

## As Introduced

**126th General Assembly  
Regular Session  
2005-2006**

**H. B. No. 416**

**Representatives Wagoner, Gilb, Coley, Seitz, Reidelbach, Ujvagi, Webster,  
Latta, Reinhard, Brown**

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### A B I L L

To amend sections 1111.13, 1111.15, 1151.191,	1
1161.24, 1319.12, 1339.01, 1339.02, 1339.03,	2
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5111.151, 5119.17, 5121.04, 5121.10, 5121.30,	21
5121.52, 5123.04, 5123.28, and 5123.40; to amend,	22
for the purpose of adopting new section numbers as	23
indicated in parentheses, sections 1339.01	24

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(5812.45), 1340.85 (5812.46), 1340.86 (5812.47), 61  
1340.90 (5812.51), 1340.91 (5812.52), and 2305.121 62  
(5806.04); to enact sections 2109.69, 5801.01, 63  
5801.011, 5801.02 to 5801.10, 5802.01 to 5802.03, 64  
5803.01 to 5803.05, 5804.01 to 5804.18, 5805.01 to 65  
5805.07, 5806.01 to 5806.03, 5807.01 to 5807.09, 66  
5808.01, 5808.02, 5808.04, 5808.06, 5808.08 to 67  
5808.17, 5809.06, 5810.01 to 5810.13, and 5811.01 68  
to 5811.03; and to repeal sections 1335.01, 69  
1339.14, 1339.66, 1339.67, 1339.69, 1340.21, 70  
1340.22, and 1340.23 of the Revised Code to adopt 71  
an Ohio trust code. 72

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

**Section 1.** That sections 1111.13, 1111.15, 1151.191, 1161.24, 73  
1319.12, 1339.01, 1339.02, 1339.03, 1339.04, 1339.08, 1339.09, 74  
1339.10, 1339.11, 1339.12, 1339.13, 1339.15, 1339.151, 1339.16, 75  
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1340.91, 1775.03, 1775.14, 1775.15, 1775.17, 1775.33, 1782.24, 85  
2101.24, 2107.33, 2109.37, 2109.62, 2109.68, 2111.131, 2113.861, 86

2305.121, 2305.22, 5111.15, 5111.151, 5119.17, 5121.04, 5121.10, 87  
5121.30, 5121.52, 5123.04, 5123.28, and 5123.40 be amended; that 88  
sections 1339.01 (5815.02), 1339.02 (5815.03), 1339.03 (5815.04), 89  
1339.031 (5815.01), 1339.04 (5815.05), 1339.08 (5815.06), 1339.09 90  
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(5814.09), 1339.41 (5815.21), 1339.411 (5815.22), 1339.412 97  
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(5812.45), 1340.85 (5812.46), 1340.86 (5812.47), 1340.90 119

(5812.51), 1340.91 (5812.52), and 2305.121 (5806.04) be amended 120  
for the purpose of adopting new section numbers as indicated in 121  
parentheses; and that sections 2109.69, 5801.01, 5801.011, 122  
5801.02, 5801.03, 5801.04, 5801.05, 5801.06, 5801.07, 5801.08, 123  
5801.09, 5801.10, 5802.01, 5802.02, 5802.03, 5803.01, 5803.02, 124  
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5810.02, 5810.03, 5810.04, 5810.05, 5810.06, 5810.07, 5810.08, 133  
5810.09, 5810.10, 5810.11, 5810.12, 5810.13, 5811.01, 5811.02, and 134  
5811.03 of the Revised Code be enacted to read as follows: 135

136

**Sec. 1111.13.** (A)(1) Except as provided in divisions (A)(2) 137  
and (G) of this section or as otherwise provided by the instrument 138  
creating the trust, a trust company acting as fiduciary under any 139  
instrument and having funds of the trust which are to be invested 140  
may, in addition to any other investments authorized to a trust 141  
company by law, invest them in any of the following: 142

