintenance and distribution to a beneficiary of assets of a trust authorized by section ~~1339.51~~ 5815.28 of the Revised Code.

(F) The director shall provide monitoring of county boards of mental retardation and developmental disabilities.

Sec. 5123.28. (A) Except as otherwise provided in this division, money or property deposited with managing officers of institutions under the jurisdiction of the department of mental retardation and developmental disabilities by any resident under the department's control or by relatives, guardians, conservators, and others for the special benefit of such resident, as well as all other funds and all other income paid to the resident, to ~~his~~ the resident's estate, or on ~~his~~ the resident's behalf, or paid to the managing officer or to the institution as representative payee or otherwise paid on the resident's behalf, shall remain in the hands of such managing officers in appropriate accounts for use accordingly. Each such managing officer shall keep itemized book accounts of the receipt and disposition of such money and property, which book shall be open at all times to the inspection of the department. The director of mental retardation and developmental

disabilities shall adopt rules governing the deposit, transfer, withdrawal, or investment of such funds and the income of the funds, as well as rules under which such funds and income shall be paid by managing officers, institutions, or district managers for the support of such residents pursuant to Chapter 5121. of the Revised Code, or for their other needs.

This division does not require, and shall not be construed as requiring, the deposit of the principal or income of a trust created pursuant to section ~~1339.51~~ 5815.28 of the Revised Code with managing officers of institutions under the jurisdiction of the department.

(B) Whenever any resident confined in a state institution under the jurisdiction of the department dies, escapes, or is discharged from the institution, any personal funds of the resident remain in the hands of the managing officer of the institution, and no demand is made upon the managing officer by the owner of the funds or ~~his~~ the owner's legally appointed representative, the managing officer shall hold the funds in the personal deposit fund for a period of at least one year during which time the managing officer shall make every effort possible to locate the owner or ~~his~~ the owner's legally appointed representative. If, at the end of this period, no demand has been made for the funds, the managing officer shall dispose of the funds as follows:

(1) All money in a personal deposit fund in excess of ten dollars due for the support of a resident, shall be paid in accordance with Chapter 5121. of the Revised Code.

(2) All money in a personal deposit fund in excess of ten dollars not due for the support of a resident, shall be placed to the credit of the institution's local account designated as the "industrial and entertainment" fund.

(3) The first ten dollars to the credit of a resident shall be placed to the credit of the institution's local account designated as the "industrial and entertainment" fund.

(C) Whenever any resident in any state institution subject to the jurisdiction of the department dies, escapes, or is discharged from the institution, any personal effects of the resident remain in the hands of the managing officer of the institution, and no demand is made upon the managing officer by the owner of the personal effects or ~~his~~ the owner's legally appointed representative, the managing officer shall hold and dispose of the personal effects in the following manner. All the miscellaneous personal effects shall be held for a period of at least one year, during which time the managing officer shall make every effort possible to locate the owner or ~~his~~ the owner's legal representative. If, at the end of this period, no demand has been made by the owner of the property or ~~his~~ the owner's legal

representative, the managing officer shall file with the county recorder of the county of commitment of such owner, all deeds, wills, contract mortgages, or assignments. The balance of the personal effects shall be sold at public auction after being duly advertised, and the funds turned over to the treasurer of state for credit to the general revenue fund. If any of the property is not of a type to be filed with the county recorder and is not salable at public auction, the managing officer of the institution shall destroy that property.

Sec. 5123.40. There is hereby created in the state treasury the services fund for individuals with mental retardation and developmental disabilities. On the death of the beneficiary of a trust created pursuant to section ~~1339.51~~ 5815.28 of the Revised Code, the portion of the remaining assets of the trust specified in the trust instrument shall be deposited to the credit of the fund.

Money credited to the fund shall be used for individuals with mental retardation and developmental disabilities. In accordance with Chapter 119. of the Revised Code, the department of mental retardation and developmental disabilities may adopt any rules necessary to implement this section.

Sec. 5801.01. As used in Chapters 5801. to 5811. of the Revised Code:

(A) "Action," with respect to an act of a trustee, includes a failure to act.

(B) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

(C) "Beneficiary" means a person that has a present or future beneficial interest in a trust, whether vested or contingent, or that, in a capacity other than that of trustee, holds a power of appointment over trust property, or a charitable organization that is expressly designated in the terms of the trust to receive distributions. "Beneficiary" does not include any charitable organization that is not expressly designated in the terms of the trust to receive distributions, but to whom the trustee may in its discretion make distributions.

(D) "Beneficiary surrogate" means a person, other than a trustee, designated by the settlor in the trust instrument to receive notices, information, and reports otherwise required to be provided to a current beneficiary under divisions (B)(8) and (9) of section 5801.04 of the Revised Code.

(E) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in division (A) of section 5804.05 of the Revised Code.

(F) "Current beneficiary" means a beneficiary that, on the date the

beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.

(G) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(H) "Guardian of the estate" means a guardian appointed by a court to administer the estate of any individual or to serve as conservator of the property of an individual eighteen years of age or older under section 2111.021 of the Revised Code.

(I) "Guardian of the person" means a guardian appointed by a court to make decisions regarding the support, care, education, health, and welfare of any individual or to serve as conservator of the person of an individual eighteen years of age or older under section 2111.021 of the Revised Code. "Guardian of the person" does not include a guardian ad litem.

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

(K) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(L) "Jurisdiction," with respect to a geographic area, includes a state or country.

(M) "Mandatory distribution" means a distribution of income or principal, including a distribution upon termination of the trust, that the trustee is required to make to a beneficiary under the terms of the trust. Mandatory distributions do not include distributions that a trustee is directed or authorized to make pursuant to a support or other standard, regardless of whether the terms of the trust provide that the trustee "may" or "shall" make the distributions pursuant to a support or other standard.

(N) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental agency or instrumentality, public corporation, or any other legal or commercial entity.

(O) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable by a trustee that is limited by an ascertainable standard or that is exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(P) "Property" means anything or any interest in anything that may be the subject of ownership.

(Q) "Qualified beneficiary" means a beneficiary to whom, on the date the beneficiary's qualification is determined, any of the following applies:

(1) The beneficiary is a distributee or permissible distributee of trust income or principal.

(2) The beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in division (Q)(1) of this section terminated on that date, but the termination of those interests would not cause the trust to terminate.

(3) The beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(R) "Revocable," as applied to a trust, means revocable at the time of determination by the settlor alone or by the settlor with the consent of any person other than a person holding an adverse interest. A trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a power of attorney, or a guardian of the person or estate of the settlor, is serving.

(S) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(T) "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

(U) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(V) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(W) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust and any amendments to that instrument.

(X) "Trustee" includes an original, additional, and successor trustee and a cotrustee.

(Y)(1) "Wholly discretionary trust" means a trust to which all of the following apply:

(a) The trust is irrevocable.

(b) Distributions of income or principal from the trust may or shall be made to or for the benefit of the beneficiary only at the trustee's discretion.

(c) The beneficiary does not have a power of withdrawal from the trust.

(d) The terms of the trust use "sole," "absolute," "uncontrolled," or language of similar import to describe the trustee's discretion to make

distributions to or for the benefit of the beneficiary.

(e) The terms of the trust do not provide any standards to guide the trustee in exercising its discretion to make distributions to or for the benefit of the beneficiary.

(f) The beneficiary is not the settlor, the trustee, or a cotrustee.

(g) The beneficiary does not have the power to become the trustee or a cotrustee.

(2) A trust may be a wholly discretionary trust with respect to one or more but less than all beneficiaries.

(3) If a beneficiary has a power of withdrawal, the trust may be a wholly discretionary trust with respect to that beneficiary during any period in which the beneficiary may not exercise the power. During a period in which the beneficiary may exercise the power, both of the following apply:

(a) The portion of the trust the beneficiary may withdraw may not be a wholly discretionary trust with respect to that beneficiary;

(b) The portion of the trust the beneficiary may not withdraw may be a wholly discretionary trust with respect to that beneficiary.

(4) If the beneficiary and one or more others have made contributions to the trust, the portion of the trust attributable to the beneficiary's contributions may not be a wholly discretionary trust with respect to that beneficiary, but the portion of the trust attributable to the contributions of others may be a wholly discretionary trust with respect to that beneficiary. If a beneficiary has a power of withdrawal, then upon the lapse, release, or waiver of the power, the beneficiary is treated as having made contributions to the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greatest of the following amounts:

(a) The amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code;

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

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

(5) Notwithstanding divisions (Y)(1)(f) and (g) of this section, a trust may be a wholly discretionary trust if the beneficiary is, or has the power to become, a trustee only with respect to the management or the investment of the trust assets, and not with respect to making discretionary distribution decisions. With respect to a trust established for the benefit of an individual who is blind or disabled as defined in 42 U.S.C. 1382c(a)(2) or (3), as

amended, a wholly discretionary trust may include either or both of the following:

(a) Precatory language regarding its intended purpose of providing supplemental goods and services to or for the benefit of the beneficiary, and not to supplant benefits from public assistance programs;

(b) A prohibition against providing food, clothing, and shelter to the beneficiary.

Sec. 5801.011. Chapters 5801. to 5811. of the Revised Code may be cited as the Ohio trust code.

Sec. 5801.02. Except as otherwise provided in any provision of Chapters 5801. to 5811. of the Revised Code, those chapters apply to charitable and noncharitable inter vivos express trusts and to trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. Chapters 5801. to 5811. of the Revised Code apply to testamentary trusts to the extent provided by section 2109.69 of the Revised Code.

Sec. 5801.03. (A) Subject to division (B) of this section, a person has knowledge of a fact if any of the following apply:

(1) The person has actual knowledge of the fact.

(2) The person has received notice or notification of the fact.

(3) From all the facts and circumstances known to the person at the time in question, the person has reason to know the fact.

(B) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time an employee having responsibility to act for the trust received the information or the information would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

Sec. 5801.04. (A) Except as otherwise provided in the terms of the trust, Chapters 5801. to 5811. of the Revised Code govern the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(B) The terms of a trust prevail over any provision of Chapters 5801. to 5811. of the Revised Code except the following:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith and in accordance with the purposes of the trust;

(3) The requirement that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) The power of the court to modify or terminate a trust under sections 5804.10 to 5804.16 of the Revised Code;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Chapter 5805. of the Revised Code;

(6) The power of the court under section 5807.02 of the Revised Code to require, dispense with, or modify or terminate a bond;

(7) The power of the court under division (B) of section 5807.08 of the Revised Code to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) Subject to division (C) of this section, the duty under divisions (B)(2) and (3) of section 5808.13 of the Revised Code to notify current beneficiaries of an irrevocable trust who have attained twenty-five years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports;

(9) Subject to division (C) of this section, the duty under division (A) of section 5808.13 of the Revised Code to respond to the request of a current beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

(10) The effect of an exculpatory term under section 5810.08 of the Revised Code;

(11) The rights under sections 5810.10 to 5810.13 of the Revised Code of a person other than a trustee or beneficiary;

(12) Periods of limitation for commencing a judicial proceeding;

(13) The power of the court to take any action and exercise any jurisdiction that may be necessary in the interests of justice;

(14) The subject-matter jurisdiction of the court for commencing a proceeding as provided in section 5802.03 of the Revised Code.

(C) With respect to one or more of the current beneficiaries, the settlor, in the trust instrument, may waive or modify the duties of the trustee described in divisions (B)(8) and (9) of this section. The waiver or modification may be made only by the settlor designating in the trust instrument one or more beneficiary surrogates to receive any notices, information, or reports otherwise required under those divisions to be provided to the current beneficiaries. If the settlor makes a waiver or

modification pursuant to this division, the trustee shall provide the notices, information, and reports to the beneficiary surrogate or surrogates in lieu of providing them to the current beneficiaries. The beneficiary surrogate or surrogates shall act in good faith to protect the interests of the current beneficiaries for whom the notices, information, or reports are received. A waiver or modification made under this division shall be effective for so long as the beneficiary surrogate or surrogates, or their successor or successors designated in accordance with the terms of the trust instrument, act in that capacity.

Sec. 5801.05. The common law of trusts and principles of equity continue to apply in this state, except to the extent modified by Chapters 5801. to 5811. or another section of the Revised Code.

Sec. 5801.06. The law of the jurisdiction designated in the terms of a trust determines the meaning and effect of the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue. In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue determines the meaning and effect of the terms.

Sec. 5801.07. (A) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, the terms of a trust designating the principal place of administration of the trust are valid and controlling if a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction or if all or part of the administration occurs in the designated jurisdiction.

(B) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(C) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by division (B) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(D) The trustee shall notify the current beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty days before initiating the transfer. The notice of a proposed transfer shall include all of the following:

(1) The name of the jurisdiction to which the principal place of administration is to be transferred;

(2) The address and telephone number at the new location at which the

trustee can be contacted:

(3) An explanation of the reasons for the proposed transfer;

(4) The date on which the trustee expects the proposed transfer to occur.

(E) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 5807.04 of the Revised Code.

Sec. 5801.08. (A) Notice to a person or the sending of a document to a person under Chapters 5801. to 5811. of the Revised Code shall be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(B) Notice otherwise required or a document otherwise required to be sent under Chapters 5801. to 5811. of the Revised Code is not required to be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(C) The person to be notified or sent a document may waive notice or the sending of a document under Chapters 5801. to 5811. of the Revised Code.

(D) Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.

Sec. 5801.09. (A) Whenever Chapters 5801. to 5811. of the Revised Code require notice to current or qualified beneficiaries of a trust, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

(B) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 5804.08 or 5804.09 of the Revised Code has the rights of a current beneficiary under Chapters 5801. to 5811. of the Revised Code.

Sec. 5801.10. (A) As used in this section, "creditor" means any of the following:

(1) A person holding a debt or security for a debt entered into by a trustee on behalf of the trust;

(2) A person holding a debt secured by one or more assets of the trust;

(3) A person having a claim against the trustee or the assets of the trust under section 5805.06 of the Revised Code;

(4) A person who has attached through legal process a beneficiary's interest in the trust.

(B) The parties to an agreement under this section shall be all of the following, or their representatives under the representation provisions of Chapter 5803. of the Revised Code, except that only the settlor and any trustee are required to be parties to an amendment of any revocable trust:

(1) The settlor if living and if no adverse income or transfer tax results would arise from the settlor's participation;

(2) All beneficiaries;

(3) All currently serving trustees;

(4) Creditors, if their interest is to be affected by the agreement.

(C) The persons specified in division (B) of this section may by written instrument enter into an agreement with respect to any matter concerning the construction of, administration of, or distributions under the trust instrument, the investment of income or principal held by the trustee, or other matters. The agreement is valid only to the extent that it does not effect a termination of the trust before the date specified for the trust's termination in the trust instrument, does not change the interests of the beneficiaries in the trust except as necessary to effect a modification described in division (C)(5) or (6) of this section, and includes terms and conditions that could be properly approved by the court under Chapters 5801. to 5811. of the Revised Code or other applicable law. Matters that may be resolved by a private settlement agreement include, but are not limited to, all of the following:

(1) Determining classes of creditors, beneficiaries, heirs, next of kin, or other persons;

(2) Resolving disputes arising out of the administration or distribution under the trust instrument, including disputes over the construction of the language of the trust instrument or construction of the language of other writings that affect the trust instrument;

(3) Granting to the trustee necessary or desirable powers not granted in the trust instrument or otherwise provided by law, to the extent that those powers either are not inconsistent with the express provisions or purposes of the trust instrument or, if inconsistent with the express provisions or purposes of the trust instrument, are necessary for the due administration of the trust instrument;

(4) Modifying the trust instrument, if the modification is not inconsistent with any dominant purpose or objective of the trust;

(5) Modifying the trust instrument in the manner required to qualify the gift under the trust instrument for the charitable estate or gift tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by the

Internal Revenue Code and regulations promulgated under it in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest;

(6) Modifying the trust instrument in the manner required to qualify any gift under the trust instrument for the estate tax marital deduction available to noncitizen spouses, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the Internal Revenue Code and regulations promulgated under it in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest;

(7) Resolving any other matter that arises under Chapters 5801. to 5811. of the Revised Code.

(D) No agreement shall be entered into under this section affecting the rights of a creditor without the creditor's consent or affecting the collection rights of federal, state, or local taxing authorities.

(E) Any agreement entered into under this section that complies with the requirements of division (C) of this section shall be final and binding on the trustee, the settlor if living, all beneficiaries, and their heirs, successors, and assigns.

(F) Notwithstanding anything in this section, in division (D) of section 5803.03 of the Revised Code, or in any other rule of law to the contrary, a trustee serving under the trust instrument shall only represent its own individual or corporate interests in negotiating or entering into an agreement subject to this section. No trustee serving under the trust instrument shall be considered to represent any settlor, beneficiary, or the interests of any settlor or beneficiary in negotiating or entering into an agreement subject to this section.

(G) Any party to a private settlement agreement entered into under this section may request the court to approve the agreement, to determine whether the representation as provided in Chapter 5803. of the Revised Code was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

(H) If an agreement entered into under this section contains a provision requiring binding arbitration of any disputes arising under the agreement, the provision is enforceable.

(I) Nothing in this section affects any of the following:

(1) The right of a beneficiary to disclaim under section 5815.36 of the Revised Code;

(2) The termination or modification of a trust under section 5804.10, 5804.11, 5804.12, 5804.13, 5804.14, 5804.15, or 5804.16 of the Revised

Code:

(3) The ability of a trustee to divide or consolidate a trust under section 5804.17 of the Revised Code.

(J) Nothing in this section restricts or limits the jurisdiction of any court to dispose of matters not covered by agreements under this section or to supervise the acts of trustees appointed by that court.

(K) This section shall be liberally construed to favor the validity and enforceability of agreements entered into under it.

(L) A trustee serving under the trust instrument is not liable to any third person arising from any loss due to that trustee's actions or inactions taken or omitted in good faith reliance on the terms of an agreement entered into under this section.

(M) This section does not apply to any of the following:

(1) A charitable trust that has one or more charitable organizations as qualified beneficiaries;

(2) A charitable trust the terms of which authorize or direct the trustee to distribute trust income or principal to one or more charitable organizations to be selected by the trustee, or for one or more charitable purposes described in division (A) of section 5804.05 of the Revised Code, if any of the following apply:

(a) The distributions may be made on the date that an agreement under this section would be entered into.

(b) The distributions could be made on the date that an agreement under this section would be entered into if the interests of the current beneficiaries of the trust terminated on that date, but the termination of those interests would not cause the trust to terminate.

(c) The distributions could be made on the date that an agreement under this section would be entered into if the trust terminated on that date.

Sec. 5802.01. (A) A court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(B) An inter vivos trust is not subject to continuing judicial supervision unless ordered by the court. Trusts created pursuant to a section of the Revised Code or a judgment or decree of a court are subject to continuing judicial supervision to the extent provided by the section, judgment, or decree or by court order.

(C) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

Sec. 5802.02. (A) By accepting the trusteeship of a trust having its

principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(B) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from the trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(C) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

Sec. 5802.03. The probate division of the court of common pleas has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the court of common pleas to issue writs and orders and to hear and determine any action that involves an inter vivos trust.

Sec. 5803.01. (A) Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person.

(B) The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(C) Except as otherwise provided in sections 5804.11 and 5806.02 of the Revised Code, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(D) A settlor may not represent and bind a beneficiary under this chapter with respect to the termination or modification of a trust under division (A) of section 5804.11 of the Revised Code.

Sec. 5803.02. To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

Sec. 5803.03. To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute, all of the following apply:

(A) A guardian of the estate may represent and bind the estate that the

guardian of the estate controls.

(B) A guardian of the person may represent and bind the ward if a guardian of the estate has not been appointed.

(C) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal.

(D) Except as provided in division (F) of section 5801.10 of the Revised Code, a trustee may represent and bind the beneficiaries of the trust.

(E) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(F) A parent may represent and bind the parent's minor or unborn child if neither a guardian for the child's estate or a guardian of the person has been appointed.

Sec. 5803.04. Unless otherwise represented, a minor, incapacitated individual, unborn individual, or person whose identity or location is unknown and not reasonably ascertainable may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

Sec. 5803.05. (A) If the court determines that an interest is not represented under this chapter or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated individual, unborn individual, or person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(B) A representative may act on behalf of the individual represented with respect to any matter arising under Chapters 5801. to 5811. of the Revised Code, whether or not a judicial proceeding concerning the trust is pending.

(C) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

Sec. 5804.01. A trust may be created by any of the following methods:

(A) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(B) Declaration by the owner of property that the owner holds identifiable property as trustee;

(C) Exercise of a power of appointment in favor of a trustee;

(D) A court order.

Sec. 5804.02. (A) A trust is created only if all of the following apply:

(1) The settlor of the trust, other than the settlor of a trust created by a

court order, has capacity to create a trust.

(2) The settlor of the trust, other than the settlor of a trust created by a court order, indicates an intention to create the trust.

(3) The trust has a definite beneficiary or is one of the following:

(a) A charitable trust;

(b) A trust for the care of an animal, as provided in section 5804.08 of the Revised Code;

(c) A trust for a noncharitable purpose, as provided in section 5804.09 of the Revised Code.

(4) The trustee has duties to perform.

(5) The same person is not the sole trustee and sole beneficiary.

(B) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(C) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(D) A trust is valid regardless of the existence, size, or character of the corpus of the trust. This division applies to any trust that was executed prior to, or is executed on or after, the effective date of Chapters 5801. to 5811. of the Revised Code.

(E) A trust is not invalid because a person, including, but not limited to, the creator of the trust, is or may become the sole trustee and the sole holder of the present beneficial enjoyment of the corpus of the trust, provided that one or more other persons hold a vested, contingent, or expectant interest relative to the enjoyment of the corpus of the trust upon the cessation of the present beneficial enjoyment. A merger of the legal and equitable titles to the corpus of a trust described in this division does not occur in its creator, and, notwithstanding any contrary provision of Chapter 2107. of the Revised Code, the trust is not a testamentary trust that is required to comply with that chapter in order for its corpus to be legally distributed to other beneficiaries in accordance with the provisions of the trust upon the cessation of the present beneficial enjoyment. This division applies to any trust that satisfies the provisions of this division, whether the trust was executed prior to, on, or after October 10, 1991.

Sec. 5804.03. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation, any of the following applies:

(A) The settlor was domiciled in, had a place of abode in, or was a

national of the jurisdiction.

(B) A trustee was domiciled or had a place of business in the jurisdiction.

(C) Any trust property was located in the jurisdiction.

Sec. 5804.04. A trust may be created only to the extent that its purposes are lawful, not contrary to public policy, and possible to achieve. A trust exists, and its assets shall be held, for the benefit of its beneficiaries in accordance with the interests of the beneficiaries in the trust.

Sec. 5804.05. (A) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(B) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(C) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

Sec. 5804.06. A trust is void to the extent its creation was induced by fraud, duress, or undue influence. As used in this section, "fraud," "duress," and "undue influence" have the same meanings for trust validity purposes as they have for purposes of determining the validity of a will.

Sec. 5804.07. Except as required by any section of the Revised Code not in Chapters 5801. to 5811. of the Revised Code, a trust is not required to be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

Sec. 5804.08. (A) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(B) A person appointed in the terms of a trust or, if no person is so appointed, a person appointed by the court may enforce a trust authorized by this section. A person having an interest in the welfare of an animal that is provided care by a trust authorized by this section may request the court to appoint a person to enforce the trust or to remove a person appointed.

(C) The property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required

for the intended use must be distributed to the settlor if then living or to the settlor's successors in interest.

Sec. 5804.09. Except as otherwise provided in section 5804.08 of the Revised Code or any other section of the Revised Code:

(A) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. A trust created for a noncharitable purpose may not be enforced for more than twenty-one years.

(B) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(C) The property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor if then living or to the settlor's successors in interest.

Sec. 5804.10. (A) In addition to the methods of termination prescribed by sections 5804.11 to 5804.14 of the Revised Code, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, a court determines that no purpose of the trust remains to be achieved, or a court determines that the purposes of the trust have become unlawful or impossible to achieve.

(B) A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed modification or termination under sections 5804.11 to 5804.16 of the Revised Code or to approve or disapprove a trust combination or division under section 5804.17 of the Revised Code. The settlor may commence a proceeding to approve or disapprove a proposed modification or termination under section 5804.11 of the Revised Code. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 5804.13 of the Revised Code.

Sec. 5804.11. (A) If upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. An agent under a power of attorney may exercise a settlor's power to consent to a trust's modification or termination only to the extent expressly authorized by both the power of attorney and the terms of the trust. The settlor's guardian of the estate may exercise a settlor's power to consent to a trust's modification or termination with the approval

of the court supervising the guardianship if an agent is not so authorized. The guardian of the settlor's person may exercise a settlor's power to consent to a trust's modification or termination with the approval of the court supervising the guardianship if an agent is not so authorized and a guardian of the estate has not been appointed. This division applies only to irrevocable trusts created on or after the effective date of Chapters 5801. to 5811. of the Revised Code and to revocable trusts that become irrevocable on or after the effective date of Chapters 5801. to 5811. of the Revised Code. This division does not apply to a noncharitable irrevocable trust described in 42 U.S.C. 1396p(d)(4).

(B) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified, but not to remove or replace the trustee, upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust. A spendthrift provision in the terms of the trust may, but is not presumed to, constitute a material purpose of the trust.

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

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

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

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

Sec. 5804.12. (A) The court may modify the administrative or dispositive terms of a trust or terminate the trust if because of circumstances not anticipated by the settlor modification or termination will further the purposes of the trust. To the extent practicable, the court shall make the modification in accordance with the settlor's probable intention.

(B) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or impair the trust's administration.

(C) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

Sec. 5804.13. (A) Except as otherwise provided in division (B) of this

section, if a particular charitable purpose becomes unlawful, impracticable, or impossible to achieve, all of the following apply:

(1) The trust does not fail in whole or in part.

(2) The trust property does not revert to the settlor or the settlor's successors in interest.

(3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes. In accordance with section 109.25 of the Revised Code, the attorney general is a necessary party to a judicial proceeding brought under this section.

(B) A provision in the terms of a charitable trust for the distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under division (A) of this section to apply cy pres to modify or terminate the trust.

Sec. 5804.14. (A)(1) Except as provided in division (A)(2) of this section, after notice to the qualified beneficiaries, the trustee of an inter vivos trust consisting of trust property having a total value of less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(2) Division (A)(1) of this section does not apply to any of the following:

(a) A charitable trust that has one or more charitable organizations as qualified beneficiaries;

(b) A charitable trust the terms of which authorize or direct the trustee to distribute trust income or principal to one or more charitable organizations to be selected by the trustee, or for one or more charitable purposes described in division (A) of section 5804.05 of the Revised Code, if any of the following apply:

(i) The distributions may be made on the date that the trust would be terminated under division (A)(1) of this section.

(ii) The distributions could be made on the date that the trust would be terminated under division (A)(1) of this section if the interests of the current beneficiaries of the trust terminated on that date, but the termination of those interests would not cause the trust to terminate.

(iii) The distributions could be made on the date that the trust would be terminated under division (A)(1) of this section, if the trust terminated on that date but not under that division.

(B) If an inter vivos trust consists of trust property having a total value of less than one hundred thousand dollars, the court may modify or

terminate the trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(C) Upon the termination of a trust pursuant to division (A)(1) of this section, the trustee shall distribute the trust estate in accordance with any provision specified in the trust instrument for the premature termination of the trust. If there is no provision of that nature in the trust instrument, the trustee shall distribute the trust estate among the beneficiaries of the trust in accordance with their respective beneficial interests and in a manner that the trustee determines to be equitable. For purposes of distributing the trust estate among the beneficiaries of the trust under this division, the trustee shall consider all of the following:

(1) The existence of any agreement among the beneficiaries with respect to their beneficial interests;

(2) The actuarial values of the separate beneficial interests of the beneficiaries;

(3) Any expression of preference of the beneficiaries that is contained in the trust instrument.

(D) Upon the termination of a trust pursuant to division (B) of this section, the probate court shall order the distribution of the trust estate in accordance with any provision specified in the trust instrument for the premature termination of the trust. If there is no provision of that nature in the trust instrument, the probate court shall order the distribution of the trust estate among the beneficiaries of the trust in accordance with their respective beneficial interests and in a manner that the court determines to be equitable. For purposes of ordering the distribution of the trust estate among the beneficiaries of the trust under this division, the court shall consider the three factors listed in division (C) of this section.

(E) The existence of a spendthrift or similar provision in a trust instrument or will does not preclude the termination of a trust pursuant to this section.

(F) This section does not apply to an easement for conservation or preservation.

Sec. 5804.15. The court may reform the terms of a trust, even if they are unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Sec. 5804.16. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's

probable intention. The court may provide that the modification has retroactive effect.

Sec. 5804.17. After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust.

Sec. 5804.18. A trust described in 42 U.S.C. 1396p(d)(4) is irrevocable if the terms of the trust prohibit the settlor from revoking it, whether or not the settlor's estate or the settlor's heirs are named as the remainder beneficiary or beneficiaries of the trust upon the settlor's death.

Sec. 5805.01. (A) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest or if it restrains involuntary transfer of a beneficiary's interest and permits voluntary transfer of a beneficiary's interest only with the consent of a trustee who is not the beneficiary.

(B) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(C) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter and in section 5810.04 of the Revised Code, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. Real property or tangible personal property that is owned by the trust but that is made available for a beneficiary's use or occupancy in accordance with the trustee's authority under the trust instrument shall not be considered to have been distributed by the trustee or received by the beneficiary for purposes of allowing a creditor or assignee of the beneficiary to reach the property.

Sec. 5805.02. (A) As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(B) Subject to section 5805.03 of the Revised Code, a spendthrift provision is unenforceable against either of the following:

(1) The beneficiary's child or spouse who has a judgment or court order against the beneficiary for support, but only if distributions can be made for the beneficiary's support or the beneficiary is entitled to receive mandatory distributions under the terms of the trust;

(2) A claim of this state or the United States to the extent provided by the Revised Code or federal law.

(C) A spendthrift provision is enforceable against the beneficiary's

former spouse.

(D) A claimant described in division (B) of this section may obtain from the court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to the relief that is appropriate under the circumstances, considering among any other factors determined appropriate by the court the support needs of the beneficiary, the beneficiary's spouse, and the beneficiary's dependent children or, with respect to a beneficiary who is the recipient of public benefits, the supplemental needs of the beneficiary if the trust was not intended to provide for the beneficiary's basic support.

(E) The only exceptions to the effectiveness of a spendthrift provision are those described in divisions (B) and (D) of this section, in division (B) of section 5805.05 of the Revised Code, and in sections 5805.06 and 5810.04 of the Revised Code.

Sec. 5805.03. Notwithstanding anything to the contrary in division (B) of section 5805.02 of the Revised Code, no creditor or assignee of a beneficiary of a wholly discretionary trust may reach the beneficiary's interest in the trust, or a distribution by the trustee before its receipt by the beneficiary, whether by attachment of present or future distributions to or for the benefit of the beneficiary, by judicial sale, by obtaining an order compelling the trustee to make distributions from the trust, or by any other means, regardless of whether the trust instrument includes a spendthrift provision.

Sec. 5805.04. (A) As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or any other state.

(B) Except as otherwise provided in divisions (C) and (D) of this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if the discretion is expressed in the form of a standard of distribution or the trustee has abused the discretion.

(C) Division (B) of this section does not apply to this state for any claim for support of a beneficiary in a state institution if the terms of the trust do not include a spendthrift provision and do include a standard for distributions to or for the beneficiary under which the trustee may make distributions for the beneficiary's support.

(D) Unless the settlor has explicitly provided in the trust that the beneficiary's child or spouse or both are excluded from benefiting from the trust, to the extent a trustee of a trust that is not a wholly discretionary trust has not complied with a standard of distribution or has abused a discretion,

both of the following apply:

(1) The court may order a distribution to satisfy a judgment or court order against the beneficiary for support of the beneficiary's child or spouse, provided that the court may order the distributions only if distributions can be made for the beneficiary's support under the terms of the trust and that the court may not order any distributions under this division to satisfy a judgment or court order against the beneficiary for support of the beneficiary's former spouse.

(2) The court shall direct the trustee to pay to the child or spouse the amount that is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(E) Even if a trust does not contain a spendthrift provision, to the extent a beneficiary's interest in a trust is subject to the exercise of the trustee's discretion, whether or not such discretion is subject to one or more standards of distribution, the interest may not be ordered sold to satisfy or partially satisfy a claim of the beneficiary's creditor or assignee.

(F) If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim if the beneficiary were not acting as trustee or cotrustee.

Sec. 5805.05. (A) To the extent that a trust that gives a beneficiary the right to receive one or more mandatory distributions does not contain a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to attach present or future mandatory distributions to or for the benefit of the beneficiary or to reach the beneficiary's interest by other means. The court may limit an award under this section to the relief that is appropriate under the circumstances, considering among any other factors determined appropriate by the court, the support needs of the beneficiary, the beneficiary's spouse, and the beneficiary's dependent children or, with respect to a beneficiary who is the recipient of public benefits, the supplemental needs of the beneficiary if the trust was not intended to provide for the beneficiary's basic support. If in exercising its power under this section the court decides to order either a sale of a beneficiary's interest or that a lien be placed on the interest, in deciding between the two types of action, the court shall consider among any other factors it considers relevant the amount of the claim of the creditor or assignee and the proceeds a sale would produce relative to the potential value of the interest to the

beneficiary.

(B) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution the beneficiary is entitled to receive if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

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

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

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

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

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

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

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

(a) The amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code;

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

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

Sec. 5805.07. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

Sec. 5806.01. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

Sec. 5806.02. (A) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This division does not apply to a trust created under an instrument executed before the effective date of this section.

(B) If a revocable trust is created or funded by more than one settlor, all of the following apply:

(1) To the extent the trust consists of community property, either spouse acting alone may revoke the trust, but the trust may be amended only by joint action of both spouses.

(2) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(3) Upon the revocation or amendment of the trust by less than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(C) The settlor may revoke or amend a revocable trust by substantial compliance with a method provided in the terms of the trust or, if the terms of the trust do not provide a method, by any other method manifesting clear and convincing evidence of the settlor's intent, provided that a revocable trust may not be revoked or amended by a will or codicil, regardless of whether it refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust unless the terms of the trust expressly allow it to be revoked or amended by a will or codicil.

(D) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(E) An agent under a power of attorney may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only to the extent expressly authorized by both the terms of the trust and the power.

(F) A guardian of the estate of the settlor or, if no guardian of the estate has been appointed, a guardian of the person of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship.

(G) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

Sec. 5806.03. (A) During the lifetime of the settlor of a revocable trust, whether or not the settlor has capacity to revoke the trust, the rights of the

beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. If the trustee breaches its duty during the lifetime of the settlor, any recovery obtained from the trustee after the settlor becomes incapacitated or dies shall be apportioned by the court. If the settlor is living when the recovery is obtained, the court shall apportion the recovery between the settlor and the trust, or allocate the entire recovery to the settlor or the trust, as it determines to be equitable under the circumstances. If the settlor is not living when the recovery is obtained, the court shall apportion the recovery between the settlor's estate and the trust, or allocate the entire recovery to the settlor's estate or the trust, as it determines to be equitable under the circumstances.

(B) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

Sec. ~~2305.121~~ 5806.04. (A) Any of the following actions pertaining to a revocable trust that is made irrevocable by the death of the ~~grantor settlor~~ of the trust shall be commenced within two years after the date of the death of the ~~grantor settlor~~ of the trust:

- (1) An action to contest the validity of the trust;
- (2) An action to contest the validity of any amendment to the trust that was made during the lifetime of the ~~grantor settlor~~ of the trust;
- (3) An action to contest the revocation of the trust during the lifetime of the ~~grantor settlor~~ of the trust;
- (4) An action to contest the validity of any transfer made to the trust during the lifetime of the ~~grantor settlor~~ of the trust.

(B) Upon the death of the ~~grantor settlor~~ of a revocable trust that was made irrevocable by the death of the ~~grantor settlor~~, the trustee, without liability, may proceed to distribute the trust property in accordance with the terms of the trust unless either of the following applies:

- (1) The trustee has actual knowledge of a pending action to contest the validity of the trust, any amendment to the trust, the revocation of the trust, or any transfer made to the trust during the lifetime of the ~~grantor settlor~~ of the trust.
- (2) The trustee receives written notification from a potential contestant of a potential action to contest the validity of the trust, any amendment to the trust, the revocation of the trust, or any transfer made to the trust during the lifetime of the ~~grantor settlor~~ of the trust, and the action is actually filed within ninety days after the written notification was given to the trustee.

(C) If a distribution of trust property is made pursuant to division (B) of this section, a beneficiary of the trust shall return any distribution to the

extent that it exceeds the distribution to which the beneficiary is entitled if the trust, an amendment to the trust, or a transfer made to the trust later is determined to be invalid.

(D) This section applies only to revocable trusts that are made irrevocable by the death of the ~~grantor~~ settlor of the trust if the grantor dies on or after ~~the effective date of this section~~ July 23, 2002.

Sec. 5807.01. (A) Except as otherwise provided in division (C) of this section, a person designated as trustee accepts the trusteeship by substantially complying with a method of acceptance provided in the terms of the trust or, if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(B) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(C) A person designated as trustee, without accepting the trusteeship, may do either or both of the following:

(1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary;

(2) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

Sec. 5807.02. (A) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(B) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(C) A regulated financial-service institution qualified to do trust business in this state need not give bond, even if required by the terms of the trust.

Sec. 5807.03. (A) If there are three or more cotrustees serving, the cotrustees may act by majority decision.

(B) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(C) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because

of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(D) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(E) A trustee may delegate to a cotrustee duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. A delegation made under this division shall be governed by section 5808.07 of the Revised Code. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(F) Except as otherwise provided in division (G) of this section, and subject to divisions (C) and (E) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(G) Except as otherwise provided in this division, each trustee shall exercise reasonable care to prevent a cotrustee from committing a serious breach of trust and to compel a cotrustee to redress a serious breach of trust. A trustee is not required to exercise reasonable care of that nature under this division, and a trustee is not liable for resulting losses, when section 5815.25 of the Revised Code is applicable or there is more than one other trustee and the other trustees act by majority vote.

(H) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action.

Sec. 5807.04. (A) A vacancy in a trusteeship occurs under any of the following circumstances:

- (1) A person designated as trustee rejects the trusteeship;
- (2) A person designated as trustee cannot be identified or does not exist;
- (3) A trustee resigns;
- (4) A trustee is disqualified or removed;
- (5) A trustee dies;
- (6) A guardian of the estate or person is appointed for an individual serving as trustee.

(B) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(C) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust to act as successor trustee;

(2) By a person appointed by someone designated in the terms of the trust to appoint a successor trustee;

(3) By a person appointed by unanimous agreement of the qualified beneficiaries;

(4) By a person appointed by the court.

(D) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust to act as successor trustee;

(2) By a person appointed by someone designated in the terms of the trust to appoint a successor trustee;

(3) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust;

(4) By a person appointed by the court.

(E) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

Sec. 5807.05. (A) A trustee may resign upon at least thirty days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees or with the approval of the court.

(B) In approving a resignation of a trustee, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(C) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

Sec. 5807.06. (A) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or the court may remove a trustee on its own initiative.

(B) The court may remove a trustee for any of the following reasons:

(1) The trustee has committed a serious breach of trust;

(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries.

(C) Pending a final decision on a request to remove a trustee, or in lieu

of or in addition to removing a trustee, the court may order any appropriate relief under division (B) of section 5810.01 of the Revised Code that is necessary to protect the trust property or the interests of the beneficiaries.

Sec. 5807.07. (A) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(B) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

Sec. 5807.08. (A) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(B) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if the duties of the trustee are substantially different from those contemplated when the trust was created or the compensation specified by the terms of the trust would be unreasonably low or high.

Sec. 5807.09. (A) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for expenses that were properly incurred in the administration of the trust and, to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(B) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Sec. 5808.01. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with Chapters 5801. to 5811. of the Revised Code.

Sec. 5808.02. (A) A trustee shall administer the trust solely in the interests of the beneficiaries.

(B) Subject to the rights of persons dealing with or assisting the trustee as provided in section 5810.12 of the Revised Code, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless one of the following applies:

(1) The transaction was authorized by the terms of the trust or by other provisions of the Revised Code.

(2) The transaction was approved by the court.

(3) The beneficiary did not commence a judicial proceeding within the time allowed by section 5810.05 of the Revised Code.

(4) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 5810.09 of the Revised Code.