(a) Forms of investments enumerated or described in, or made 143  
eligible for investment by, the Ohio Uniform Prudent Investor Act 144  
and sections ~~1339.44, 1339.52 to 1339.61~~, 2109.37, 2109.371, and 145  
2109.372, and 5815.26 of the Revised Code, including, but not 146  
limited to, securities, stocks, bonds, or certificates of deposit 147  
issued by the trust company or any bank owned or controlled by the 148  
bank holding company that owns or controls the trust company. 149  
Investment authority granted under division (A)(1)(a) of this 150  
section is subject to the limitations on investments specified in 151

division (B) of section 2109.371 of the Revised Code.	152
(b) Any collective investment fund established and maintained	153
by the trust company or by an affiliate of the trust company;	154
(c) The securities of any investment company, including any	155
affiliated investment company, whether or not the trust company	156
has invested other funds held by it in an agency or other	157
nonfiduciary capacity in the securities of the same investment	158
company or affiliated investment company.	159
(2) A trust company acting as fiduciary may not invest its	160
trust funds in stock issued by the fiduciary itself except under	161
one of the following circumstances:	162
(a) In the case of a testamentary instrument, when expressly	163
permitted by the instrument creating the relationship and	164
authorized by court order;	165
(b) In the case of an inter vivos instrument, when expressly	166
permitted by the instrument or authorized by court order and in	167
either case, only when directed to purchase or invest in the stock	168
by a cofiduciary or other person other than the trust company who	169
has the right under the terms of the instrument to direct the	170
investment;	171
(c) When exercising rights to purchase its own stock or to	172
purchase or convert securities convertible into its own stock if	173
the rights were offered pro rata to the shareholders;	174
(d) To complement fractional shares acquired when the	175
exercise of rights or receipt of a stock dividend results in	176
fractional shareholdings.	177
(3) If the law or the instrument creating a trust expressly	178
permits investment in direct obligations of the United States or	179
an agency or instrumentality of the United States, unless	180
expressly prohibited by the instrument, a trust company also may	181

invest in no front end load money market mutual funds consisting 182  
exclusively of obligations of the United States or an agency or 183  
instrumentality of the United States and in repurchase agreements, 184  
including those issued by the trust company itself, secured by 185  
obligations of the United States or an agency or instrumentality 186  
of the United States, or in securities of other no load money 187  
market mutual funds whose portfolios are similarly restricted; and 188  
in collective investment funds established in accordance with 189  
section 1111.14 of the Revised Code or by an affiliate of the 190  
trust company and consisting exclusively of any direct obligations 191  
of the United States or an agency or instrumentality of the United 192  
States, notwithstanding division (A)(1)(c) of that section. 193

(B) A trust company acting in any fiduciary capacity or under 194  
any instrument has the right to retain any part of the trust or 195  
estate it receives, whether from the creator of the trust or the 196  
estate, at its inception or by later addition, or by addition by 197  
any other person who is authorized to make additions to the trust 198  
or estate, and any investments the trust company makes. 199

(C) Except as otherwise expressly provided by the instrument 200  
creating the fiduciary relationship, any trust company may 201  
exercise all voting, consenting, and dissenting rights, including 202  
the right to vote for the election of directors, pertaining to 203  
stocks, bonds, or other securities held by it in any fiduciary 204  
capacity, including rights pertaining to stocks, bonds, or other 205  
securities issued by the trust company in its individual corporate 206  
capacity and held by it in any fiduciary capacity, provided: 207

(1) In the case of any fiduciary relationship created prior 208  
to January 1, 1968, voting rights pertaining to any shares of a 209  
trust company's own stock held by it in a fiduciary relationship, 210  
if exercised, shall be exercised with respect to the election of 211  
directors, only in accordance with any provisions of law 212  
applicable to that election and without regard to the first 213

paragraph of division (C) and divisions (C)(2)(a), (b), and (c) of 214  
this section, and those portions of division (C) of this section 215  
shall not be construed to be determinative of the voting rights or 216  
to be declaratory of a public policy with respect to the voting 217  
rights. 218