(5) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(C) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with one of the following:

(1) The trustee's spouse;

(2) The trustee's descendant, sibling, or parent or the spouse of a trustee's descendant, sibling, or parent;

(3) An agent or attorney of the trustee;

(4) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(D) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(E) An investment by a trustee that is permitted by other provisions of the Revised Code is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Chapter 5809. of the Revised Code.

(F) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(G) This section does not preclude either of the following:

(1) Any transaction authorized by another section of the Revised Code;

(2) Unless the beneficiaries establish that it is unfair, any of the following transactions:

(a) An agreement between a trustee and a beneficiary relating to the

appointment or compensation of the trustee;

(b) Payment of reasonable compensation to the trustee;

(c) A transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) A deposit of trust money in a regulated financial-services institution that is an affiliate of the trustee;

(e) An advance by the trustee of money for the protection of the trust.

(H) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

~~Sec. 1339.55~~ 5808.03. ~~(A) A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.~~

~~(B) If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing, and distributing the trust assets taking into account any differing property, giving due regard to the beneficiaries' respective interests of the beneficiaries.~~

Sec. 5808.04. A trustee shall administer the trust as a prudent person would and shall consider the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

~~Sec. 1339.57~~ 5808.05. ~~Except as otherwise permitted by law, in investing and managing administering a trust assets,~~ a trustee may ~~only~~ incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

Sec. 5808.06. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

~~Sec. 1339.59~~ 5808.07. ~~(A) A trustee may delegate investment duties and management functions of a trust powers~~ that a prudent trustee having comparable skills could properly delegate under the circumstances. In accordance with this division, a trustee shall exercise reasonable care, skill, and caution in doing all of the following:

(1) Selecting an agent, cotrustee, or other fiduciary to whom the delegation is made;

(2) Establishing the scope and terms of the delegation consistent with the purposes and terms of the trust;

(3) Periodically reviewing the agent's, cotrustee's, or other fiduciary's actions in order to monitor the agent's, cotrustee's, or other fiduciary's performance and compliance with the terms of the delegation.

(B) In performing ~~investment or management functions~~ of a trust that ~~are~~ delegated to an agent function, an agent, cotrustee, or other fiduciary owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(C) A trustee who complies with division (A) of this section is not liable to the beneficiaries of the trust or to the trust for the decisions or actions of the agent, cotrustee, or other fiduciary to whom the function was delegated.

(D) By accepting the delegation of ~~investment powers~~ or ~~management functions~~ duties from the trustee of a trust that is subject to the laws of this state, an agent, cotrustee, or other fiduciary submits to the jurisdiction of this state.

Sec. 5808.08. (A) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(B) As provided in section 5815.25 of the Revised Code, a trustee is not liable for losses resulting from certain actions or failures to act when other persons are granted certain powers with respect to the administration of the trust.

(C) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(D) A person other than a beneficiary who holds a power to direct is presumptively a fiduciary who, as a fiduciary, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Sec. 5808.09. A trustee shall take reasonable steps to take control of and protect the trust property.

Sec. 5808.10. (A) A trustee shall keep adequate records of the administration of the trust.

(B) A trustee shall keep trust property separate from the trustee's own property.

(C) Except as otherwise provided in division (D) of this section and in section 2131.21 of the Revised Code, a trustee not subject to federal or state banking regulation shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(D) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

Sec. 5808.11. A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

Sec. 5808.12. A trustee shall take reasonable steps to collect trust property held by third persons. The responsibility of a successor trustee with respect to the administration of the trust by a prior trustee shall be governed by section 5815.24 of the Revised Code.

Sec. 5808.13. (A) A trustee shall keep the current beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

(B) A trustee shall do all of the following:

(1) Upon the request of a beneficiary, promptly furnish to the beneficiary a copy of the trust instrument. If the settlor of a revocable trust that has become irrevocable has completely restated the terms of the trust, the trust instrument furnished by the trustee shall be the restated trust instrument, including any amendments to the restated trust instrument. Nothing in division (B)(1) of this section limits the ability of a beneficiary to obtain a copy of the original trust instrument, any other restatements of the original trust instrument, or amendments to the original trust instrument and any other restatements of the original trust instrument in a judicial proceeding with respect to the trust.

(2) Within sixty days after accepting a trusteeship, notify the current beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) Within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, notify the current beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in division (C) of this section;

(4) Notify the current beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(C) A trustee shall send to the current beneficiaries, and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, the trust assets' respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report for the period during which the former trustee served must be sent to

the current beneficiaries by the former trustee. A personal representative or guardian may send the current beneficiaries a report on behalf of a deceased or incapacitated trustee.

(D) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(E) The trustee may provide information and reports to beneficiaries to whom the provided information and reports are not required to be provided under this section.

(F) Divisions (B)(2) and (3) of this section apply only to a trustee who accepts a trusteeship on or after the effective date of this section, to an irrevocable trust created on or after the effective date of this section, and to a revocable trust that becomes irrevocable on or after the effective date of this section.

Sec. 5808.14. (A) The judicial standard of review for discretionary trusts is that the trustee shall exercise a discretionary power reasonably, in good faith, and in accordance with the terms and purposes of the trust and the interests of the beneficiaries, except that a reasonableness standard shall not be applied to the exercise of discretion by the trustee of a wholly discretionary trust. The greater the grant of discretion by the settlor to the trustee, the broader the range of permissible conduct by the trustee in exercising it.

(B) Subject to division (D) of this section, and unless the terms of the trust expressly indicate that a rule in this division does not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard.

(2) A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(C) A power whose exercise is limited or prohibited by division (B) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(D) Division (B) of this section does not apply to any of the following:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the

Internal Revenue Code, was previously allowed:

(2) Any trust during any period that the trust may be revoked or amended by its settlor;

(3) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

Sec. 5808.15. (A) A trustee, without authorization by the court, may exercise powers conferred by the terms of the trust and, except as limited by the terms of the trust, may exercise all of the following powers:

(1) All powers over the trust property that an unmarried competent owner has over individually owned property;

(2) Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property;

(3) Any other powers conferred by Chapters 5801. to 5811. of the Revised Code.

(B) The exercise of a power is subject to the fiduciary duties prescribed by Chapter 5808. of the Revised Code.

Sec. 5808.16. Without limiting the authority conferred by section 5808.15 of the Revised Code, a trustee may do all of the following:

(A) Collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(B) Acquire or sell property, for cash or on credit, at public or private sale;

(C) Exchange, partition, or otherwise change the character of trust property;

(D) Deposit trust money in an account in a regulated financial-service institution;

(E) Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(F) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(G) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to do any of the following:

(1) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(2) Hold a security in the name of a nominee or in other form without

disclosure of the trust so that title may pass by delivery:

(3) Pay calls, assessments, and other sums chargeable or accruing against the securities and sell or exercise stock subscription or conversion rights;

(4) Deposit the securities with a depository or other regulated financial-service institution.

(H) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(I) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(J) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(K) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(L) Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(M) With respect to possible liability for violation of environmental law, do any of the following:

(1) Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(2) Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(3) Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(4) Compromise claims against the trust that may be asserted for an alleged violation of environmental law;

(5) Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.

(N) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(O) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(P) Exercise elections with respect to federal, state, and local taxes;

(Q) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance policy payable to the trustee, exercise rights under any employee benefit or retirement plan, annuity, or life insurance policy payable to the trustee, including the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(R) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(S) Pledge the property of a revocable trust to guarantee loans made by others to the settlor of the revocable trust, or, if the settlor so directs, to guarantee loans made by others to a third party;

(T) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(U) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by doing any of the following:

(1) Paying it to the beneficiary's guardian of the estate, or, if the beneficiary does not have a guardian of the estate, the beneficiary's guardian of the person;

(2) Paying it to the beneficiary's custodian under sections 5814.01 to 5814.09 of the Revised Code and, for that purpose, creating a custodianship;

(3) If the trustee does not know of a guardian of the person or estate, or custodian, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf;

(4) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(V) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(W) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(X) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(Y) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;

(Z) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

Sec. 5808.17. (A) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(B) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(C) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent that it was induced by improper conduct of the trustee or that the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

Sec. ~~1339.52~~ 5809.01. (A)(1) As used in the Revised Code, the "Ohio Uniform Prudent Investor Act" means sections 5809.01 to 5809.08, 5808.03, 5808.05, and 5808.06, division (A) of section 5808.02, and division (B) of section 5808.07 of the Revised Code, and those sections may be cited as the "Ohio Uniform Prudent Investor Act."

(2) As used in sections ~~1339.52 to 1339.61~~ of the Revised Code the Ohio Uniform Prudent Investor Act, "trustee" means a trustee under any testamentary, inter vivos, or other trust.

(B) Except as provided in division (C) or (D) of this section, a trustee who invests and manages trust assets under sections ~~1339.52 to 1339.61~~ of the Revised Code the Ohio Uniform Prudent Investor Act owes a duty to the

beneficiaries of the trust to comply with ~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform Prudent Investor Act.

(C) ~~Sections 1339.52 to 1339.61 of the Revised Code~~ The Ohio Uniform Prudent Investor Act may be expanded, restricted, eliminated, or otherwise altered, without express reference ~~to these sections~~ by the instrument creating a trust to the Ohio Uniform Prudent Investor Act or any section of the Revised Code that is part of that act.

(D) A trustee is not liable to a beneficiary of a trust to the extent the trustee acted in reasonable reliance on the provisions of the trust.

~~Sec. 1339.53~~ 5809.02. (A) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this requirement, the trustee shall exercise reasonable care, skill, and caution.

(B) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

~~(C) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.~~

~~(D)~~ A trustee's investment and management decisions respecting individual trust assets shall not be evaluated in isolation but in the context of the trust portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

~~(E)~~(D) Among circumstances that a trustee shall consider in investing and managing trust assets are the following as are relevant to the trust or its beneficiaries:

- (1) The general economic conditions;
- (2) The possible effect of inflation or deflation;
- (3) The expected tax consequences of investment decisions or strategies;
- (4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
- (5) The expected total return from income and appreciation of capital;
- (6) Other resources of the beneficiaries;
- (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;
- (8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

~~Sec. 1339.54~~ 5809.03. (A) A trustee may invest in any kind of property or type of investment provided that the investment is consistent with the

requirements and standards of ~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform Prudent Investor Act.

(B) A trustee shall diversify the investments of a trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Sec. ~~1339.56~~ 5809.04. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of trust assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and in order to comply with the requirements and standards of ~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform Prudent Investor Act.

Sec. ~~1339.58~~ 5809.05. Compliance with ~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform Prudent Investor Act shall be determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Sec. 5809.06. (A) A trustee may delegate investment and management functions of a trust that a prudent trustee having comparable skills could properly delegate under the circumstances. A trustee that exercises its delegation authority under this division shall comply with the requirements of division (A) of section 5808.07 of the Revised Code.

(B) In performing investment or management functions of a trust that are delegated to an agent, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(C) A trustee who delegates a function to an agent in compliance with division (A) of this section is not liable to the beneficiaries of the trust or to the trust for the decisions or actions of the agent to whom the function was delegated.

(D) By accepting the delegation of investment or management functions of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of this state.

Sec. ~~1339.60~~ 5809.07. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted by ~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform Prudent Investor Act: "investments permissible by law for investment of trust funds"; "legal investments"; "authorized investments"; "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to

speculation but in regard to the permanent disposition of their funds considering the probable income as well as the probable safety of their capital"; "prudent man rule"; "prudent trustee rule"; "prudent person rule"; and "prudent investor rule."

~~Sec. 1339.61~~ 5809.08. (A) ~~Sections 1339.52 to 1339.61 of the Revised Code~~ The Ohio Uniform Prudent Investor Act shall be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of these sections among the states enacting it. ~~These sections may be cited as the "Ohio Uniform Prudent Investor Act."~~

(B) ~~Sections 1339.52 to 1339.61 of the Revised Code apply~~ The Ohio Uniform Prudent Investor Act applies to trusts existing on or created after ~~the effective date of these sections~~ March 22, 1999. As applied to trusts existing on ~~the effective date of these sections~~ March 22, 1999, ~~sections 1339.52 to 1339.61 of the Revised Code govern~~ Ohio Uniform Prudent Investor Act governs only decisions or actions occurring after ~~the effective date of these sections~~ March 22, 1999.

(C) The temporary investment of cash or funds pursuant to section ~~1339.44~~ 5815.26 or 2109.372 of the Revised Code shall be considered a prudent investment in compliance with ~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform Prudent Investor Act.

Sec. 5810.01. (A) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(B) To remedy a breach of trust that has occurred or may occur, the court may do any of the following:

- (1) Compel the trustee to perform the trustee's duties;
- (2) Enjoin the trustee from committing a breach of trust;
- (3) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
- (4) Order a trustee to account;
- (5) Appoint a special fiduciary to take possession of the trust property and administer the trust;
- (6) Suspend the trustee;
- (7) Remove the trustee as provided in section 5807.06 of the Revised Code;
- (8) Reduce or deny compensation to the trustee;
- (9) Subject to section 5810.12 of the Revised Code, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds;
- (10) Order any other appropriate relief.

Sec. 5810.02. (A) A trustee who commits a breach of trust is liable to

the beneficiaries affected for the greater of the following:

(1) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred;

(2) The profit the trustee made by reason of the breach.

(B) Except as otherwise provided in this division, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

Sec. 5810.03. (A) Absent a breach of trust, a trustee is not accountable to a beneficiary for any profit made by the trustee arising from the administration of the trust.

(B) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

Sec. 5810.04. In a judicial proceeding involving the administration of a trust, including a trust that contains a spendthrift provision, the court, as justice and equity may require, may award costs, expenses, and reasonable attorney's fees to any party, to be paid by another party, from the trust that is the subject of the controversy, or from a party's interest in the trust that is the subject of the controversy.

Sec. 5810.05. (A) A beneficiary may not commence a proceeding against a trustee for breach of trust more than two years after the date the beneficiary, a representative of the beneficiary, or a beneficiary surrogate is sent a report that adequately discloses the existence of a potential claim for breach of trust and informs the beneficiary, the representative of the beneficiary, or the beneficiary surrogate of the time allowed for commencing a proceeding against a trustee.

(B) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or the representative of the beneficiary knows of the potential claim or should know of the existence of the potential claim.

(C) If division (A) of this section does not apply, notwithstanding section 2305.09 of the Revised Code, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within four years after the first of the following to occur:

(1) The removal, resignation, or death of the trustee;

(2) The termination of the beneficiary's interest in the trust;

(3) The termination of the trust;

(4) The time at which the beneficiary knew or should have known of the breach of trust.

Sec. 5810.06. A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

Sec. 5810.07. If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

Sec. 5810.08. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries or was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

Sec. 5810.09. A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee or, at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

Sec. 5810.10. (A) Except as otherwise provided in the contract, for contracts entered into on or after March 22, 1984, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity. The words "trustee," "as trustee," "fiduciary," or "as fiduciary," or other words that indicate one's trustee capacity, following the name or signature of a trustee are sufficient disclosure for purposes of this division.

(B) A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(C) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of

trust property, or on a tort committed in the course of administering a trust may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

Sec. 5810.11. (A)(1) Except as otherwise provided in division (C) of this section or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed. A partnership certificate that is filed pursuant to Chapter 1777, or another chapter of the Revised Code and that indicates that a trustee holds a general partnership interest in a fiduciary capacity by the use following the name or signature of the trustee of the words "as trustee" or other words that indicate the trustee's fiduciary capacity constitutes a sufficient disclosure for purposes of this division.

(2) If a partnership certificate is not required to be filed pursuant to Chapter 1777, or another chapter of the Revised Code, a sufficient disclosure for purposes of division (A) of this section can be made by a trustee if a certificate that is filed with the recorder of the county in which the partnership's principal office or place of business is situated and with the recorder of each county in which the partnership owns real estate satisfies all of the following requirements:

(a) The certificate states in full the names of all persons holding interests in the partnership and their places of residence.

(b) The certificate is signed by all persons who are general partners in the partnership and is acknowledged by a person authorized to take acknowledgements of deeds.

(c) The certificate uses the words "trustee under the (will or trust) of (name of decedent or settlor)," or other words that indicate the trustee's fiduciary capacity, following the trustee's name or signature.

(3) A contract or other written instrument that is delivered to a party that contracts with the partnership in which a trustee holds a general partnership interest in a fiduciary capacity and that indicates that the trustee so holds the interest constitutes a disclosure for purposes of division (A)(1) of this section with respect to transactions between the party and the partnership. If a disclosure has been made by a certificate in accordance with division (A) of this section, a disclosure for purposes of division (A) of this section with respect to such transactions exists regardless of whether a contract or other instrument indicates the trustee holds the general partnership interest in a fiduciary capacity.

(B) Except as otherwise provided in division (C) of this section, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(C) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

(D) If the trustee of a revocable trust holds an interest as a general partner in a general or limited partnership, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

Sec. 5810.12. (A) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(B) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(C) A person who in good faith delivers assets to a trustee is not required to ensure their proper application.

(D) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(E) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

Sec. 5810.13. (A) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing all of the following information:

(1) A statement that the trust exists and the date the trust instrument was executed;

(2) The identity of the settlor;

(3) The identity and address of the currently acting trustee;

(4) The powers of the trustee;

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;

(7) The trust's taxpayer identification number;

(8) The manner of taking title to trust property.

(B) Any trustee may sign or otherwise authenticate a certification of trust.

(C) A certification of trust shall state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(D) A certification of trust is not required to contain the dispositive terms of a trust.

(E) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

(F) A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(G) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(H) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

(I) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

Sec. 5811.01. In applying and construing Chapters 5801. to 5811. of the Revised Code, a court may consider the need to promote uniformity of the law with respect to the subject matter of those chapters among states that enact the uniform trust code.

Sec. 5811.02. The provisions of Chapters 5801. to 5811. of the Revised Code governing the legal effect, validity, or enforceability of electronic records or electronic signatures and of contracts formed or performed with the use of electronic records or electronic signatures conform to the requirements of section 102 of the Electronic Signatures in Global and

National Commerce Act, 15 U.S.C. 7002, 114 Stat. 467, and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

Sec. 5811.03. (A) Except as otherwise provided in Chapters 5801. to 5811. of the Revised Code, all of the following apply:

(1) Chapters 5801. to 5811. of the Revised Code apply to all trusts created before, on, or after their effective date.

(2) Chapters 5801. to 5811. of the Revised Code apply to all judicial proceedings concerning trusts commenced on or after their effective date.

(3) Chapters 5801. to 5811. of the Revised Code apply to judicial proceedings concerning trusts commenced before the effective date of those chapters unless the court finds that application of a particular provision of those chapters would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision does not apply, and the superseded law applies.

(4) Any rule of construction or presumption provided in Chapters 5801. to 5811. of the Revised Code applies to trust instruments executed before the effective date of those chapters unless there is a clear indication of a contrary intent in the terms of the trust.

(5) Chapters 5801. to 5811. of the Revised Code do not affect an act done before the effective date of those chapters.

(B) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of Chapters 5801. to 5811. of the Revised Code, that statute continues to apply to the right even if it has been repealed or superseded.

Sec. ~~1340.40~~ 5812.01. As used in sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code:

(A) "Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. "Accounting period" includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

(B) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(C) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(D) "Income" means money or property that a fiduciary receives as current return from a principal asset. "Income" includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in sections ~~1340.57~~ 5812.18 to ~~1340.77~~ 5812.38 of the Revised Code.

(E) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(F) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require or authorize it to be distributed in the trustee's discretion.

(G) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(H) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code to or from income during the period.

(I) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(J) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(K) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(L) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(M) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

Sec. ~~1340.41~~ 5812.02. (A) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of sections ~~1340.46~~ 5812.07 to ~~1340.53~~ 5812.14 of the Revised Code, all of the following apply:

(1) A fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code.

(2) A fiduciary may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of

the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by any provision of sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code.

(3) A fiduciary shall administer a trust or estate in accordance with sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration.

(4) A fiduciary shall add a receipt, or charge a disbursement, to principal to the extent that the terms of the trust and any provision of sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code do not provide for allocating the receipt or disbursement to or between principal and income.

(B) In exercising the power to adjust under division (A) of section ~~1340.42~~ 5812.03 of the Revised Code or a discretionary power of administration regarding a matter within the scope of sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code, whether granted by the terms of a trust, a will, or a provision of any such section, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code is presumed to be fair and reasonable to all of the beneficiaries.

(C) In allocating receipts and disbursements to or between principal and income, a fiduciary may credit a receipt or charge an expenditure to income or principal with respect to a decedent's estate, a trust, or property passing to a trust, that is eligible for a federal estate tax marital deduction or Ohio estate tax marital deduction, or for a federal estate tax charitable deduction or Ohio estate tax charitable deduction, or for a federal gift tax marital deduction or federal gift tax charitable deduction only to the extent that the credit of the receipt or charge of the expenditure will not cause the reduction or loss of the deduction.

(D) As used in division (C) of this section:

(1) "Federal estate tax charitable deduction" means the estate tax charitable deduction allowed by subtitle B, Chapter 11 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2055, as amended.

(2) "Federal estate tax marital deduction" means the estate tax marital deduction allowed by subtitle B, Chapter 11 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2056, as amended.

(3) "Federal gift tax charitable deduction" means the gift tax charitable

deduction allowed by subtitle B, Chapter 12 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2522, as amended.

(4) "Federal gift tax marital deduction" means the gift tax marital deduction allowed by subtitle B, Chapter 12 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2523, as amended.

(5) "Ohio estate tax charitable deduction" means the estate tax charitable deduction allowed by division (A) of section 5731.17 of the Revised Code.

(6) "Ohio estate tax marital deduction" means the estate tax marital deduction allowed by section 5731.15 of the Revised Code.

Sec. ~~1340.42~~ 5812.03. (A) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages the trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying division (A) of section ~~1340.41~~ 5812.02 of the Revised Code, that the trustee is unable to comply with division (B) of that section.

(B) In deciding whether and to what extent to exercise the power conferred by division (A) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including all of the following factors to the extent they are relevant:

- (1) The nature, purpose, and expected duration of the trust;
- (2) The intent of the settlor;
- (3) The identity and circumstances of the beneficiaries;
- (4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;
- (5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
- (6) The net amount allocated to income under sections ~~1340.40~~ 5812.01, ~~1340.41~~ 5812.02, and ~~1340.46~~ 5812.07 to ~~1340.91~~ 5812.52 of the Revised Code; and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

(9) The anticipated tax consequences of an adjustment.

(C) A trustee shall not make an adjustment if any of the following applies:

(1) The adjustment diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment.

(2) The adjustment reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion.

(3) The adjustment changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(4) The adjustment is from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside.

(5) If possessing or exercising the power to make the adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make the adjustment;

(6) If possessing or exercising the power to make the adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make the adjustment;

(7) If the trustee is a beneficiary of the trust;

(8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(D) If division (C)(5), (6), (7), or (8) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(E) A trustee may release the entire power conferred by division (A) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in division (C)(1), (2), (3), (4), (5), (6), or (8) of this section or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in

division (C) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

(F) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by division (A) of this section.

(G) The liability of a trustee relative to the exercise of adjustment authority conferred by divisions (A) to (F) of this section shall be limited in the following manner:

(1) Unless a court determines that a trustee has acted in bad faith, no trustee shall be held liable for damages for choosing not to make an adjustment.

(2) Unless a court determines that a trustee has acted in bad faith with respect to an adjustment, the sole remedy to be ordered by a court shall be a prospective correction of the adjustment.

(3) For purposes of this section, and subject to division (C) of this section, from time to time a trustee may make a safe-harbor adjustment to increase net trust accounting income up to and including an amount equal to four per cent of the trust's fair market value determined as of the first business day of the current year. If a trustee determines to make this safe-harbor adjustment, the propriety of this adjustment shall be conclusively presumed. Nothing in division (G)(3) of this section prohibits any other type of adjustment authorized under any provision of this section.

Sec. ~~1340.46~~ 5812.07. After a decedent dies, in the case of an estate, or after an income interest in a trust ends, all of the following apply:

(A) The fiduciary of the estate or of the terminating income interest shall determine, under the provisions of sections ~~1340.51~~ 5812.12 to ~~1340.86~~ 5812.47 of the Revised Code that apply to trustees and under division (E) of this section, the amount of net income and net principal receipts received from property specifically given to a beneficiary. The fiduciary shall distribute the net income and net principal receipts to the beneficiary that is to receive the specific property.

(B) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the provisions of sections ~~1340.51~~ 5812.12 to ~~1340.86~~ 5812.47 of the Revised Code that apply to trustees and by doing all of the following:

(1) Including in net income all income from property used to discharge liabilities;

(2) Paying from income or principal, in the fiduciary's discretion, fees of

attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes. However, the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction.

(3) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(C) A fiduciary shall distribute to a beneficiary that receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under division (B) of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(D) A fiduciary shall distribute the net income remaining after distributions required by division (C) of this section, in the manner described in section ~~1340.47~~ 5812.08 of the Revised Code, to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable, general power of appointment over the trust.

(E) A fiduciary shall not reduce principal or income receipts from property described in division (A) of this section because of a payment described in section ~~1340.81~~ 5812.42 or ~~1340.82~~ 5812.43 of the Revised Code to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable

provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

Sec. ~~1340.47~~ 5812.08. (A) Each beneficiary described in division (D) of section ~~1340.46~~ 5812.07 of the Revised Code is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one that does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of the decedent's death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(B) In determining a beneficiary's share of net income for the purpose of this section, all of the following apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(C) If a fiduciary does not distribute all of the collected but undistributed net income described in divisions (A) and (B) of this section to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each.

(D) To the extent that a fiduciary considers it appropriate, the fiduciary may apply the provisions of divisions (A) to (C) of this section to any net gain or loss, realized after the date of the decedent's death or an income interest termination or earlier distribution date, from the disposition of a principal asset to which such provisions apply.

Sec. ~~1340.51~~ 5812.12. (A) An income beneficiary is entitled to net income from the date on which the income interest begins. An income

interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(B) An asset becomes subject to a trust on any of the following dates:

(1) The date it is transferred to the trust, in the case of an asset that is transferred to a trust during the transferor's life;

(2) The date of a testator's death, in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate;

(3) The date of an individual's death, in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(C) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under division (D) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(D) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

Sec. ~~4340.52~~ 5812.13. (A) A trustee shall allocate to principal an income receipt or disbursement other than one to which division (A) of section ~~4340.46~~ 5812.07 of the Revised Code applies, if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(B) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and if it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal, and the balance shall be allocated to income.

(C) For the purposes of this section, an item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date. Distributions to shareholders or other owners from an entity to which section ~~4340.57~~ 5812.18 of the Revised Code applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease

or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

Sec. ~~1340.53~~ 5812.14. (A) As used in this section, "undistributed income" means net income received before the date on which an income interest ends. "Undistributed income" excludes an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(B) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary that survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust, unless the beneficiary has an unqualified power to revoke more than five per cent of the trust immediately before the income interest ends. If the beneficiary has such power, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(C) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

Sec. ~~1340.57~~ 5812.18. (A) As used in this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which section ~~1340.58~~ 5812.19 of the Revised Code applies, a business or activity to which section ~~1340.59~~ 5812.20 of the Revised Code applies, or an asset-backed security to which section ~~1340.77~~ 5812.38 of the Revised Code applies.

(B) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(C) A trustee shall allocate all of the following receipts from an entity to principal:

- (1) Property other than money;
- (2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;
- (3) Money received in total or partial liquidation of the entity;
- (4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(D) Money is received in partial liquidation in either of the following circumstances:

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation;

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty per cent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(E) Money is not received in partial liquidation, nor shall it be taken into account under division (D)(2) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(F) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

Sec. ~~1340.58~~ 5812.19. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section ~~1340.57~~ 5812.18 or ~~1340.77~~ 5812.38 of the Revised Code applies to a receipt from the trust.

Sec. ~~1340.59~~ 5812.20. (A) If a trust that conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(B) A trustee that accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee

determines that the amount received is no longer required in the conduct of the business.

(C) Activities for which a trustee may maintain separate accounting records under this section include all of the following:

(1) Retail, manufacturing, service, and other traditional business activities;

(2) Farming;

(3) Raising and selling livestock and other animals;

(4) Management of rental properties;

(5) Extraction of minerals and other natural resources;

(6) Timber operations;

(7) Activities to which section ~~1340.76~~ 5812.37 of the Revised Code applies.

Sec. ~~1340.63~~ 5812.24. A trustee shall allocate to principal all of the following:

(A) To the extent not allocated to income under sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(B) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to sections ~~1340.57~~ 5812.18 to ~~1340.77~~ 5812.38 of the Revised Code;

(C) Amounts recovered from third parties to reimburse the trust because of disbursements described in division (A)(7) of section ~~1340.82~~ 5812.43 of the Revised Code or for other reasons to the extent not based on the loss of income;

(D) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(E) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income;

(F) Other receipts as provided in sections ~~1340.70~~ 5812.31 to ~~1340.77~~ 5812.38 of the Revised Code.

Sec. ~~1340.64~~ 5812.25. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received

as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and shall not be available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

Sec. ~~1340.65~~ 5812.26. (A) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(B) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after the date it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after the date it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.

(C) This section does not apply to an obligation to which section ~~1340.71~~ 5812.32, ~~1340.72~~ 5812.33, ~~1340.73~~ 5812.34, ~~1340.74~~ 5812.35, ~~1340.76~~ 5812.37, or ~~1340.77~~ 5812.38 of the Revised Code applies.

Sec. ~~1340.66~~ 5812.27. (A) Except as otherwise provided in division (B) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(B) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section ~~1340.59~~ 5812.20 of the Revised Code, loss of profits from a business.

(C) This section does not apply to a contract to which section ~~1340.71~~ 5812.32 of the Revised Code applies.

Sec. ~~1340.70~~ 5812.31. If a trustee determines that an allocation between principal and income required by section ~~1340.71~~ 5812.32, ~~1340.72~~ 5812.33, ~~1340.73~~ 5812.34, ~~1340.74~~ 5812.35, or ~~1340.77~~ 5812.38 of the Revised Code is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in division (C) of

section ~~1340.42~~ 5812.03 of the Revised Code applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in division (D) of that section and may be released for the reasons and in the manner described in division (E) of the section. An allocation is presumed to be insubstantial if either of the following applies:

(A) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten per cent.

(B) The value of the asset producing the receipt for which the allocation would be made is less than ten per cent of the total value of the trust's assets at the beginning of the accounting period.

Sec. ~~1340.71~~ 5812.32. (A) As used in this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. "Payment" includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, or a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(B) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(C) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten per cent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this division, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(D) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than is provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(E) This section does not apply to payments to which section ~~1340.72~~ 5812.33 of the Revised Code applies.

Sec. ~~1340.72~~ 5812.33. (A) As used in this section, "liquidating asset"

means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. "Liquidating asset" includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. "Liquidating asset" excludes a payment subject to section ~~1340.71~~ 5812.32 of the Revised Code, resources subject to section ~~1340.73~~ 5812.34 of the Revised Code, timber subject to section ~~1340.74~~ 5812.35 of the Revised Code, an activity subject to section ~~1340.76~~ 5812.37 of the Revised Code, an asset subject to section ~~1340.77~~ 5812.38 of the Revised Code, or any asset for which the trustee establishes a reserve for depreciation under section ~~1340.83~~ 5812.44 of the Revised Code.

(B) A trustee shall allocate to income ten per cent of the receipts from a liquidating asset and the balance to principal.

Sec. ~~1340.73~~ 5812.34. (A) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate the receipts in accordance with all of the following:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income.

(2) If received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety per cent shall be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in division (A)(1), (2), or (3) of this section, ninety per cent of the net amount received shall be allocated to principal and the balance to income.

(B) An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, ninety per cent of the amount shall be allocated to principal and the balance to income.

(C) This section applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(D) If a trust owns an interest in minerals, water, or other natural resources on ~~the effective date of this section~~ January 1, 2003, the trustee

may allocate receipts from the interest as provided in this section or in the manner used by the trustee before that date. If the trust acquires an interest in minerals, water, or other natural resources after ~~the effective date of this section~~ January 1, 2003, the trustee shall allocate receipts from the interest as provided in this section.

Sec. ~~1340.74~~ 5812.35. (A) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts in accordance with all of the following:

(1) To income, to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) To principal, to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) To or between income and principal, if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying divisions (A)(1) and (2) of this section;

(4) To principal, to the extent that advance payments, bonuses, and other payments are not allocated pursuant to division (A)(1), (2), or (3) of this section.

(B) In determining net receipts to be allocated pursuant to division (A) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(C) This section applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(D) If a trust owns an interest in timberland on ~~the effective date of this section~~ January 1, 2003, the trustee may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the trustee before that date. If the trust acquires an interest in timberland after ~~the effective date of this section~~ January 1, 2003, the trustee shall allocate net receipts from the sale of timber and related products as provided in this section.

Sec. ~~1340.75~~ 5812.36. (A) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section ~~1340.42~~ 5812.03 of the Revised Code and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide

the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by division (A) of that section. The trustee may decide which action or combination of actions to take.

(B) In cases not governed by division (A) of this section, proceeds from the sale or other disposition of an asset shall be principal without regard to the amount of income the asset produces during any accounting period.

Sec. ~~1340.76~~ 5812.37. (A) As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(B) To the extent that a trustee does not account under section ~~1340.59~~ 5812.20 of the Revised Code for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(C) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, shall be allocated to principal.

Sec. ~~1340.77~~ 5812.38. (A) As used in this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. "Asset-backed security" includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. "Asset-backed security" excludes an asset to which section ~~1340.57~~ 5812.18 or ~~1340.71~~ 5812.32 of the Revised Code applies.

(B) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of

the payment to principal.

(C) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten per cent of the payment to income and the balance to principal.

Sec. ~~1340.81~~ 5812.42. A trustee shall make all of the following disbursements from income to the extent that they are not disbursements to which division (B)(2) or (3) of section ~~1340.46~~ 5812.07 of the Revised Code applies:

(A) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(B) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(C) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest;

(D) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Sec. ~~1340.82~~ 5812.43. (A) A trustee shall make all of the following disbursements from principal:

(1) The remaining one-half of the disbursements described in divisions (A) and (B) of section ~~1340.81~~ 5812.42 of the Revised Code;

(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;

(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) Premiums paid on a policy of insurance not described in division (D) of section ~~1340.81~~ 5812.42 of the Revised Code of which the trust is the owner and beneficiary;

(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust;

(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing

environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(B) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

Sec. ~~1340.83~~ 5812.44. (A) As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(B) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but shall not transfer any amount for depreciation under any of the following circumstances:

(1) Any amount for depreciation of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) Any amount for depreciation during the administration of a decedent's estate;

(3) Any amount for depreciation under this section if the trustee is accounting under section ~~1340.59~~ 5812.20 of the Revised Code for the business or activity in which the asset is used.

(C) An amount transferred to principal need not be held as a separate fund.

Sec. ~~1340.84~~ 5812.45. (A) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(B) Principal disbursements to which division (A) of this section applies include all of the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) A capital improvement to a principal asset, whether in the form of

changes to an existing asset or the construction of a new asset, including special assessments;

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments;

(5) Disbursements described in division (A)(7) of section ~~1340.82~~ 5812.43 of the Revised Code.

(C) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in division (A) of this section.

Sec. ~~1340.85~~ 5812.46. (A) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(B) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(C) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately as follows:

(1) From income, to the extent that receipts from the entity are allocated to income;

(2) From principal, as follows:

(a) To the extent that receipts from the entity are allocated to principal; and

(b) To the extent that the trust's share of the entity's taxable income exceeds the total receipts described in divisions (C)(1) and (2)(a) of this section.

(D) For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

Sec. ~~1340.86~~ 5812.47. (A) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from any of the following:

(1) Elections and decisions, other than those described in division (B) of this section, that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or

a beneficiary as a result of a transaction involving or a distribution from the estate or trust;

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or beneficiary.

(B) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Sec. ~~1340.90~~ 5812.51. (A) Sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code may be cited as the "uniform principal and income act (1997)."

(B) In applying and construing the "uniform principal and income act (1997)", consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the "uniform principal and income act (1997)".

Sec. ~~1340.91~~ 5812.52. Sections ~~1340.40~~ 5812.01 to ~~1340.90~~ 5812.51 of the Revised Code apply to every trust or decedent's estate existing on ~~the effective date of this section~~ January 1, 2003, except as otherwise expressly provided in the will or terms of the trust or in sections ~~1340.40~~ 5812.01 to ~~1340.90~~ 5812.51 of the Revised Code.

Sec. ~~1340.31~~ 5813.01. As used in sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the Revised Code:

(A) "Institution" means an incorporated or unincorporated organization that is organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes or a governmental organization to the extent that it holds funds exclusively for any of those purposes.

(B) "Governing board" means the body responsible for the management of an institution.

(C) "Institutional trust fund" means a trust fund, or a part of a trust fund,

that is held by a trustee for the exclusive use, benefit, or purposes of one or more institutions and that is not wholly distributable to the institution or institutions on a current basis under the terms of the applicable trust instrument. "Institutional trust fund" does not include a fund in which a beneficiary that is not an institution has an interest other than a right that may arise upon a violation of a covenant under the terms of the applicable trust instrument or upon a violation of or the failure of the purposes of the fund.

(D) "Applicable fund value" means for any particular fiscal year the sum of the month-end values of the net assets of an institutional trust fund for the prior fiscal year for those months in which the institutional trust fund has been in existence during such prior fiscal year divided by the number of those months. The month-end values shall be determined by the trustee in accordance with the trustee's records, and any such determination made by a trustee in good faith is conclusive.

(E) "Trust instrument" means a testamentary or inter vivos trust under which the trustee of the trust holds an institutional trust fund.

(F) "Trustee" means an individual, corporation, institution, or organization, including, but not limited to, a bank, trust company, or other financial institution, serving as a trustee or as sole trustee under a trust instrument. "Trustee" includes an original trustee and any successor or added trustee.

Sec. ~~1340.32~~ 5813.02. (A) Subject to division (D) of this section and section ~~1340.33~~ 5813.03 of the Revised Code, during any fiscal year in which income may be or is required to be distributed to an institution from an institutional trust fund, income means the greater of the following:

(1) The income from the assets of the institutional trust fund for the fiscal year as determined in accordance with the applicable trust instrument and applicable law without regard to sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the Revised Code;

(2) The amount requested by the institution's governing board for the fiscal year pursuant to division (B) of this section.

(B) An institution's governing board may request that an amount be distributed to the institution for the fiscal year, and that amount shall not exceed the sum of both of the following:

(1) Five per cent of the applicable fund value for the institutional trust fund for the fiscal year;

(2) If, in any prior fiscal year that is after ~~the effective date of this section~~ September 15, 1999, the governing board requested less than five per cent of the applicable fund value for ~~such~~ that prior fiscal year and if the

amount the institution actually received from the institutional trust fund pursuant to division (A) of this section was less than five per cent for ~~such~~ that prior fiscal year, the aggregate difference between five per cent of the applicable fund value with respect to each such prior fiscal year and the amount the institution actually received pursuant to division (A) of this section for ~~such~~ each prior fiscal year.

(C) If, under a trust instrument, more than one institution is a beneficiary of an institutional trust fund, the trustee shall take such actions that the trustee determines appropriate or necessary to allow for the distributions of income as contemplated by division (A) of this section, which actions may include dividing the institutional trust fund into separate shares according to the interest that each institution has in the total institutional trust fund held under the trust instrument.

(D) This section does not limit the authority or obligation of a trustee to distribute, or the authority of a governing board to request, funds as permitted or required under the terms of the applicable trust instrument.

Sec. ~~1340.33~~ 5813.03. (A) Division (A) of section ~~1340.32~~ 5813.02 of the Revised Code does not apply if the applicable trust instrument expressly indicates the settlor's intention that income is to be otherwise than as defined in division (A) of section ~~1340.32~~ 5813.02 of the Revised Code.

(B) A restriction upon the definition of income in division (A) of section ~~1340.32~~ 5813.02 of the Revised Code may not be inferred from a designation of an institutional trust fund as an endowment; a direction or authorization in the applicable trust instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or a direction that contains other words of a similar import; a direction in a trust instrument that income and principal are to be determined by reference to certain statutory provisions; or, subject to division (A) of this section, the inclusion of specified provisions in a trust instrument setting forth the way in which income and principal are to be determined.

(C) The rule of construction set forth in division (B) of this section applies to trust instruments executed or in effect before, on, or after ~~the effective date of this section~~ September 15, 1999.