(2) In the case of any fiduciary relationship created on or 219  
after January 1, 1968, voting rights pertaining to any shares of a 220  
trust company's own stock held by it in a fiduciary relationship 221  
shall be exercised by it with respect to the election of 222  
directors, only if and as directed in writing by any person 223  
described in division (C)(2)(a), (b), or (c) of this section, 224  
provided that the person may not be the trust company, or a 225  
director, officer, or employee of the trust company except as to 226  
fiduciary relationships in which the director, officer, or 227  
employee is a settlor or beneficiary, or a nominee, agent, 228  
attorney, or subsidiary of the trust company: 229

(a) Any person, including a settlor or beneficiary, who has 230  
the right under the terms of the instrument under which shares are 231  
held to determine the manner in which shares shall be voted, or if 232  
there is no such person; 233

(b) Any person acting as cofiduciary under the instrument 234  
under which such shares are held, or if there is no such person; 235

(c) Any person, having the right of revocation or amendment 236  
of the instrument under which the shares are held. 237

(D) If there is more than one person having power to direct 238  
voting under division (C)(2)(a), (b), or (c) of this section and 239  
they fail to agree, each person shall have the right to direct 240  
voting with respect to the election of directors as to an equal 241  
number of shares. 242

(E) As used in this section: 243



(1) "Affiliated investment company" means any investment company that is any of the following:	244 245
(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;	246 247 248 249 250
(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;	251 252 253 254
(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;	255 256 257 258 259
(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.	260 261 262 263 264 265 266
(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.	267 268 269 270 271 272
(3) "Instrument" includes, but is not limited to, any will, declaration of trust, agreement of trust, agency, or	273 274

custodianship, or court order creating a fiduciary relationship. 275

(4) "Reasonable fee" means compensation or payment, the 276  
receipt of which would not constitute a breach of fiduciary duty 277  
under section 36 of the "Investment Company Act of 1940," 54 Stat. 278  
789, 15 U.S.C.A. 80a-35. 279

(F) Shares as to which the voting rights with respect to the 280  
election of directors may not be exercised under this section 281  
shall not be considered as outstanding for the purpose of 282  
computing the voting power of the corporation or of its shares of 283  
any class with respect to the election of directors. 284

(G) This section does not authorize a trust company acting as 285  
a probate fiduciary to perform any act prohibited by section 286  
2109.44 of the Revised Code, unless the act is authorized by the 287  
instrument creating the trust. 288

(H) A trust company making an investment of trust funds in an 289  
affiliated investment company, or a bank or other corporation 290  
owned or controlled by the bank holding company that owns or 291  
controls the trust company, may charge a reasonable fee for 292  
investment advisory, brokerage, transfer agency, registrar, 293  
management, shareholder servicing, custodian, or any related 294  
services provided to an affiliated investment company. The fee may 295  
be in addition to the compensation that the trust company is 296  
otherwise entitled to receive from the trust, provided that the 297  
fee is charged as a percentage of either asset value or income 298  
earned or actual amount charged and is disclosed at least annually 299  
by prospectus, account statement, or any other written means to 300  
all persons entitled to receive statements of account activity. 301

(I) A trust company making an investment of trust funds in 302  
the securities of an affiliated investment company pursuant to 303  
division (A)(1)(c) of this section shall, when providing any 304  
periodic account statements to the trust fund, report the net 305

asset value of the shares comprising the investment of the trust 306  
fund in the affiliated investment company. 307

(J) If a trust company making an investment of trust funds in 308  
the securities of an affiliated investment company pursuant to 309  
division (A)(1)(c) of this section invests the funds in any mutual 310  
fund, the trust company shall disclose, in at least ten-point 311  
boldface type, by prospectus, account statement, or any other 312  
written means to all persons entitled to receive statements of 313  
account activity, that the mutual fund is not insured or 314  
guaranteed by the federal deposit insurance corporation or by any 315  
other government agency or government-sponsored agency of the 316  
federal government or of this state. 317