Sec. ~~1340.34~~ 5813.04. (A) In administering the powers to request amounts from a trustee of an institutional trust fund in accordance with divisions (A) and (B) of section ~~1340.32~~ 5813.02 of the Revised Code, members of a governing board of an institution shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision and shall make requests for amounts under

divisions (A) and (B) of section ~~1340.32~~ 5813.02 of the Revised Code only as is prudent under this standard. In so doing, the governing board shall consider the long- and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes; the institution's present and anticipated financial requirements; the expected total return on the investments held by the institution and held by the trustee under the applicable trust instrument; price level trends; and general economic conditions.

(B) In determining the expected total return on the investments held by a trustee of an institutional trust fund under the applicable trust instrument, the members of the governing board of an institution may follow, and are not required to examine independently, the determination of the trustee regarding the expected total return on the investments held by the trustee.

(C) A trustee of an institutional trust fund has no duty to inquire or ascertain whether the governing board of an institution has satisfied the standards set forth in divisions (A) and (B) of this section, and the trustee does not have any liability for the failure of the governing board to satisfy those standards.

Sec. ~~1340.35~~ 5813.05. Nothing in sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52, or any other section of the Revised Code limits or restricts the definition of income in division (A) of section ~~1340.32~~ 5813.02 of the Revised Code or limits or restricts a governing board of an institution from requesting, or a trustee from making, distributions from an institutional trust fund in accordance with sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the Revised Code.

Sec. ~~1340.36~~ 5813.06. (A) Nothing in sections ~~1340.31~~ 5813.01 to ~~1340.35~~ 5813.05 of the Revised Code affects the construction or interpretation of sections 1715.51 to 1715.59 of the Revised Code relating to the uniform management of institutional funds act. Specifically, neither the percentage set forth in division (B) of section 1340.32 of the Revised Code nor the amount actually requested by a governing board pursuant to section ~~1340.32~~ 5813.02 of the Revised Code shall be construed or interpreted to limit or expand what is a prudent amount that can be expended by a governing board of an institution under sections 1715.51 to 1715.59 of the Revised Code.

(B) If an institutional trust fund is also an institutional fund as defined in division (B) of section 1715.51 of the Revised Code with the result that sections 1715.51 to 1715.59 of the Revised Code also are applicable to the institutional trust fund, then sections 1715.51 to 1715.59 of the Revised Code apply to the institutional trust fund, and sections ~~1340.31~~ 5813.01 to

~~1340.37~~ 5813.07 of the Revised Code do not apply to the institutional trust fund.

Sec. ~~1340.37~~ 5813.07. Sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the Revised Code may be cited as the "institutional trust funds act."

Sec. ~~1339.31~~ 5814.01. As used in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, unless the context otherwise requires:

(A) "Benefit plan" means any plan of an employer for the benefit of any employee, any plan for the benefit of any partner, or any plan for the benefit of a proprietor, and includes, but is not limited to, any pension, retirement, death benefit, deferred compensation, employment agency, stock bonus, option, or profit-sharing contract, plan, system, account, or trust.

(B) "Broker" means a person that is lawfully engaged in the business of effecting transactions in securities for the account of others. A "broker" includes a financial institution that effects such transactions and a person who is lawfully engaged in buying and selling securities for ~~his~~ the person's own account, through a broker or otherwise, as a part of a regular business.

(C) "Court" means the probate court.

(D) "The custodial property" includes:

(1) All securities, money, life or endowment insurance policies, annuity contracts, benefit plans, real estate, tangible and intangible personal property, proceeds of a life or endowment insurance policy, an annuity contract, or a benefit plan, and other types of property under the supervision of the same custodian for the same minor as a consequence of a transfer or transfers made to the minor, a gift or gifts made to the minor, or a purchase made by the custodian for the minor, in a manner prescribed in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code;

(2) The income from the custodial property;

(3) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, or other disposition of the securities, money, life or endowment insurance policies, annuity contracts, benefit plans, real estate, tangible and intangible personal property, proceeds of a life or endowment insurance policy, an annuity contract, or a benefit plan, other types of property, and income.

(E) "Custodian" or "successor custodian" means a person so designated in a manner prescribed in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code.

(F) "Financial institution" means any bank, as defined in section 1101.01, any building and loan association, as defined in section 1151.01, any credit union as defined in section 1733.01 of the Revised Code, and any federal credit union, as defined in the "Federal Credit Union Act," 73 Stat.

628 (1959), 12 U.S.C.A. 1752, as amended.

(G) "Guardian of the minor" includes the general guardian, guardian, tutor, or curator of the property, estate, or person of a minor.

(H) "Issuer" means a person who places or authorizes the placing of ~~his~~ the person's name on a security, other than as a transfer agent, to evidence that it represents a share, participation, or other interest in ~~his~~ the person's property or in an enterprise, or to evidence ~~his~~ the person's duty or undertaking to perform an obligation that is evidenced by the security, or who becomes responsible for or in place of any such person.

(I) "Legal representative" of a person means the executor, administrator, general guardian, guardian, committee, conservator, tutor, or curator of ~~his~~ the person's property or estate.

(J) "Member of the minor's family" means a parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt of the minor, whether of the whole or half blood, or by adoption.

(K) "Minor" means a person who has not attained the age of twenty-one years.

(L) "Security" includes any note, stock, treasury stock, common trust fund, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under an oil, gas, or mining title or lease, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. A "security" does not include a security of which the donor or transferor is the issuer. A security is in "registered form" when it specifies a person who is entitled to it or to the rights that it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(M) "Transfer" means a disposition, other than a gift, by a person who is eighteen years of age or older that creates custodial property under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code.

(N) "Transfer agent" means a person who acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities, in the issue of new securities, or in the cancellation of surrendered securities.

(O) "Transferor" means a person who is eighteen years of age or older, who makes a transfer.

(P) "Trust company" means a financial institution that is authorized to

exercise trust powers.

(Q) "Administrator" includes an "administrator with the will annexed."

Sec. ~~1339.32~~ 5814.02. (A) A person who is eighteen years of age or older may, during ~~his~~ the person's lifetime, make a gift or transfer of a security, money, a life or endowment insurance policy, an annuity contract, a benefit plan, real estate, tangible or intangible personal property, or any other property to, may designate as beneficiary of a life or endowment insurance policy, an annuity contract, or a benefit plan, or make a transfer by the irrevocable exercise of a power of appointment in favor of, a person who is a minor on the date of the gift or transfer:

(1) If the subject of the gift or transfer is a security in registered form, by registering it in the name of the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance, by the words: "as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act";

(2) If the subject of the gift or transfer is a security not in registered form, by delivering it to the donor or transferor, another person who is eighteen years of age or older, or a trust company, accompanied by a statement of a gift or transfer in the following form, in substance, signed by the donor or transferor and the person or trust company designated as custodian:

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT

I, ..... (name of donor or transferor), hereby deliver to (name of custodian) as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act, the following security (ies): (insert an appropriate description of the security or securities delivered, sufficient to identify it or them).

.....  
(signature of donor or transferor)

..... (name of custodian) hereby acknowledges receipt of the above described security (ies) as custodian for the above minor under the Ohio Transfers to Minors Act.

Dated: .....  
(signature of custodian)"

(3) If the subject of the gift or transfer is money, by paying or delivering it to a broker, or a financial institution for credit to an account in the name of the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance, by the words: "as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act."

(4) If the subject of the gift or transfer is a life or endowment insurance policy, an annuity contract, or a benefit plan, by assigning the policy, contract, or plan to the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance by the words: "as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act."

(5) If the subject of the gift or transfer is an interest in real estate, by executing and delivering in the appropriate manner a deed, assignment, or similar instrument in the name of the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance, by the words: "as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act."

(6) If the subject of the gift or transfer is tangible personal property, by delivering it to the donor or transferor, another person who is eighteen years of age or older, or a trust company, accompanied by a statement of a gift or transfer in the following form, in substance, signed by the donor or transferor and the person or trust company designated as custodian:

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS  
ACT

I, ..... (name of donor or transferor), hereby deliver to ..... (name of custodian) as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act, the following property: (insert an appropriate description of the property delivered, sufficient to identify it).

.....  
(signature of donor or transferor)

..... (name of custodian) hereby acknowledges receipt of the above described property as custodian for the above minor under the Ohio Transfers to Minors Act.

Dated: .....  
(signature of custodian)"

(7) If the subject of the gift or transfer is tangible personal property, title to which is evidenced by a certificate of title issued by a department or agency of a state or of the United States, by issuing title to the donor or transferor, another person who is eighteen years of age or older, or a trust company, accompanied by a statement of a gift or transfer in the following form, in substance: "as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act"; or by delivering the title to another person who is eighteen years of age or older or a trust company, endorsed to that person followed in substance by the following words: "as custodian for ..... under the Ohio Transfers to Minors Act."

(8) If the subject of the gift or transfer is the designation of a minor as beneficiary of a life or endowment insurance policy, an annuity contract, or a benefit plan, by designating as beneficiary of the policy, contract, or plan the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance, by the words: "as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act."

(9) If the subject of the gift or transfer is an irrevocable exercise of a power of appointment in favor of a minor or is an interest in any property that is not described in divisions (A)(1) to (8) of this section, by causing the ownership of the property to be transferred by any written document in the name of the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance, by the words: "as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act."

(B) Trustees, inter vivos or testamentary, executors, and administrators having authority to distribute or pay any trust or estate property to or for the benefit of a minor, or having authority to distribute or pay any trust or estate property to any other person for the benefit of a minor may, if authorized by a will or trust instrument, distribute or pay trust or estate property of any type mentioned in division (A) of this section in the manner and form provided in that division, and may name the custodian or successor custodian of the property if the will or trust instrument does not name an eligible custodian, or if the will or trust does not name an eligible successor custodian and the naming of a successor custodian is necessary. A person who is eighteen years of age or older, in ~~his~~ the person's will or trust instrument, may provide that the fiduciary shall make any payment or distribution as provided in this division and may name the custodian and a successor custodian of the trust or estate property. As to any distribution or payment so made, the testator of a will, under the provisions of which a testamentary trust or estate is being administered, or the settlor of an inter vivos trust shall be deemed the donor or transferor.

(C) Any gift, transfer, payment, or distribution that is made in a manner prescribed in division (A), (B), or (E) of this section may be made to only one minor and only one person may be the custodian. All gifts, transfers, payments, and distributions made by a person in a manner prescribed in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code to the same custodian for the benefit of the same minor result in a single custodianship.

(D) A donor or transferor who makes a gift or transfer to a minor in a manner prescribed in division (A) of this section and a trustee, executor, or

administrator acting under division (B) or (E) of this section shall promptly do all things within ~~his~~ the donor's, transferor's, trustee's, executor's, or administrator's power to put the subject of the gift or transfer in the possession and control of the custodian, but neither the donor's, transferor's, trustee's, executor's, or administrator's failure to comply with this division, nor ~~his~~ the designation by the donor, transferor, trustee, executor, or administrator of an ineligible custodian, nor the renunciation by the person or trust company designated as custodian, affects the consummation of the gift or transfer.

(E) If there is no will, or if a will, trust, or other governing instrument does not contain an authorization to make a transfer as described in this division, a trustee, executor, or administrator may make a transfer in a manner prescribed in division (A) of this section to ~~himself~~ self, another person who is eighteen years of age or older, or a trust company, as custodian, if all of the following apply:

(1) Irrespective of the value of the property, the trustee, executor, or administrator considers the transfer to be in the best interest of the minor;

(2) Irrespective of the value of the property, the transfer is not prohibited by or inconsistent with the applicable will, trust agreement, or other governing instrument;

(3) If the value of the property exceeds ten thousand dollars, the transfer is authorized by the appropriate court.

Sec. ~~1339.33~~ 5814.03. (A) A gift or transfer made in a manner prescribed in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, is irrevocable and conveys to the minor indefeasibly vested legal title to the security, money, life or endowment insurance policy, annuity contract, benefit plan, real estate, tangible or intangible personal property, or other property given or, subject to the right of the owner of the policy, contract, or benefit plan to change the beneficiary if the custodian is not the owner, to the proceeds of a life or endowment insurance policy, an annuity contract, or a benefit plan given, but no guardian of the minor has any right, power, duty, or authority with respect to the custodial property except as provided in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code.

(B) By making a gift or transfer in a manner prescribed in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, the donor or transferor incorporates in ~~his~~ the gift or transfer all the provisions of these sections and grants to the custodian, and to any issuer, transfer agent, financial institution, broker, or third person dealing with a person or trust company designated as custodian, the respective powers, rights, and

immunities provided in these sections.

Sec. ~~1339.34~~ 5814.04. (A) The custodian shall collect, hold, manage, invest, and reinvest the custodial property.

(B) The custodian shall pay over to the minor for expenditure by the minor, or expend for the use or benefit of the minor, as much of or all the custodial property as the custodian considers advisable for the use and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in ~~his~~ the custodian's discretion considers suitable and proper, with or without court order, with or without regard to the duty or ability of the custodian or of any other person to support the minor or ~~his~~ the minor's ability to do so, and with or without regard to any other income or property of the minor that may be applicable or available for any purpose. Any payment or expenditure that is made under this division is in addition to, is not a substitute for, and does not affect the obligation of any person to support the minor for whom the payment or expenditure is made.

(C) The court, on the petition of a parent or guardian of the minor or of the minor, if ~~he~~ the minor has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by ~~him~~ the minor or to expend as much of or all the custodial property as is necessary for the use and benefit of the minor.

(D)(1) Except as provided in division (D)(2) of this section, to the extent that the custodial property is not so expended, the custodian shall deliver or pay the custodial property over to the minor on ~~his~~ the minor's attaining the age of twenty-one years or, if the minor dies before attaining the age of twenty-one years, shall, upon the minor's death, deliver or pay the custodial property over to the estate of the minor.

(2) If the donor or transferor, in the written instrument that makes or provides for the gift or transfer, directs the custodian to deliver or pay over the custodial property to the minor on ~~his~~ the minor's attaining any age between eighteen and twenty-one, the custodian shall deliver or pay over the custodial property to the minor on ~~his~~ the minor's attaining that age, or, if the minor dies before attaining that age, the custodian shall, upon the minor's death, deliver or pay the custodial property over to the estate of the minor.

(E) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent person of discretion and intelligence dealing with the property of another, except that the custodian may, in the discretion of the custodian and without liability to the minor or the estate of the minor, retain any custodial property received in a manner prescribed in sections ~~1339.34~~ 5814.01 to

~~1339.39~~ 5814.09 of the Revised Code. If a custodian has special skills or is named custodian on the basis of representations of special skills or expertise, the custodian is under a duty to use those skills or that expertise.

(F) The custodian may sell, exchange, convert, or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices, and upon the terms ~~he~~ the custodian considers advisable. ~~He~~ The custodian may vote in person or by general or limited proxy a security that is custodial property. ~~He~~ The custodian may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of an issuer of a security that is custodial property, and to the sale, lease, pledge, or mortgage of any property by or to such an issuer, and to any other action by such an issuer. ~~He~~ The custodian may purchase any life or endowment insurance policy or annuity contract on the life of the minor or any member of the family of the minor and pay, from funds in ~~his~~ the custodian's custody, any premiums on any life or endowment insurance policy or annuity contract held by ~~him~~ the custodian as custodial property. ~~He~~ The custodian may execute and deliver any and all instruments in writing that ~~he~~ the custodian considers advisable to carry out any of ~~his~~ the custodian's powers as custodian.

(G) The custodian shall register each security that is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act," or shall maintain each security that is custodial property and in registered form in an account with a broker or in a financial institution in the name of the custodian, followed, in substance, by the words: "as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act." A security held in account with a broker or in a financial institution in the name of the custodian may be held in the name of the broker or financial institution. A security that is custodial property and in registered form and that is held by a broker or in a financial institution in which the broker or financial institution does not have a lien for indebtedness due to it from a custodial account may not be pledged, lent, hypothecated, or disposed of except upon the specific instructions of the custodian. The custodian shall hold all money that is custodial property in an account with a broker or in a financial institution in the name of the custodian, followed, in substance, by the words: "as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act." The custodian shall hold all life or endowment insurance policies, annuity contracts, or benefit plans that are custodial property in the name of the custodian, followed, in substance, by the words "as custodian for ..... (name of

minor) under the Ohio Transfers to Minors Act." The custodian shall take title to all real estate that is custodial property in the name of the custodian, followed, in substance, by the words: "as custodian for ..... (name of minor) under the Ohio Transfers to Minors Act." The custodian shall keep all other custodial property separate and distinct from ~~his~~ the custodian's own property in a manner to identify it clearly as custodial property.

(H) The custodian shall keep records of all transactions with respect to the custodial property and make the records available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if ~~he~~ the minor has attained the age of fourteen years.

(I) A custodian has, with respect to the custodial property, in addition to the rights and powers provided in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, all the rights and powers that a guardian has with respect to property not held as custodial property.

(J) The custodian may invest in or pay premiums on any life or endowment insurance policy or annuity contract on either of the following:

(1) The life of the minor, if the minor or the estate of the minor is the sole beneficiary under the policy or contract;

(2) The life of any person in whom the minor has an insurable interest, if the minor, ~~his~~ the minor's estate, or the custodian in ~~his~~ the custodian's capacity as custodian is the sole beneficiary.

(K) All of the rights, powers, and authority of the custodian over custodial property, including all of the incidents of ownership in any life or endowment insurance policy, annuity contract, or benefit plan, are held only in the capacity of the custodian as custodian.

Sec. ~~1339.35~~ 5814.05. (A) A custodian is entitled to reimbursement from the custodial property for ~~his~~ reasonable expenses incurred in the performance of ~~his~~ the custodian's duties.

(B) A custodian may act without compensation for ~~his~~ the custodian's services.

(C) Unless ~~he~~ the custodian is a donor or transferor, ~~a~~ the custodian may receive from custodial property reasonable compensation for ~~his~~ the custodian's services determined by one of the following standards in the order stated:

(1) A direction by the donor or transferor when the gift or transfer is made;

(2) A statute of this state applicable to custodians;

(3) The statute of this state applicable to guardians;

(4) An order of the court.

(D) Except as otherwise provided in sections ~~1339.31~~ 5814.01 to

~~1339.39~~ 5814.09 of the Revised Code, a custodian shall not be required to give a bond for the performance of ~~his~~ the custodian's duties.

(E) A custodian not compensated for ~~his~~ the custodian's services is not liable for losses to the custodial property unless they result from ~~his~~ the custodian's bad faith, intentional wrongdoing, or gross negligence or from ~~his~~ the custodian's failure to maintain the standard of prudence in investing the custodial property provided in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code.

Sec. ~~1339.36~~ 5814.06. An issuer, transfer agent, financial institution, broker, life insurance company, or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or transferor or dealing with any person or trust company purporting to act as a custodian is not required to do any of the following:

(A) Determine either of the following:

(1) Whether the person or trust company designated by the purported donor or transferor, or the person or trust company purporting to act as a custodian, has been duly designated;

(2) Whether any purchase, sale, or transfer to or by, or any other act of, any person or trust company purporting to act as a custodian is in accordance with or authorized by sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code.

(B) Inquire into the validity or propriety under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code of any instrument or instructions executed or given by a person purporting to act as a donor or transferor or by a person or trust company purporting to act as a custodian;

(C) See to the application by any person or trust company purporting to act as a custodian of any money or other property paid or delivered to the person or trust company.

Sec. ~~1339.37~~ 5814.07. (A) Any person who is eighteen years of age or older or a trust company is eligible to become a successor custodian. A successor custodian has all the rights, powers, duties, and immunities of a custodian designated in a manner prescribed by sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code.

(B) A custodian may resign and designate ~~his~~ the custodian's successor by doing all of the following:

(1) Executing an instrument of resignation that designates the successor custodian;

(2) Causing each security that is custodial property and in registered form to be registered in the name of the successor custodian followed, in substance, by the words: "as custodian for ..... under the Ohio

Transfers  
(name of minor)  
to Minors Act;"

(3) Executing in the appropriate manner a deed, assignment, or similar instrument for all interest in real estate that is custodial property in the name of the successor custodian, followed, in substance, by the words: "as custodian for ..... under the Ohio Transfers to (name of minor)

Minors Act";

(4) Delivering to the successor custodian the instrument of resignation, each security registered in the name of the successor custodian, each deed, assignment, or similar instrument for all interest in real estate that is in the name of the successor custodian, and all other custodial property, together with any additional instruments that are required for the transfer of the custodial property.