**Sec. 1111.15.** (A) A trust company acting in any fiduciary 318  
capacity, including, but not limited to, the capacities described 319  
in section 1111.11 of the Revised Code, may purchase any service 320  
or product, including, but not limited to, insurance or securities 321  
underwritten or otherwise distributed by the trust company or by 322  
an affiliate, through or directly from the trust company or an 323  
affiliate or from a syndicate or selling group that includes the 324  
trust company or an affiliate, provided that the purchase is 325  
otherwise prudent under ~~sections 1339.52 to 1339.61~~ of the Revised 326  
Code Ohio Uniform Prudent Investor Act and the compensation for 327  
the service or product is reasonable and is not prohibited by the 328  
instrument governing the fiduciary relationship. The compensation 329  
for the service or product may be in addition to the compensation 330  
that the trust company is otherwise entitled to receive from the 331  
fiduciary account. 332

(B) A trust company shall disclose at least annually any 333  
purchase authorized by this section that was made by the trust 334  
company during that reporting period. The disclosure shall be 335  
given, in writing or electronically, to all persons entitled to 336

receive statements of account activity, and shall include any 337  
capacities in which the trust company or an affiliate acts for the 338  
issuer of the securities or the provider of the products or 339  
services and the fact that the trust company or an affiliate may 340  
have an interest in the products or services. 341

(C) This section shall apply to the purchase of securities 342  
made at the time of the initial offering of the securities or at 343  
any time thereafter. 344

**Sec. 1151.191.** (A) A building and loan association may serve 345  
as trustee of any trust which qualifies, at the time the 346  
association becomes trustee, for tax treatment under section 401 347  
or 408 of the Internal Revenue Code. The association may invest 348  
the funds of any such trust in savings accounts or deposits of a 349  
domestic building and loan association or in equity or debt 350  
securities issued by a domestic building and loan association. 351

(B) Whenever any deposit or stock deposit is made in a 352  
building and loan association by any person in trust for another 353  
and no further notice of the existence and terms of a legal and 354  
valid trust is given in writing to such association, such deposit 355  
or stock deposit or any part thereof together with the dividends 356  
or interest thereon may in the event of the death of the trustee 357  
be paid to the person for whom the deposit or stock deposit was 358  
made. 359

~~Whenever any deposit or stock deposit is made in the name of 360  
another as trustee for the depositor accompanied by a declaration 361  
of trust, any trust created thereby shall not be invalid by reason 362  
of section 1335.01 of the Revised Code. 363~~

(C) Any funds held in trust as authorized by division (A) or 364  
(B) of this section may be commingled by the trustee association 365  
in one or more accounts. Whenever individual trust funds are 366

commingled, separate records shall be maintained by the trustee 367  
association for each trust account comprising the commingled fund. 368

(D) Exercise of the limited trust power granted associations 369  
by this section shall not be subject to regulation other than by 370  
the superintendent of building and loan associations pursuant to 371  
Chapters 1151., 1153., 1155., and 1157. of the Revised Code. 372

**Sec. 1161.24.** (A) A savings bank may serve as trustee of any 373  
trust that qualifies, at the time the savings bank becomes 374  
trustee, for tax treatment under section 401 or 408 of the 375  
"Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as 376  
amended. The savings bank may invest the funds of any such trust 377  
in savings accounts or deposits of a domestic savings bank or in 378  
equity or debt securities issued by a domestic savings bank. 379

(B)~~(1)~~ Whenever any deposit or stock deposit is made in a 380  
savings bank by any person in trust for another and no further 381  
notice of the existence and terms of a legal and valid trust is 382  
given in writing to the savings bank, the deposit or stock deposit 383  
or any part thereof together with the dividends or interest 384  
thereon, in the event of the death of the trustee, may be paid to 385  
the person for whom the deposit or stock deposit was made. 386