(C) A custodian may petition the court for permission to resign and for the designation of a successor custodian.

(D) A custodian may designate by ~~his~~ the custodian's will a successor custodian, which designation is effective at the custodian's death. Upon the custodian's death, the custodian's legal representative shall do each of the following:

(1) Cause each security that is custodial property and in registered form to be registered in the name of the successor custodian, followed, in substance, by the words: "as custodian for ..... under the Ohio Transfers to (name of minor)

Minors Act";

(2) Execute in the appropriate manner a deed, assignment, or similar instrument for all interest in real estate that is custodial property in the name of the successor custodian, followed, in substance, by the words: "as custodian for ..... under the Ohio Transfers to Minors

(name of minor)

Act";

(3) Deliver to the successor custodian each security registered in the name of the successor custodian, each deed, assignment, or similar instrument for all interest in real estate that is in the name of the successor custodian, and all other custodial property, together with any additional instruments that are required for the transfer of the custodial property.

(E) If no eligible successor custodian is designated by the donor or

transferor in ~~his~~ the donor's or transferor's will or trust or by the custodian in ~~his~~ the custodian's will, or if the custodian dies intestate or is adjudged to be an incompetent by a court, the legal representative of the custodian may designate a successor custodian. If the court in which the estate or guardianship proceedings relative to the custodian are pending approves the designation, the designation shall be regarded as having been effective as of the date of the death of the custodian or as of the date ~~he~~ the custodian was adjudged to be an incompetent. Upon the approval of the court, the legal representative of the custodian shall cause the custodial property to be transferred or registered in the name of the successor custodian as provided in divisions (D)(1) to (3) of this section.

(F) If a person or entity designated as successor custodian is not eligible, or renounces or dies before the minor attains the age of twenty-one years, or if the custodian dies without designating a successor custodian and division (E) of this section does not apply because the custodian does not have a legal representative, the guardian of the minor shall be the successor custodian. If the minor does not have a guardian, a donor or transferor, the legal representative of the donor or transferor, the legal representative of the custodian, a member of the minor's family who is eighteen years of age or older, or the minor, if ~~he~~ the minor has attained the age of fourteen years, may petition the court for the designation of a successor custodian.

(G) A donor or transferor, the legal representative of a donor or transferor, a member of the minor's family who is eighteen years of age or older, a guardian of the minor, or the minor, if ~~he~~ the minor has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of ~~his~~ the custodian's duties.

(H) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on any notice that the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant any relief that the court finds to be in the best interests of the minor.

Sec. ~~4339.38~~ 5814.08. (A) The minor, if ~~he~~ the minor has attained the age of fourteen years, or the legal representative of the minor, a member of the minor's family who is eighteen years of age or older, or a donor or transferor or ~~his~~ the donor's or transferor's legal representative may petition the court for an accounting by the custodian or ~~his~~ the custodian's legal representative. A successor custodian may petition the court for an accounting by the custodian that ~~he~~ the successor custodian succeeded.

(B) The court, in a proceeding under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, or otherwise, may require or permit the custodian or ~~his~~ the custodian's legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer of the custodial property.

Sec. ~~1339.39~~ 5814.09. (A) Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code shall be ~~so~~ construed ~~as~~ to effectuate their general purpose to make uniform the law of those states ~~which~~ that enact similar provisions.

(B) Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code shall not be construed as providing an exclusive method for making gifts or transfers to minors.

(C) Nothing in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, shall affect gifts made under former sections 1339.19 to 1339.28 of the Revised Code, nor the powers, duties, and immunities conferred by gifts in such manner upon custodians and persons dealing with custodians. Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code henceforth apply, however, to all gifts made in a manner and form prescribed in former sections 1339.19 to 1339.28 of the Revised Code, except insofar as ~~such~~ the application impairs constitutionally vested rights. Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code shall be construed as a continuation of the provisions of former sections 1339.19 to 1339.28 of the Revised Code, according to the language employed, and not as a new enactment.

(D) Nothing in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, as of ~~the effective date of this amendment~~ May 7, 1986, shall affect gifts made under those sections as they existed prior to ~~the effective date of this amendment~~ May 7, 1986, or the powers, duties, and immunities conferred by the gifts in any manner upon custodians and persons dealing with custodians. Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, as of ~~the effective date of this amendment~~ May 7, 1986, hereafter apply to all gifts made in a manner and form prescribed in those sections as they existed prior to ~~the effective date of this amendment~~ May 7, 1986, except to the extent that the application of those sections, as of ~~the effective date of this amendment~~ May 7, 1986, would impair constitutionally vested rights.

Sec. ~~1339.031~~ 5815.01. Except when the intent of the settlor clearly is to the contrary, the following rules of construction shall apply in interpreting the terms "inheritance" and "bequest":

(A) The term "inheritance," in addition to its meaning at common law or under any other section or sections of the Revised Code, includes any change of title to real property by reason of the death of the owner of that real property, regardless of whether the owner died testate or intestate.

(B) The term "bequest," in addition to its meaning at common law or under any other section or sections of the Revised Code, includes any disposition of real property that occurs as a result of the death of the settlor.

Sec. ~~1339.01~~ 5815.02. As used in sections ~~1339.01~~ 5815.02 and ~~1339.02~~ 5815.03 of the Revised Code:

(A) "Fiduciary" includes a trustee under any trust, expressed, implied, resulting, or constructive; an executor, administrator, public administrator, guardian, committee, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a public or private corporation, or public officer; or any other person acting in a fiduciary capacity for any person, trust, or estate.

(B) "Good faith" includes an act done honestly, whether it is done negligently or not.

(C) "Issuer" includes domestic corporations, companies, associations, and trusts; foreign corporations, companies, associations, and trusts, to the extent that securities issued by them are held of record by persons in this state or are held on deposit in this state, and to the extent that such foreign corporation, company, association, or trust is a holder of record of, or otherwise interested in, securities of domestic corporations, companies, associations, or trusts; and also the transfer agents and registrars of the issuer and the depositories for its securities.

(D) "Person" includes a corporation, partnership, association, or two or more persons having a joint or common interest.

(E) "Securities" includes the items in the following enumeration, which, however, is not exclusive:

(1) Shares, share certificates, and other certificates and evidences of ownership or participation in property, assets, or trust estate; bonds, notes, debentures, certificates, or evidences of indebtedness, certificates of interest or participation, collateral trust certificates, equipment-trust certificates, preorganization or subscription certificates or receipts, and voting-trust certificates; passbooks or certificates of deposit of money, securities, or other property; scrip certificates, fractional interests certificates, and, in general, interests or instruments commonly known as securities, and certificates of interest or participation in, temporary or interim certificates or receipts for, or warrants or rights to subscribe to, purchase, or receive, any of the foregoing, whether such securities were issued by the issuer in its

corporate capacity, in its individual capacity, or in a fiduciary capacity;

(2) Securities ~~which~~ that were issued originally by other corporations, companies, associations, or trusts, but have become the securities of the present issuer, individually or as a fiduciary.

Sec. ~~4339.02~~ 5815.03. Unless there has been delivered to an issuer a certified copy of an order, judgment, or decree of a court, judge, or administrative body or official, the legal effect of which is to restrict, suspend, or remove such capacity or authority, ~~such~~ the issuer may treat all persons in whose names its securities are of record on its records as being of full age and competent and as having capacity and authority to exercise all rights of ownership in respect of ~~such~~ the securities, including the right to receive and to give receipts for payments and distributions, the right to transfer ~~said~~ the securities, and the right to vote or to give consent in person or by proxy, notwithstanding any description, limitation, or qualification appearing on ~~such~~ the securities or on ~~such~~ the records, any reference thereon to another instrument or to any fiduciary or pledgee or other relationship, or any knowledge or notice, actual or constructive, of the right, interest, or claim of any other person or of the infancy or lack of capacity or authority of the persons in whose names ~~such~~ the securities are of record.

~~Such~~ The issuer may treat a fiduciary as having capacity and authority to exercise all ~~said~~ rights of ownership in respect of ~~such~~ the securities that are of record in the name of a decedent holder, of a person in conservation, receivership, or bankruptcy, or of a minor, incompetent person, or person under disability, and ~~such~~ the issuer shall be protected in any action taken or suffered by it in reliance upon any instrument showing the appointment of ~~such~~ the fiduciary.

~~Such~~ The issuer is not liable for loss caused by any act done or omitted by it under this section. ~~Such~~ The issuer need not see to the execution of any trust, or to the observance or performance of any obligation of a holder of record, a fiduciary, or a pledgee of ~~such~~ the securities, and it need not inquire or inform itself concerning ~~the same~~ those matters.

This section does not enlarge the capacity, right, or authority of any holder of record of ~~such~~ the securities as against any person other than ~~such~~ the issuer, nor prevent any court of competent jurisdiction from enforcing or protecting any right, title, or interest in ~~such~~ the securities in any person who is not a holder of record ~~thereof~~ the securities.

This section does not protect any ~~such~~ issuer who participates with a fiduciary in a breach of ~~his~~ the fiduciary's trust with knowledge of such facts that the action of ~~such~~ the issuer amounts to bad faith.

Sec. ~~4339.03~~ 5815.04. As used in sections ~~4339.03~~ 5815.04 to ~~4339.13~~,

~~inclusive, 5815.11~~ of the Revised Code:

(A) "Bank" includes any person, carrying on the business of banking and any financial institution defined in section 5725.01 of the Revised Code.

(B) "Fiduciary" includes a trustee under any trust, expressed, implied, resulting, or constructive, an executor, ~~adminstrator~~ administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.

(C) "Person" includes a corporation, partnership, association, or two or more persons having a joint or common interest.

(D) "Principal" includes any person to whom a fiduciary as such owes an obligation.

(E) "Good faith" includes an act when it is in fact done honestly.

Sec. ~~4339.04~~ 5815.05. A person who in good faith pays or transfers to a fiduciary any money or other property ~~which~~ that the fiduciary as such is authorized to receive is not responsible for the proper application ~~thereof~~ of the money or other property by the fiduciary. Any right or title acquired from the fiduciary in consideration of ~~such~~ the payment or transfer is not invalid because of a misapplication by the fiduciary.

Sec. ~~4339.08~~ 5815.06. If a deposit is made in a bank to the credit of a fiduciary as such, the bank may pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which ~~such~~ the deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of ~~his~~ the obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith.

If such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of ~~his~~ the obligation as fiduciary in drawing or delivering the check.

Sec. ~~4339.09~~ 5815.07. If a check is drawn upon ~~his~~ the principal's account by a fiduciary who is empowered to do so, the bank may pay ~~such~~ the check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of ~~his~~ the obligation as fiduciary in drawing ~~such~~ the check or with knowledge of such facts that its action in paying the check amounts to bad faith.

If such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank

is liable to the principal if the fiduciary in fact commits a breach of ~~his~~ the obligation as fiduciary in drawing or delivering the check.

Sec. ~~1339.10~~ 5815.08. If a fiduciary makes a deposit in a bank to ~~his~~ the ~~fiduciary's~~ personal credit of checks drawn by ~~him~~ the fiduciary upon an account in ~~his~~ the fiduciary's own name as fiduciary, checks payable to ~~him~~ the fiduciary as fiduciary, checks drawn by ~~him~~ the fiduciary upon an account in the name of ~~his~~ the principal if ~~he~~ the fiduciary is empowered to draw checks thereon, checks payable to ~~his~~ the principal and indorsed by ~~him~~ the fiduciary if ~~he~~ the fiduciary is empowered to indorse ~~such~~ the checks, or if ~~he~~ the fiduciary otherwise makes a deposit of funds held by ~~him~~ the fiduciary as fiduciary, the bank receiving ~~such~~ the deposit is not bound to inquire whether the fiduciary is committing a breach of ~~his~~ the obligation as fiduciary.

~~Such~~ The bank may pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of ~~his~~ the obligation as fiduciary in making ~~such~~ the deposit or in drawing ~~such~~ the check, or with knowledge of such facts that the action of ~~such~~ the bank in receiving the deposit or paying the check amounts to bad faith.

Sec. ~~1339.11~~ 5815.09. When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee authorized to do so by the other, neither the payee or other holder nor the bank is bound to inquire whether it is a breach of trust to authorize ~~such~~ the trustee to draw checks upon the trust account and neither is liable unless the circumstances are such that the action of the payee or other holder or the bank amounts to bad faith.

Sec. ~~1339.12~~ 5815.10. Sections ~~1339.03~~ 5815.04 to ~~1339.13, inclusive,~~ 5815.11 of the Revised Code shall be ~~so~~ construed ~~so~~ as to effectuate their general purpose ~~which is to make~~ of making the law of this state uniform with the law of those states ~~which~~ that enact similar legislation.

Sec. ~~1339.13~~ 5815.11. In any case not provided for in sections ~~1339.03~~ 5815.04 to ~~1339.13, inclusive,~~ 5815.11 of the Revised Code, the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments, and banking apply.

Sec. ~~1339.15~~ 5815.12. As used in sections ~~1339.15~~ 5815.13, ~~1339.16~~ 5815.14, and ~~1339.17~~ 5815.15 of the Revised Code, "power of appointment" means any power ~~which~~ that is in effect a power to appoint, however created, regardless of the nomenclature used in creating the power and regardless of connotations under the law of property, trusts, or wills. ~~Such~~

The power includes but is not limited to powers which are special, general, limited, absolute, in gross, appendant, appurtenant, or collateral.

Sec. ~~4339.151~~ 5815.13. Any power of appointment ~~which~~ that is not subject to an express condition that it may be exercised only by a donee or holder of a greater age may be exercised by any donee or holder of the age of eighteen years; or over.

Sec. ~~4339.16~~ 5815.14. Any power of appointment may be released in whole or in part by the donee or holder of the power by an instrument in writing, signed and acknowledged in the manner prescribed for the execution of deeds. No such release is ineffective because it was given either for or without consideration, because it was signed and acknowledged before June 3, 1943, or because no delivery is made of a copy of the release as provided for in section ~~4339.17~~ 5815.15 of the Revised Code.

Sections ~~4339.16~~ 5815.14 and ~~4339.17~~ 5815.15 of the Revised Code do not affect the validity of a release of a power of appointment effected in any other form or manner.

A donee or holder of a power of appointment may disclaim the same at any time, wholly or in part, in the same manner and to the same extent as ~~he~~ the donee or holder of the power might release it.

Sec. ~~4339.17~~ 5815.15. No fiduciary or other person having the possession or control of any property subject to a power of appointment, other than the donee or holder of such power, has notice of a release of the power until a copy of the release is delivered to ~~him~~ the fiduciary or other person having possession or control.

No purchaser or mortgagee of real property subject to a power of appointment has notice of a release of the power until a copy of the release is delivered to the officer charged by law with the recording of deeds in the county in which the property is situated. If the property is in this state the county recorder to whom a release is delivered shall record ~~such~~ the release in the record of powers of attorney and shall charge a fee computed in the same manner as the fee charged for recording deeds.

Sec. ~~4339.18~~ 5815.16. (A) Absent an express agreement to the contrary, an attorney who performs legal services for a fiduciary, by reason of the attorney performing those legal services for the fiduciary, has no duty or obligation in contract, tort, or otherwise to any third party to whom the fiduciary owes fiduciary obligations.

(B) As used in this section, "fiduciary" means a trustee under an express trust or an executor or administrator of a decedent's estate.

Sec. ~~4339.41~~ 5815.21. Whenever the executor of a will or the trustee of a testamentary or inter vivos trust is permitted or required to select assets in

kind to satisfy a gift, devise, or bequest, whether outright or in trust, intended to qualify for the federal estate tax marital deduction prescribed by the United States "Internal Revenue Code of 1954," 68A Stat. 392, 26 U.S.C.A. 2056, or any comparable federal statute enacted after July 20, 1965, and the will or trust instrument empowers or requires the fiduciary to satisfy such gift, devise, or bequest by allocating assets thereto at any values other than market values at the date of satisfaction of such gift, devise, or bequest, the executor or trustee shall satisfy such gift, devise, or bequest by distribution of assets having a value fairly representative in the aggregate of appreciation or depreciation in the value of all property, including cash, available for distribution in satisfaction of such gift, devise, or bequest, unless the will or trust instrument expressly requires that distribution be made in a manner so as not to be fairly representative of such appreciation or depreciation.

Sec. ~~4339.411~~ 5815.22. (A)(1) Except as provided in divisions (A)(2), (3), and (4) of this section, a spendthrift provision in an instrument that creates an inter vivos or testamentary trust shall not cause any forfeiture or postponement of any interest in property that satisfies both of the following:

(a) It is granted to a surviving spouse of the testator or other settlor.

(b) It qualifies for the federal estate tax marital deduction allowed by Subtitle B, Chapter 11, of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2056, as amended, the estate tax marital deduction allowed by division (A) of section 5731.15 of the Revised Code, or the qualified terminable interest property deduction allowed by division (B) of section 5731.15 of the Revised Code.

(2) Division (A)(1) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that obtaining a marital deduction or a qualified terminable interest property deduction as described in division (A)(1)(b) of this section is less important than enforcing the forfeiture or postponement of the interest in property in accordance with the spendthrift provision in the instrument.

(3) Division (A)(1) of this section applies only to the forfeiture or postponement portions of a spendthrift provision and does not apply to any portion of a spendthrift provision that prohibits a beneficiary from assigning, alienating, or otherwise disposing of any beneficial interest in a trust or prohibits a creditor of a beneficiary from attaching or otherwise encumbering the trust estate.

(4) Division (A)(1) of this section does not apply to any beneficiary of an inter vivos or testamentary trust other than the surviving spouse of the

testator or other settlor or to any inter vivos or testamentary trust of which the surviving spouse of the testator or other settlor is a beneficiary if an interest in property does not qualify for a marital deduction or a qualified terminable interest property deduction as described in division (A)(1)(b) of this section.

(B)(1) Except as provided in divisions (B)(2) and (3) of this section, if an instrument creating an inter vivos or testamentary trust includes a spendthrift provision and the trust holds shares in an S corporation, the spendthrift provision shall not cause any forfeiture or postponement of any beneficial interest, income, principal, or other interest in the shares of the S corporation held by the trust. For purposes of division (B)(1) of this section, "S corporation" has the same meaning as in section 1361 of the "Internal Revenue Code of 1986," 26 U.S.C. 1361.

(2) Division (B)(1) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that maintenance of the corporation's status as an S corporation is less important than enforcing the forfeiture or postponement of any beneficial interest, income, principal, or other interest in the S corporation shares in accordance with the spendthrift provision in the instrument.

(3) Division (B)(1) of this section applies only to the forfeiture or postponement portions of a spendthrift provision and does not apply to any portion of a spendthrift provision that prohibits a beneficiary from assigning, alienating, or otherwise disposing of any beneficial interest in a trust or prohibits a creditor of a beneficiary from attaching or otherwise encumbering the trust estate.

(C)(1) Except as provided in divisions (C)(2) and (3) of this section, a spendthrift provision in an instrument that creates an inter vivos or testamentary trust shall not cause any forfeiture or postponement of any interest in property that satisfies both of the following:

(a) It is granted to a person who is a skip person under the federal generation-skipping transfer tax imposed by Subtitle B, Chapter 13, of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2601-2663, as amended.

(b) It qualifies as a nontaxable gift under section 2642(c) of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2642(c).

(2) Division (C)(1) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that qualifying as a nontaxable trust gift as described in division (C)(1)(b) of this section is less important than enforcing the forfeiture or postponement of the interest in property in

accordance with the spendthrift provision in the instrument.

(3) Division (C)(1) of this section applies only to the forfeiture or postponement portions of a spendthrift provision and does not apply to any portion of a spendthrift provision that prohibits a beneficiary from assigning, alienating, or otherwise disposing of any beneficial interest in a trust or prohibits a creditor of a beneficiary from attaching or otherwise encumbering the trust estate.

(D) Divisions (A), (B), and (C) of this section are intended to codify certain fiduciary and trust law principles relating to the interpretation of a testator's or other settlor's intent with respect to the provisions of a trust. Divisions (A), (B), and (C) of this section apply to trust instruments executed prior to and existing on August 29, 2000, and to trust instruments executed on or after August 29, 2000.

~~Sec. 4339.412~~ 5815.23. (A) Except as provided in division (B) of this section, an instrument that creates an inter vivos or testamentary trust shall not require or permit the accumulation for more than one year of any income of property that satisfies both of the following:

(1) The property is granted to a surviving spouse of the testator or other settlor.