~~(2) Whenever any deposit or stock deposit is made in the name 387  
of another as trustee for the depositor accompanied by a 388  
declaration of trust, any trust created thereby shall not be 389  
invalid by reason of section 1335.01 of the Revised Code. 390~~

(C) Any funds held in trust as authorized by division (A) or 391  
(B) of this section may be commingled by the trustee savings bank 392  
in one or more accounts. Whenever individual trust funds are 393  
commingled, separate records shall be maintained by the trustee 394  
savings bank for each trust account comprising the commingled 395  
fund. 396

(D) Exercise of the limited trust power granted savings banks 397  
by this section is not subject to regulation other than by the 398  
superintendent of savings banks pursuant to this chapter and 399  
Chapters 1163. and 1165. of the Revised Code. 400

**Sec. 1319.12.** (A)(1) As used in this section, "collection 401  
agency" means any person who, for compensation, contingent or 402  
otherwise, or for other valuable consideration, offers services to 403  
collect an alleged debt asserted to be owed to another. 404

(2) "Collection agency" does not mean a person whose 405  
collection activities are confined to and directly related to the 406  
operation of another business, including, but not limited to, the 407  
following: 408

(a) Any bank, including the trust department of a bank, trust 409  
company, savings and loan association, savings bank, credit union, 410  
or fiduciary as defined in section ~~1339.03~~ 5815.04 of the Revised 411  
Code, except those that own or operate a collection agency; 412

(b) Any real estate broker or real estate salesperson, as 413  
defined in section 4735.01 of the Revised Code; 414

(c) Any retail seller collecting its own accounts; 415

(d) Any insurance company authorized to do business in this 416  
state under Title XXXIX of the Revised Code or a health insuring 417  
corporation authorized to operate in this state under Chapter 418  
1751. of the Revised Code; 419

(e) Any public officer or judicial officer acting under order 420  
of a court; 421

(f) Any licensee as defined either in section 1321.01 or 422  
1321.71 of the Revised Code, or any registrant as defined in 423  
section 1321.51 of the Revised Code; 424

(g) Any public utility; 425

(h) Any person registered to sell interment rights under 426  
section 4767.031 of the Revised Code. 427

(B) A collection agency with a place of business in this 428  
state may take assignment of another person's accounts, bills, or 429  
other evidences of indebtedness in its own name for the purpose of 430  
billing, collecting, or filing suit in its own name as the real 431  
party in interest. 432

(C) No collection agency shall commence litigation for the 433  
collection of an assigned account, bill, or other evidence of 434  
indebtedness unless it has taken the assignment in accordance with 435  
all of the following requirements: 436

(1) The assignment was voluntary, properly executed, and 437  
acknowledged by the person transferring title to the collection 438  
agency. 439

(2) The collection agency did not require the assignment as a 440  
condition to listing the account, bill, or other evidence of 441  
indebtedness with the collection agency for collection. 442

(3) The assignment was manifested by a written agreement 443  
separate from and in addition to any document intended for the 444  
purpose of listing the account, bill, or other evidence of 445  
indebtedness with the collection agency. The written agreement 446  
shall state the effective date of the assignment and the 447  
consideration paid or given, if any, for the assignment and shall 448  
expressly authorize the collection agency to refer the assigned 449  
account, bill, or other evidence of indebtedness to an attorney 450  
admitted to the practice of law in this state for the commencement 451  
of litigation. The written agreement also shall disclose that the 452  
collection agency may consolidate, for purposes of filing an 453  
action, the assigned account, bill, or other evidence of 454  
indebtedness with those of other creditors against an individual 455  
debtor or co-debtors. 456

(4) Upon the effective date of the assignment to the 457  
collection agency, the creditor's account maintained by the 458  
collection agency in connection with the assigned account, bill, 459  
or other evidence of indebtedness was canceled. 460