(2) The property qualifies for the federal estate tax marital deduction allowed by subtitle B, Chapter 11 of the "Internal Revenue Code of 1986," 26 U.S.C. 2056, as amended, the estate tax marital deduction allowed by division (A) of section 5731.15 of the Revised Code, or the qualified terminable interest property deduction allowed by division (B) of section 5731.15 of the Revised Code.

(B)(1) Division (A) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that obtaining a marital deduction or a qualified terminable interest property deduction as described in division (A)(2) of this section is less important than requiring or permitting the accumulation of income of property in accordance with a provision in the instrument that requires or permits the accumulation for more than one year of any income of property.

(2) Division (A) of this section does not apply to any beneficiary of an inter vivos or testamentary trust other than the surviving spouse of the testator or other settlor or to any inter vivos or testamentary trust of which the surviving spouse of the testator or other settlor is a beneficiary if an interest in property does not qualify for a marital deduction or a qualified terminable interest property deduction as described in division (A)(2) of this section.

(C)(1) The trustee of a trust that qualifies for an estate tax marital deduction for federal or Ohio estate tax purposes and that is the beneficiary of an individual retirement account has a fiduciary duty, in regard to the income distribution provision of the trust, to withdraw and distribute the income of the individual retirement account, at least annually, to the surviving spouse of the testator or other settlor.

(2) A trustee's fiduciary duty as described in division (C)(1) of this section is satisfied if the terms of the trust instrument expressly provide the surviving spouse a right to withdraw all of the assets from the trust or a right to compel the trustee to withdraw and distribute the income of the individual retirement account to the surviving spouse.

(D) Divisions (A), (B), and (C)(1) of this section are intended to codify existing fiduciary and trust law principles relating to the interpretation of a testator's or other settlor's intent with respect to the income provisions of a trust. Divisions (A), (B), and (C) of this section apply to trust instruments executed prior to and existing on October 1, 1996, or executed thereafter. The trustee of a trust described in division (A) or (B) of this section, in a written trust amendment, may elect to not apply divisions (A) and (B) of this section to the trust. Any election of that nature, when made, is irrevocable.

Sec. ~~4339.42~~ 5815.24. (A) As used in this section, "fiduciary" means a trustee under any expressed, implied, resulting, or constructive trust; an executor, administrator, public administrator, committee, guardian, conservator, curator, receiver, trustee in bankruptcy, or assignee for the benefit of creditors; a partner, agent, officer of a public or private corporation, or public officer; or any other person acting in a fiduciary capacity for any person, trust, or estate.

(B) A fiduciary, or a custodian, who is a transferee of real or personal property that is held by a fiduciary other than the person or entity serving as the transferee, is not required to inquire into any act, or audit any account, of the transferor fiduciary, unless the transferee is specifically directed to do so in the instrument governing ~~him~~ the transferee or unless the transferee has actual knowledge of conduct of the transferor that would constitute a breach of the transferor's fiduciary responsibilities.

(C) If a trustee is authorized or directed in a trust instrument to pay or advance all or any part of the trust property to the personal representative of a decedent's estate for the payment of the decedent's legal obligations, death taxes, bequests, or expenses of administration, the trustee is not liable for the application of the trust property paid or advanced to the personal representative and is not liable for any act or omission of the personal representative with respect to the trust property, unless the trustee has actual

knowledge, prior to the payment or advancement of the trust property, that the personal representative does not intend to use the trust property for such purposes.

Sec. ~~1339.43~~ 5815.25. (A) As used in this section, "fiduciary" means a trustee under any testamentary, inter vivos, or other trust, an executor or administrator, or any other person who is acting in a fiduciary capacity for any person, trust, or estate.

(B) When an instrument under which a fiduciary acts reserves to the grantor, or vests in an advisory or investment committee or in one or more other persons, including one or more fiduciaries, to the exclusion of the fiduciary or of one or more of several fiduciaries, any power, including, but not limited to, the authority to direct the acquisition, disposition, or retention of any investment or the power to authorize any act that an excluded fiduciary may propose, any excluded fiduciary is not liable, either individually or as a fiduciary, for either of the following:

(1) Any loss that results from compliance with an authorized direction of the grantor, committee, person, or persons;

(2) Any loss that results from a failure to take any action proposed by an excluded fiduciary that requires a prior authorization of the grantor, committee, person, or persons if that excluded fiduciary timely sought but failed to obtain that authorization.

(C) Any excluded fiduciary as described in division (B) of this section is relieved from any obligation to perform investment reviews and make recommendations with respect to any investments to the extent the grantor, an advisory or investment committee, or one or more other persons have authority to direct the acquisition, disposition, or retention of any investment.

(D) This section does not apply to the extent that the instrument under which an excluded fiduciary as described in division (B) of this section acts contains provisions that are inconsistent with this section.

Sec. ~~1339.44~~ 5815.26. (A) As used in this section:

(1) "Fiduciary" means a trustee under any testamentary, inter vivos, or other trust, an executor or administrator, or any other person who is acting in a fiduciary capacity for a person, trust, or estate.

(2) "Short term trust-quality investment fund" means a short term investment fund that meets both of the following conditions:

(a) The fund may be either a collective investment fund established pursuant to section 1111.14 of the Revised Code or a registered investment company, including any affiliated investment company whether or not the fiduciary has invested other funds held by it in an agency or other

nonfiduciary capacity in the securities of the same registered investment company or affiliated investment company.

(b) The fund is invested in any one or more of the following manners:

(i) In obligations of the United States or of its agencies;

(ii) In obligations of one or more of the states of the United States or their political subdivisions;

(iii) In variable demand notes, corporate money market instruments including, but not limited to, commercial paper rated at the time of purchase in either of the two highest classifications established by at least one nationally recognized standard rating service;

(iv) In deposits in banks or savings and loan associations whose deposits are insured by the federal deposit insurance corporation, if the rate of interest paid on such deposits is at least equal to the rate of interest generally paid by such banks or savings and loan associations on deposits of similar terms or amounts;

(v) In fully collateralized repurchase agreements or other evidences of indebtedness that are of trust quality and are payable on demand or have a maturity date consistent with the purpose of the fund and the duty of fiduciary prudence.

(3) "Registered investment company" means any investment company that is defined in and registered under sections 3 and 8 of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8.

(4) "Affiliated investment company" has the same meaning as in division (E)(1) of section 1111.10 of the Revised Code.

(B) A fiduciary is not required to invest cash that belongs to the trust and may hold that cash for the period prior to distribution if either of the following applies:

(1) The fiduciary reasonably expects to do either of the following:

(a) Distribute the cash to beneficiaries of the trust on a quarterly or more frequent basis;

(b) Use the cash for the payment of debts, taxes, or expenses of administration within the ninety-day period following the receipt of the cash by the fiduciary.

(2) Determined on the basis of the facilities available to the fiduciary and the amount of the income that reasonably could be earned by the investment of the cash, the amount of the cash does not justify the administrative burden or expense associated with its investment.

(C) If a fiduciary wishes to hold funds that belong to the trust in liquid form and division (B) of this section does not apply, the fiduciary may so hold the funds as long as they are temporarily invested as described in

division (D) of this section.

(D)(1) A fiduciary may make a temporary investment of cash that ~~he~~ may ~~hold~~ be held uninvested in accordance with division (B) of this section, and shall make a temporary investment of funds held in liquid form pursuant to division (C) of this section, in any of the following investments, unless the governing instrument provides for other investments in which the temporary investment of cash or funds is permitted:

(a) A short term trust-quality investment fund;

(b) Direct obligations of the United States or of its agencies;

(c) A deposit with a bank or savings and loan association, including a deposit with the fiduciary itself or any bank subsidiary corporation owned or controlled by the bank holding company that owns or controls the fiduciary, whose deposits are insured by the federal deposit insurance corporation, if the rate of interest paid on that deposit is at least equal to the rate of interest generally paid by that bank or savings and loan association on deposits of similar terms or amounts.

(2) A fiduciary that makes a temporary investment of cash or funds pursuant to division (D)(1) of this section may charge a reasonable fee for the services associated with that investment. The fee shall be in addition to the compensation to which the fiduciary is entitled for his ordinary fiduciary services.

(3) Fiduciaries that make one or more temporary investments of cash or funds pursuant to division (D)(1) of this section shall provide to the beneficiaries of the trusts involved, that are currently receiving income or have a right to receive income, a written disclosure of their temporary investment practices and, if applicable, the method of computing reasonable fees for their temporary investment services pursuant to division (D)(2) of this section. Fiduciaries may comply with this requirement in any appropriate written document, including, but not limited to, any periodic statement or account.

(4) A fiduciary that makes a temporary investment of cash or funds in an affiliated investment company pursuant to division (D)(1)(a) of this section shall, when providing any periodic account statements of its temporary investment practices, report the net asset value of the shares comprising the investment in the affiliated investment company.

(5) If a fiduciary that makes a temporary investment of cash or funds in an affiliated investment company pursuant to division (D)(1)(a) of this section invests in any mutual fund, the fiduciary shall provide to the beneficiaries of the trust involved, that are currently receiving income or have a right to receive income, a written disclosure, in at least ten-point

boldface type, that the mutual fund is not insured or guaranteed by the federal deposit insurance corporation or by any other government agency or government-sponsored agency of the federal government or of this state.

Sec. ~~1339.45~~ 5815.27. (A) A provision in a will or trust agreement, which provision pertains to the payment of any taxes that are imposed by reason of the testator's or trust creator's death, does not include the payment of any portion of any tax that is imposed on any transfer under any other will or trust agreement by Chapter 13 of subtitle B of the "Internal Revenue Code of 1986," 100 Stat. 2718, 26 U.S.C. 2601-2624, as amended, unless the provision of the will or trust agreement specifically states, using the words "generation-skipping transfer tax," that the payment of the tax imposed under that chapter is included within the provision of the will or trust agreement.

(B) This section applies to wills and trust agreements that are executed before or after March 14, 1979.

Sec. ~~1339.51~~ 5815.28. (A) As used in this section:

(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.

(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 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 the individual is eligible to receive under programs authorized by federal or state law.

(B) Any person may create a 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 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 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 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, the beneficiary's estate, the settlor, or the 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, the beneficiary's estate, the settlor, or the 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 action, subrogation, execution, garnishment, attachment, judicial sale, or other legal process, if all of the following apply:

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

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

(3) The trust instrument provides that trust assets can be used only to provide supplemental services, as defined by rule of 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, to the beneficiary;

(4) The trust is maintained and assets are distributed 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;

(5) The trust instrument provides that on the death of the beneficiary, a portion of the remaining assets of the trust, which shall be not less than fifty per cent of such assets, will be deposited to the credit of the services fund for individuals with mental illness created by section 5119.17 of the Revised Code or the services fund for individuals with mental retardation and developmental disabilities created by section 5123.40 of the Revised Code.

(E) In 1994, the trust principal maximum amount for a trust created under this section shall be two hundred thousand dollars. The maximum amount for a trust created under this section prior to November 11, 1994, may be increased to two hundred thousand dollars.

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

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

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

Sec. ~~4339.62~~ 5815.31. Unless the trust or separation agreement provides otherwise, if, after executing a trust in which ~~he~~ the grantor reserves to ~~himself~~ self a power to alter, amend, revoke, or terminate the provisions of the trust, a grantor is divorced, obtains a dissolution of marriage, has ~~his~~ the grantor's marriage annulled, or, upon actual separation from ~~his~~ the grantor's spouse, enters into a separation agreement pursuant to which the parties intend to fully and finally settle their prospective property rights in the property of the other, whether by expected inheritance or otherwise, the spouse or former spouse of the grantor shall be deemed to have predeceased the grantor and any provision in the trust conferring a general or special power of appointment on the spouse or former spouse or nominating the spouse or former spouse as trustee or trust advisor shall be revoked. If the grantor remarries ~~his~~ the grantor's former spouse or if the separation agreement is terminated, the spouse shall not be deemed to have predeceased the grantor and any provision in the trust conferring a general or special power of appointment on the spouse or former spouse or nominating the spouse or former spouse as trustee or trust advisor shall not be revoked.

Sec. ~~4339.624~~ 5815.32. If a principal executes a power of attorney designating the principal's spouse as the attorney in fact for the principal and if after executing the power of attorney, the principal and the principal's spouse are divorced, obtain a dissolution or annulment of their marriage, or enter into a separation agreement pursuant to which they intend to fully and finally settle each spouse's prospective property rights in the property of the other, the designation in the power of attorney of the spouse or former spouse of the principal to act as attorney in fact for the principal is revoked, unless the power of attorney provides otherwise. The subsequent remarriage of the principal to the principal's former spouse, or the termination of a separation agreement between the principal and the principal's spouse, does not revive a power of attorney that is revoked under this section.

Sec. ~~4339.63~~ 5815.33. (A) As used in this section:

(1) "Beneficiary" means a beneficiary of a life insurance policy, an annuity, a payable on death account, an individual retirement plan, an employer death benefit plan, or another right to death benefits arising under a contract.

(2) "Employer death benefit plan" means any funded or unfunded plan or program, or any fund, that is established to provide the beneficiaries of an employee participating in the plan, program, or fund with benefits that may be payable upon the death of that employee.

(3) "Individual retirement plan" means an individual retirement account

or individual retirement annuity as defined in section 408 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 408, as amended.

(B)(1) Unless the designation of beneficiary or the judgment or decree granting the divorce, dissolution of marriage, or annulment specifically provides otherwise, and subject to division (B)(2) of this section, if a spouse designates the other spouse as a beneficiary or if another person having the right to designate a beneficiary on behalf of the spouse designates the other spouse as a beneficiary, and if, after either type of designation, the spouse who made the designation or on whose behalf the designation was made, is divorced from the other spouse, obtains a dissolution of marriage, or has the marriage to the other spouse annulled, then the other spouse shall be deemed to have predeceased the spouse who made the designation or on whose behalf the designation was made, and the designation of the other spouse as a beneficiary is revoked as a result of the divorce, dissolution of marriage, or annulment.

(2) If the spouse who made the designation or on whose behalf the designation was made remarries the other spouse, then, unless the designation no longer can be made, the other spouse shall not be deemed to have predeceased the spouse who made the designation or on whose behalf the designation was made, and the designation of the other spouse as a beneficiary is not revoked because of the previous divorce, dissolution of marriage, or annulment.

(C) An agent, bank, broker, custodian, issuer, life insurance company, plan administrator, savings and loan association, transfer agent, trustee, or other person is not liable in damages or otherwise in a civil or criminal action or proceeding for distributing or disposing of property in reliance on and in accordance with a designation of beneficiary as described in division (B)(1) of this section, if both of the following apply:

(1) The distribution or disposition otherwise is proper;

(2) The agent, bank, broker, custodian, issuer, life insurance company, plan administrator, savings and loan association, transfer agent, trustee, or other person did not have any notice of the facts that resulted in the revocation of the beneficiary designation by operation of division (B)(1) of this section.

~~Sec. 4339.64~~ 5815.34. (A)(1) Unless the judgment or decree granting the divorce, dissolution of marriage, or annulment specifically provides otherwise, and subject to division (A)(2) of this section, if the title to any personal property is held by two persons who are married to each other, if the title is so held for the joint lives of the spouses and then to the survivor of them, and if the marriage of the spouses subsequently is terminated by a

judgment or decree granting a divorce, dissolution of marriage, or annulment, then the survivorship rights of the spouses terminate, and each spouse shall be deemed the owner of an undivided interest in common in the title to the personal property, that is in proportion to ~~his~~ the spouse's net contributions to the personal property.

(2) If the spouses described in division (A)(1) of this section remarry each other and the title to the personal property continues to be held by them in accordance with that division, then the survivorship rights of the spouses are not terminated, and the spouses again hold title in the personal property for their joint lives and then to the survivor of them.

(B)(1) Unless the judgment or decree granting the divorce, dissolution of marriage, or annulment specifically provides otherwise, and subject to division (B)(2) of this section, if the title to any personal property is held by more than two persons and at least two of the persons are married to each other, if the title is so held for the joint lives of the titleholders and then to the survivor or survivors of them, and if the marriage of any of the titleholders who are married to each other subsequently is terminated by a judgment or decree granting a divorce, dissolution of marriage, or annulment, then the survivorship rights of the titleholders who were married to each other terminate, the survivorship rights of the other titleholders are not affected, and each of the titleholders who were married to each other shall be deemed to be the owner of an undivided interest in common in the personal property, that is in proportion to ~~his~~ the net contributions of the titleholders who were married to each other to the personal property.

(2) If the titleholders who were married to each other as described in division (B)(1) of this section remarry each other, and if the title to the personal property continues to be held by them, and the other titleholders whose survivorship rights continued unaffected, in accordance with that division, then the survivorship rights of the remarried titleholders are not terminated, and the remarried and other titleholders again hold title in the personal property for their joint lives and then to the survivor or survivors of them.

(C) An agent, bank, broker, custodian, issuer, life insurance company, plan administrator, savings and loan association, transfer agent, trustee, or other person is not liable in damages or otherwise in a civil or criminal action or proceeding for distributing or disposing of personal property in reliance on and in accordance with a registration in the form of a joint ownership for life, with rights of survivorship, as described in division (A)(1) or (B)(1) of this section, if both of the following apply:

(1) The distribution or disposition otherwise is proper;

(2) The agent, bank, broker, custodian, issuer, life insurance company, plan administrator, savings and loan association, transfer agent, trustee, or other person did not have any notice of the facts that resulted in the termination of the rights of survivorship by operation of division (A)(1) or (B)(1) of this section.

Sec. ~~1339.65~~ 5815.35. (A)(1) As used in this division:

(a) "~~Fiduciary, fiduciary~~" means any person, association, or corporation, other than a trustee of a testamentary trust, an assignee or trustee for an insolvent debtor, or a guardian under Chapter 5905. of the Revised Code, that is appointed by and accountable to the probate court, and that is acting in a fiduciary capacity for another or charged with duties in relation to any property, interest, ~~trust~~, or estate for another's benefit. A fiduciary also includes an agency under contract with the department of mental retardation and developmental disabilities for the provision of protective service under sections 5123.55 to 5123.59 of the Revised Code, when appointed by ~~an~~ and accountable to the probate court as a guardian or trustee for a mentally retarded or developmentally disabled person.

(b) "~~Trustee~~" means a trustee of an inter vivos trust.

(2) A ~~trustee or~~ fiduciary who enters a contract as ~~trustee or~~ fiduciary on or after March 22, 1984, is not personally liable on that contract, unless the contract otherwise specifies, if the contract is within the ~~trustee's or~~ fiduciary's authority and the ~~trustee or~~ fiduciary discloses that the contract is being entered into in ~~his trustee or~~ a fiduciary capacity. In a contract, the words "~~trustee,~~" "~~as trustee,~~" "fiduciary;" or "as fiduciary;" or other words that indicate one's ~~trustee or~~ fiduciary capacity; following the name or signature of a ~~trustee or~~ fiduciary ~~shall be~~ are sufficient disclosure for purposes of this division.

(B)(1) As used in this division:

(a) "~~Partnership, partnership~~" includes a partnership composed of only general partners and a partnership composed of general and limited partners.

(b) "~~Revocable trust~~" means ~~only a revocable trust that, by its terms, becomes irrevocable upon the death of the settlor of the trust.~~

(2) Subject to division (D) of this section, an executor, or administrator, ~~or trustee~~ who acquires, in ~~his~~ a fiduciary capacity, a general partnership interest upon the death of a general partner of a partnership, ~~or a trustee of a revocable trust who, in his fiduciary capacity, is a general partner of a partnership,~~ is not personally liable for any debt, obligation, or liability of the partnership that arises from ~~his~~ the executor's or administrator's actions, except as provided in this division, as a general partner, or for any debt, obligation, or liability of the partnership for which ~~he~~ the executor or

administrator otherwise would be personally liable because ~~he~~ the executor or administrator holds the general partnership interest, if ~~he~~ the executor or administrator discloses that the general partnership interest is held by ~~him~~ the executor or administrator in a fiduciary capacity. This immunity does not apply if an executor, or administrator, ~~or trustee~~ causes loss or injury to a person who is not a partner in the partnership, by a wrongful act or omission. This immunity is not available to an executor, or administrator, ~~or trustee~~ who holds a general partnership interest in ~~his~~ a fiduciary capacity if ~~his~~ the spouse or any ~~of his~~ of lineal descendants of the executor or administrator, or the executor, or administrator, ~~or trustee~~ ~~himself~~ other than in ~~his~~ a fiduciary capacity, holds any interest in the partnership.