(D) A collection agency shall commence litigation for the 461  
collection of an assigned account, bill, or other evidence of 462  
indebtedness in a court of competent jurisdiction located in the 463  
county in which the debtor resides, or in the case of co-debtors, 464  
a county in which at least one of the co-debtors resides. 465

(E) No collection agency shall commence any litigation 466  
authorized by this section unless the agency appears by an 467  
attorney admitted to the practice of law in this state. 468

(F) This section does not affect the powers and duties of any 469  
person described in division (A)(2) of this section. 470

(G) Nothing in this section relieves a collection agency from 471  
complying with the "Fair Debt Collection Practices Act," 91 Stat. 472  
874 (1977), 15 U.S.C. 1692, as amended, or deprives any debtor of 473  
the right to assert defenses as provided in section 1317.031 of 474  
the Revised Code and 16 C.F.R. 433, as amended. 475

(H) For purposes of filing an action, a collection agency 476  
that has taken an assignment or assignments pursuant to this 477  
section may consolidate the assigned accounts, bills, or other 478  
evidences of indebtedness of one or more creditors against an 479  
individual debtor or co-debtors. Each separate assigned account, 480  
bill, or evidence of indebtedness must be separately identified 481  
and pled in any consolidated action authorized by this section. If 482  
a debtor or co-debtor raises a good faith dispute concerning any 483  
account, bill, or other evidence of indebtedness, the court shall 484  
separate each disputed account, bill, or other evidence of 485  
indebtedness from the action and hear the disputed account, bill, 486  
or other evidence of indebtedness on its own merits in a separate 487



action. The court shall charge the filing fee of the separate 488  
action to the losing party. 489

**Sec. 1775.03.** (A) The rule that statutes in derogation of the 490  
common law are to be strictly construed has no application to 491  
~~section~~ sections 1775.01 to 1775.42 of the Revised Code. 492

(B) The law of estoppel applies under such sections. 493

(C) The law of agency applies under this chapter, but, if a 494  
provision of section ~~1339.65~~ 5815.35 of the Revised Code conflicts 495  
with that law, the provision of that section controls. 496

(D) Such sections shall be interpreted and construed so as to 497  
effectuate their general purpose to make the law of this state 498  
uniform with the law of those states which enact similar 499  
legislation. 500

(E) Sections 1775.01 to 1775.42 of the Revised Code do not 501  
impair the obligations of any contract existing on September 14, 502  
1949, or affect any action or proceedings begun or right accrued 503  
before such date. 504

**Sec. 1775.14.** (A) Subject to section ~~1339.65~~ 5815.35 of the 505  
Revised Code and except as provided in division (B) of this 506  
section, all partners are liable as follows: 507

(1) Jointly and severally for everything chargeable to the 508  
partnership under sections 1775.12 and 1775.13 of the Revised 509  
Code. This joint and several liability is not subject to section 510  
2307.22 or 2315.36 of the Revised Code with respect to a tort 511  
claim that otherwise is subject to either of those sections. 512

(2) Jointly for all other debts and obligations of the 513  
partnership, but any partner may enter into a separate obligation 514  
to perform a partnership contract. 515

(B) Subject to divisions (C)(1) and (2) of this section or as 516

otherwise provided in a written agreement between the partners of 517  
a registered limited liability partnership, a partner in a 518  
registered limited liability partnership is not liable, directly 519  
or indirectly, by way of indemnification, contribution, 520  
assessment, or otherwise, for debts, obligations, or other 521  
liabilities of any kind of, or chargeable to, the partnership or 522  
another partner or partners arising from negligence or from 523  
wrongful acts, errors, omissions, or misconduct, whether or not 524  
intentional or characterized as tort, contract, or otherwise, 525  
committed or occurring while the partnership is a registered 526  
limited liability partnership and committed or occurring in the 527  
course of the partnership business by another partner or an 528  
employee, agent, or representative of the partnership. 529