A partnership certificate that is filed pursuant to Chapter 1777. or another chapter of the Revised Code and that indicates that an executor, or administrator, ~~or trustee~~ holds a general partnership interest in a fiduciary capacity by the use following the name or signature of the executor, or administrator, ~~or trustee~~ of the words "executor under the will of (name of decedent);" or "administrator of the estate of (name of decedent);" ~~or~~ "trustee under the (will or trust) of (name of decedent or settlor)," or other words that indicate the executor's, or administrator's, ~~or trustee's~~ fiduciary capacity, constitutes a sufficient disclosure for purposes of this division.

If a partnership certificate is not required to be filed pursuant to Chapter 1777. or another chapter of the Revised Code, a sufficient disclosure for purposes of this division can be made by an executor, or administrator, ~~or trustee~~ if a certificate that satisfies the following requirements is filed with the recorder of the county in which the partnership's principal office or place of business is situated and with the recorder of each county in which the partnership owns real estate:

(a) The certificate shall state in full the names of all persons holding interests in the partnership and their places of residence;

(b) The certificate shall be signed by all persons who are general partners in the partnership, and shall be acknowledged by a person authorized to take acknowledgements of deeds;

(c) The certificate shall use the words "executor under the will of (name of decedent);" or "administrator of the estate of (name of decedent);" ~~or~~ "trustee under the (will or trust) of (name of decedent or settlor)," or other words that indicate the executor's, or administrator's, ~~or trustee's~~ fiduciary capacity, following ~~his~~ the name or signature of the executor or administrator.

A contract or other written instrument delivered to a party that contracts with the partnership in which an executor, or administrator, ~~or trustee~~ holds

a general partnership interest in a fiduciary capacity, which indicates that the executor, or administrator, ~~or trustee~~ so holds the interest, constitutes a disclosure for purposes of this division with respect to transactions between the party and the partnership. If a disclosure has been made by a certificate in accordance with this division, a disclosure for purposes of this division with respect to such transactions exists regardless of whether a contract or other instrument indicates the executor, or administrator, ~~or trustee~~ holds the general partnership interest in a fiduciary capacity.

~~If a trustee of a revocable trust, in his fiduciary capacity, is a general partner in a partnership, the settlor of the trust is personally liable for any debt, obligation, or liability of the partnership as if he were the general partner.~~ If an executor, or administrator, ~~or trustee~~ acquires, in his a fiduciary capacity, a general partnership interest, the decedent's estate ~~or the trust~~ is liable for debts, obligations, or liabilities of the partnership.

(C) An estate ~~or trust~~ that includes a general partnership interest is not liable for the debts, obligations, or liabilities of a partnership in which another estate ~~or trust~~ has a general partnership interest, merely because the executor, or administrator, ~~or trustee~~ of the estates ~~or trusts~~ holds a general partnership interest in both of the partnerships in his the executor's or administrator's fiduciary capacities.

(D) Divisions (B) and (C) of this section apply to general partnership interests held by executors, or administrators, ~~or trustees~~ in their fiduciary capacities prior to and on or after the effective date of this section. If an appropriate disclosure is made pursuant to division (B) of this section, the immunity acquired under that division extends only to debts, obligations, and liabilities of the partnership arising on and after the date of the disclosure and to debts, obligations, and liabilities of the partnership that arose prior to the acquisition of the general partnership interest by the executor, or administrator, ~~or trustee~~ ~~or prior to the trustee of a revocable trust~~ becoming a general partner.

Sec. ~~4339.68~~ 5815.36. (A) As used in this section:

(1) "Disclaimant" means any person, any guardian or personal representative of a person or estate of a person, or any attorney-in-fact or agent of a person having a general or specific authority to act granted in a written instrument, who is any of the following:

(a) With respect to testamentary instruments and intestate succession, an heir, next of kin, devisee, legatee, donee, person succeeding to a disclaimed interest, surviving joint tenant, surviving tenant by the entirety, surviving tenant of a tenancy with a right of survivorship, beneficiary under a testamentary instrument, or person designated to take pursuant to a power of

appointment exercised by a testamentary instrument;

(b) With respect to nontestamentary instruments, a grantee, donee, person succeeding to a disclaimed interest, surviving joint tenant, surviving tenant by the entirety, surviving tenant of a tenancy with a right of survivorship, beneficiary under a nontestamentary instrument, or person designated to take pursuant to a power of appointment exercised by a nontestamentary instrument;

(c) With respect to fiduciary rights, privileges, powers, and immunities, a fiduciary under a testamentary or nontestamentary instrument. This section does not authorize a fiduciary to disclaim the rights of beneficiaries unless the instrument creating the fiduciary relationship authorizes such a disclaimer.

(d) Any person entitled to take an interest in property upon the death of a person or upon the occurrence of any other event.

(2) "Property" means all forms of property, real and personal, tangible and intangible.

(B)(1) A disclaimant, other than a fiduciary under an instrument who is not authorized by the instrument to disclaim the interest of a beneficiary, may disclaim, in whole or in part, the succession to any property by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided in this section.

(2) A disclaimant who is a fiduciary under an instrument may disclaim, in whole or in part, any right, power, privilege, or immunity, by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided in this section.

(3) The written instrument of disclaimer shall be signed and acknowledged by the disclaimant and shall contain all of the following:

(a) A reference to the donative instrument;

(b) A description of the property, part of property, or interest disclaimed, and of any fiduciary right, power, privilege, or immunity disclaimed;

(c) A declaration of the disclaimer and its extent.

(4) The guardian of the estate of a minor or an incompetent, or the personal representative of a deceased person, with the consent of the probate division of the court of common pleas, may disclaim, in whole or in part, the succession to any property, or interest in property, that the ward, if an adult and competent, or the deceased, if living, might have disclaimed. The guardian or personal representative, or any interested person may file an application with the probate division of the court of common pleas that has jurisdiction of the estate, asking that the court order the guardian or personal

representative to execute and deliver, file, or record the disclaimer on behalf of the ward or estate. The court shall order the guardian or personal representative to execute and deliver, file, or record the disclaimer if the court finds, upon hearing after notice to interested parties and such other persons as the court shall direct, that:

(a) It is in the best interests of those interested in the estate of the person and of those who will take the disclaimed interest;

(b) It would not materially, adversely affect the minor or incompetent, or the beneficiaries of the estate of the decedent, taking into consideration other available resources and the age, probable life expectancy, physical and mental condition, and present and reasonably anticipated future needs of the minor or incompetent or the beneficiaries of the estate of the decedent.

A written instrument of disclaimer ordered by the court under this division shall be executed and be delivered, filed, or recorded within the time and in the manner in which the person could have disclaimed if the person were living, an adult, and competent.

(C) A partial disclaimer of property that is subject to a burdensome interest created by the donative instrument is not effective unless the disclaimed property constitutes a gift that is separate and distinct from undisclaimed gifts.

(D) The disclaimant shall deliver, file, or record the disclaimer, or cause the same to be done, not later than nine months after the latest of the following dates:

(1) The effective date of the donative instrument if both the taker and the taker's interest in the property are finally ascertained on that date;

(2) The date of the occurrence of the event upon which both the taker and the taker's interest in the property become finally ascertainable;

(3) The date on which the disclaimant attains twenty-one years of age or is no longer an incompetent, without tendering or repaying any benefit received while the disclaimant was under twenty-one years of age or an incompetent, and even if a guardian of a minor or incompetent had filed an application pursuant to division (B)(4) of this section and the probate division of the court of common pleas involved did not consent to the guardian executing a disclaimer.

(E) No disclaimer instrument is effective under this section if either of the following applies under the terms of the disclaimer instrument:

(1) The disclaimant has power to revoke the disclaimer.

(2) The disclaimant may transfer, or direct to be transferred, to self the entire legal and equitable ownership of the property subject to the disclaimer instrument.

(F)(1) Subject to division (F)(2) of this section, if the interest disclaimed is created by a nontestamentary instrument, the disclaimer instrument shall be delivered personally or by certified mail to the trustee or other person who has legal title to, or possession of, the property disclaimed.

(2) If the interest disclaimed is created by a testamentary instrument, by intestate succession, by a transfer on death deed pursuant to section 5302.22 of the Revised Code, or by a certificate of title to a motor vehicle, watercraft, or outboard motor that evidences ownership of the motor vehicle, watercraft, or outboard motor that is transferable on death pursuant to section 2131.13 of the Revised Code, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate have been commenced, and an executed copy of the disclaimer instrument shall be delivered personally or by certified mail to the personal representative of the decedent's estate.

(3) If no proceedings for the administration of the decedent's estate have been commenced, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate might be commenced according to law. The disclaimer instrument shall be filed and indexed, and fees charged, in the same manner as provided by law for an application to be appointed as personal representative to administer the decedent's estate. The disclaimer is effective whether or not proceedings thereafter are commenced to administer the decedent's estate. If proceedings thereafter are commenced for the administration of the decedent's estate, they shall be filed under, or consolidated with, the case number assigned to the disclaimer instrument.

(4) If an interest in real estate is disclaimed, an executed copy of the disclaimer instrument also shall be recorded in the office of the recorder of the county in which the real estate is located. The disclaimer instrument shall include a description of the real estate with sufficient certainty to identify it, and shall contain a reference to the record of the instrument that created the interest disclaimed. If title to the real estate is registered under Chapters 5309. and 5310. of the Revised Code, the disclaimer interest shall be entered as a memorial on the last certificate of title. A spouse of a disclaimant has no dower or other interest in the real estate disclaimed.

(G) Unless the donative instrument expressly provides that, if there is a disclaimer, there shall not be any acceleration of remainders or other interests, the property, part of property, or interest in property disclaimed, and any future interest that is to take effect in possession or enjoyment at or after the termination of the interest disclaimed, shall descend, be distributed,

or otherwise be disposed of, and shall be accelerated, in the following manner:

(1) If intestate or testate succession is disclaimed, as if the disclaimant had predeceased the decedent;

(2) If the disclaimant is one designated to take pursuant to a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power;

(3) If the donative instrument is a nontestamentary instrument, as if the disclaimant had died before the effective date of the nontestamentary instrument;

(4) If the disclaimer is of a fiduciary right, power, privilege, or immunity, as if the right, power, privilege, or immunity was never in the donative instrument.

(H) A disclaimer pursuant to this section is effective as of, and relates back for all purposes to, the date upon which the taker and the taker's interest have been finally ascertained.

(I) A disclaimant who has a present and future interest in property, and disclaims the disclaimant's present interest in whole or in part, is considered to have disclaimed the disclaimant's future interest to the same extent, unless a contrary intention appears in the disclaimer instrument or the donative instrument. A disclaimant is not precluded from receiving, as an alternative taker, a beneficial interest in the property disclaimed, unless a contrary intention appears in the disclaimer instrument or in the donative instrument.

(J) The disclaimant's right to disclaim under this section is barred if, before the expiration of the period within which the disclaimant may disclaim the interest, the disclaimant does any of the following:

(1) Assigns, conveys, encumbers, pledges, or transfers, or contracts to assign, convey, encumber, pledge, or transfer, the property or any interest in it;

(2) Waives in writing the disclaimant's right to disclaim and executes and delivers, files, or records the waiver in the manner provided in this section for a disclaimer instrument;

(3) Accepts the property or an interest in it;

(4) Permits or suffers a sale or other disposition of the property pursuant to judicial action against the disclaimant.

(K) A fiduciary's application for appointment or assumption of duties as a fiduciary does not waive or bar the disclaimant's right to disclaim a right, power, privilege, or immunity.

(L) The right to disclaim under this section exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift

provision or similar restriction.

(M) A disclaimer instrument or written waiver of the right to disclaim that has been executed and delivered, filed, or recorded as required by this section is final and binding upon all persons.

(N) The right to disclaim and the procedures for disclaimer established by this section are in addition to, and do not exclude or abridge, any other rights or procedures existing under any other section of the Revised Code or at common law to assign, convey, release, refuse to accept, renounce, waive, or disclaim property.

(O)(1) No person is liable for distributing or disposing of property in a manner inconsistent with the terms of a valid disclaimer if the distribution or disposition is otherwise proper and the person has no actual knowledge of the disclaimer.

(2) No person is liable for distributing or disposing of property in reliance upon the terms of a disclaimer that is invalid because the right of disclaimer has been waived or barred if the distribution or disposition is otherwise proper and the person has no actual knowledge of the facts that constitute a waiver or bar to the right to disclaim.

(P)(1) A disclaimant may disclaim pursuant to this section any interest in property that is in existence on September 27, 1976, if either the interest in the property or the taker of the interest in the property is not finally ascertained on that date.

(2) No disclaimer executed pursuant to this section destroys or diminishes an interest in property that exists on September 27, 1976, in any person other than the disclaimant.

Sec. ~~1339.71~~ 5815.41. As used in sections ~~1339.71~~ 5815.41 to ~~1339.78~~ 5815.48 of the Revised Code:

(A) "Art dealer" means a person engaged in the business of selling works of art, other than a person exclusively engaged in the business of selling goods at public auction.

(B) "Artist" means the creator of a work of art.

(C) "On consignment" means delivered to an art dealer for the purpose of sale or exhibition, or both, to the public by the art dealer other than at a public auction.

(D) "Work of art" means an original art work that is any of the following:

(1) A visual rendition including, but not limited to, a painting, drawing, sculpture, mosaic, or photograph;

(2) A work of calligraphy;

(3) A work of graphic art, including, but not limited to, an etching,

lithograph, offset print, or silk screen;

(4) A craft work in materials, including, but not limited to, clay, textile, fiber, wood, metal, plastic, or glass;

(5) A work in mixed media, including, but not limited to, a collage or a work consisting of any combination of the items listed in divisions (D)(1) to (4) of this section.

Sec. ~~1339.72~~ 5815.42. If an art dealer accepts a work of art, on a fee, commission, or other compensation basis, on consignment from the artist who created the work of art, the following consequences attach:

(A) The art dealer is, with respect to that work of art, the agent of the artist.

(B) The work of art is trust property and the art dealer is a trustee for the benefit of the artist until the work of art is sold to a bona fide third party or returned to the artist.

(C) The proceeds of the sale of the work of art are trust property and the art dealer is a trustee for the benefit of the artist until the amount due the artist from the sale is paid.

(D) The art dealer is strictly liable for the loss of, or damage to, the work of art while it is in the art dealer's possession or control. The value of the work of art is, for the purpose of this division, the value established in the written contract between the artist and art dealer entered into pursuant to section ~~1339.75~~ 5815.45 of the Revised Code.

Sec. ~~1339.73~~ 5815.43. (A) If a work of art is trust property under section ~~1339.72~~ 5815.42 of the Revised Code when it is initially received by the art dealer, it remains trust property, notwithstanding the subsequent purchase of the work of art by the art dealer directly or indirectly for the art dealer's own account, until the purchase price specified pursuant to division (A)(3) of section ~~1339.75~~ 5815.45 of the Revised Code is paid in full to the artist.

(B) If an art dealer resells a work of art that ~~he~~ the art dealer purchased for ~~his~~ the art dealer's own account to a bona fide third party before the artist has been paid in full, the work of art ceases to be trust property and the proceeds of the resale are trust funds in the possession or control of the art dealer for the benefit of the artist to the extent necessary to pay any balance still due to the artist. The trusteeship of the proceeds continues until the artist is paid in full under the contract entered into pursuant to section ~~1339.75~~ 5815.45 of the Revised Code.

Sec. ~~1339.74~~ 5815.44. A work of art that is trust property under section ~~1339.72~~ 5815.42 or ~~1339.73~~ 5815.43 of the Revised Code is not subject to the claims, liens, or security interests of the creditors of the art dealer, notwithstanding Chapters 1301. to 1310. of the Revised Code.

Sec. ~~1339.75~~ 5815.45. (A) An art dealer shall not accept a work of art, on a fee, commission, or other compensation basis, on consignment from the artist who created the work of art unless, prior to or at the time of acceptance, the art dealer enters into a written contract with the artist that contains all of the following:

- (1) The value of the work of art and whether it may be sold;
- (2) The time within which the proceeds of the sale are to be paid to the artist, if the work of art is sold;
- (3) The minimum price for the sale of the work of art;
- (4) The fee or percentage of the sale price that is to be paid to the art dealer for displaying or selling the work of art.

(B) If an art dealer violates this section, a court, at the request of the artist, may void the obligation of the artist to that art dealer or to a person to whom the obligation is transferred, other than a holder in due course.

Sec. ~~1339.76~~ 5815.46. An art dealer who accepts a work of art, on a fee, commission, or other compensation basis, on consignment from the artist who created the work of art shall not use or display the work of art or a photograph of the work of art, or permit the use or display of the work of art or a photograph of the work of art, unless both of the following occur:

- ~~(1)~~(A) Notice is given to users or viewers that the work of art is the work of the artist;
- ~~(2)~~(B) The artist gives prior written consent to the particular use or display.

Sec. ~~1339.77~~ 5815.47. Any portion of an agreement that waives any provision of sections ~~1339.74~~ 5815.41 to ~~1339.78~~ 5815.48 of the Revised Code is void.

Sec. ~~1339.78~~ 5815.48. Any art dealer who violates section ~~1339.75~~ 5815.45 or ~~1339.76~~ 5815.46 of the Revised Code is liable to the artist for ~~his~~ the artist's reasonable attorney's fees and in an amount equal to the greater of either of the following:

- (A) Fifty dollars;
- (B) The actual damages, if any, including the incidental and consequential damages, sustained by the artist by reason of the violation.

SECTION 2. That existing sections 1111.13, 1111.14, 1111.15, 1151.191, 1161.24, 1319.12, 1339.01, 1339.02, 1339.03, 1339.031, 1339.04, 1339.08, 1339.09, 1339.10, 1339.11, 1339.12, 1339.13, 1339.15, 1339.151, 1339.16, 1339.17, 1339.18, 1339.31, 1339.32, 1339.33, 1339.34, 1339.35, 1339.36, 1339.37, 1339.38, 1339.39, 1339.41, 1339.411, 1339.412, 1339.42, 1339.43, 1339.44, 1339.45, 1339.51, 1339.52, 1339.53, 1339.54, 1339.55, 1339.56,

1339.57, 1339.58, 1339.59, 1339.60, 1339.61, 1339.62, 1339.621, 1339.63, 1339.64, 1339.65, 1339.68, 1339.71, 1339.72, 1339.73, 1339.74, 1339.75, 1339.76, 1339.77, 1339.78, 1340.31, 1340.32, 1340.33, 1340.34, 1340.35, 1340.36, 1340.37, 1340.40, 1340.41, 1340.42, 1340.46, 1340.47, 1340.51, 1340.52, 1340.53, 1340.57, 1340.58, 1340.59, 1340.63, 1340.64, 1340.65, 1340.66, 1340.70, 1340.71, 1340.72, 1340.73, 1340.74, 1340.75, 1340.76, 1340.77, 1340.81, 1340.82, 1340.83, 1340.84, 1340.85, 1340.86, 1340.90, 1340.91, 1775.03, 1775.14, 1775.15, 1775.17, 1775.33, 1782.24, 2101.24, 2107.33, 2109.24, 2109.37, 2109.62, 2109.68, 2111.131, 2113.861, 2305.121, 2305.22, 5111.15, 5111.151, 5119.01, 5119.17, 5121.04, 5121.10, 5121.30, 5121.52, 5123.04, 5123.28, and 5123.40 and sections 1335.01, 1339.14, 1339.66, 1339.67, 1339.69, 1340.21, 1340.22, and 1340.23 of the Revised Code are hereby repealed.

SECTION 3. Sections 1 and 2 of this act shall take effect on January 1, 2007.

SECTION 4. In enacting divisions (B) to (D) of section 5808.14 of the Revised Code in Section 1 of this act, the General Assembly hereby declares its intent to codify certain fiduciary and trust law principles, previously codified in sections 1340.21 to 1340.23 of the Revised Code, relating to a fiduciary's conflict of interests and, in general, to provide for the exercise of certain discretionary powers to distribute either principal or income to a beneficiary by a beneficially interested fiduciary for the beneficially interested fiduciary's own benefit to the extent of an ascertainable standard.

SECTION 5. Section 5123.04 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 670 and Am. Sub. S.B. 285 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

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

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*Director, Legislative Service Commission.*

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

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_