(C)(1) Division (B) of this section does not affect the 530  
liability of a partner in a registered limited liability 531  
partnership for that partner's own negligence, wrongful acts, 532  
errors, omissions, or misconduct, including that partner's own 533  
negligence, wrongful acts, errors, omissions, or misconduct in 534  
directly supervising any other partner or any employee, agent, or 535  
representative of the partnership. 536

(2) Division (B) of this section shall not affect the 537  
liability of a partner for liabilities imposed by Chapters 5735., 538  
5739., 5743., and 5747. and section 3734.908 of the Revised Code. 539

(D) A partner in a registered limited liability partnership 540  
is not a proper party to an action or proceeding by or against a 541  
registered limited liability partnership with respect to any debt, 542  
obligation, or other liability of any kind described in division 543  
(B) of this section, unless the partner is liable under divisions 544  
(C)(1) and (2) of this section. 545

**Sec. 1775.15.** (A) Subject to section ~~1339.65~~ 5815.35 of the 546  
Revised Code, when a person, by words spoken or written or by 547

conduct, represents ~~himself~~ self, or consents to another 548  
representing ~~him~~ the person to anyone, as a partner in an existing 549  
partnership or with one or more persons not actual partners, ~~he~~ 550  
that person is liable to any such person to whom such 551  
representation has been made, who has, on the faith of such 552  
representation, given credit to the actual or apparent 553  
partnership, and if ~~he~~ the person has made such representation or 554  
consented to its being made in a public manner ~~he~~ the person is 555  
liable to ~~such~~ the person to whom such representation has been 556  
made, whether the representation has or has not been made or 557  
communicated to such person so giving credit by or with the 558  
knowledge of the apparent partner making the representation or 559  
consenting to its being made. 560

(1) When a partnership liability results, ~~he~~ the person who 561  
represented self as a partner or consented to another's making 562  
such representation is liable as though ~~he~~ the person were an 563  
actual member of the partnership. 564

(2) When no partnership liability results, ~~he~~ the person who 565  
represented self as a partner or consented to another's making 566  
such representation is liable jointly with the other persons, if 567  
any, so consenting to the contract or representation as to incur 568  
liability, otherwise separately. 569

(B) When a person has been thus represented to be a partner 570  
in an existing partnership, or with one or more persons not actual 571  
partners, ~~he~~ the person so represented is an agent of the persons 572  
consenting to such representation to bind them to the same extent 573  
and in the same manner as though ~~he~~ the person so represented were 574  
a partner in fact, with respect to persons who rely upon the 575  
representation. Where all the members of the existing partnership 576  
consent to the representation, a partnership act or obligation 577  
results; but in all other cases it is the joint act or obligation 578  
of the person acting and the persons consenting to the 579

representation. 580

**Sec. 1775.17.** The rights and duties of the partners in 581  
relation to the partnership shall be determined, subject to any 582  
agreement between them, by the following rules: 583

(A) Each partner shall be repaid the partner's contribution, 584  
whether by way of capital or advances, to the partnership property 585  
and share equally in the profits and surplus remaining after all 586  
liabilities, including those to partners, are satisfied; and each 587  
partner, subject to section ~~1339.65~~ 5815.35 of the Revised Code 588  
and to division (B) of section ~~1775.14~~ 5815.35 of the Revised 589  
Code, must contribute toward the losses, whether of capital or 590  
otherwise, sustained by the partnership according to the partner's 591  
share in the profits. 592

(B) The partnership must indemnify every partner in respect 593  
of payments made and personal liabilities reasonably incurred by 594  
the partner in the ordinary and proper conduct of its business, or 595  
for the preservation of its business or property. 596

(C) A partner, who in aid of the partnership makes any 597  
payment or advance beyond the amount of capital which the partner 598  
agreed to contribute, shall be paid interest from the date of the 599  
payment or advance. 600

(D) A partner shall receive interest on the capital 601  
contributed by the partner only from the date when repayment 602  
should be made. 603

(E) All partners have equal rights in the management and 604  
conduct of the partnership business. 605

(F) No partner is entitled to remuneration for acting in the 606  
partnership business, except that a surviving partner is entitled 607  
to reasonable compensation for the partner's services in winding 608  
up the partnership affairs. 609

(G) No person can become a member of a partnership without 610  
the consent of all the partners. 611

(H) Any difference arising as to ordinary matters connected 612  
with the partnership business may be decided by a majority of the 613  
partners; but no act in contravention of any agreement between the 614  
partners may be done rightfully without the consent of all the 615  
partners. 616

**Sec. 1775.33.** Where the dissolution is caused by the act, 617  
death, or bankruptcy of a partner, but subject to section ~~1339.65~~ 618  
5815.35 of the Revised Code and to division (B) of section 1775.14 619  
of the Revised Code, each partner is liable to the other partners 620  
for the partner's share of any liability created by any partner 621  
acting for the partnership as if the partnership had not been 622  
dissolved unless: 623

(A) The dissolution being by act of any partner, the partner 624  
acting for the partnership had knowledge of the dissolution; 625

(B) The dissolution being by the death or bankruptcy of a 626  
partner, the partner acting for the partnership had knowledge or 627  
notice of the death or bankruptcy. 628

**Sec. 1782.24.** (A) Except as otherwise provided in this 629  
chapter, the partnership agreement, or section ~~1339.65~~ 5815.35 of 630  
the Revised Code, a general partner of a limited partnership shall 631  
have all the rights and powers and be subject to all the 632  
restrictions and liabilities of a partner in a partnership without 633  
limited partners. 634

(B) Except as otherwise provided in this chapter, a general 635  
partner of a limited partnership has the liabilities of a partner 636  
in a partnership without limited partners to persons other than 637  
the partnership and the other partners. Except as otherwise 638  
provided in this chapter or the partnership agreement, a general 639

partner of a limited partnership has the liabilities of a partner 640  
in a partnership without limited partners to the partnership and 641  
to the other partners. 642

**Sec. 2101.24.** (A)(1) Except as otherwise provided by law, the 643  
probate court has exclusive jurisdiction: 644

(a) To take the proof of wills and to admit to record 645  
authenticated copies of wills executed, proved, and allowed in the 646  
courts of any other state, territory, or country. If the probate 647  
judge is unavoidably absent, any judge of the court of common 648  
pleas may take proof of wills and approve bonds to be given, but 649  
the record of these acts shall be preserved in the usual records 650  
of the probate court. 651

(b) To grant and revoke letters testamentary and of 652  
administration; 653

(c) To direct and control the conduct and settle the accounts 654  
of executors and administrators and order the distribution of 655  
estates; 656

(d) To appoint the attorney general to serve as the 657  
administrator of an estate pursuant to section 2113.06 of the 658  
Revised Code; 659

(e) To appoint and remove guardians, conservators, and 660  
testamentary trustees, direct and control their conduct, and 661  
settle their accounts; 662

(f) To grant marriage licenses; 663

(g) To make inquests respecting persons who are so mentally 664  
impaired as a result of a mental or physical illness or 665  
disability, or mental retardation, or as a result of chronic 666  
substance abuse, that they are unable to manage their property and 667  
affairs effectively, subject to guardianship; 668

(h) To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts;	669 670 671
(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;	672 673 674 675
(j) To authorize the completion of real estate contracts on petition of executors and administrators;	676 677
(k) To construe wills;	678
(l) To render declaratory judgments, including, but not limited to, those rendered pursuant to section 2107.084 of the Revised Code;	679 680 681
(m) To direct and control the conduct of fiduciaries and settle their accounts;	682 683
(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;	684 685
(o) To terminate a testamentary trust in any case in which a court of equity may do so;	686 687
(p) To hear and determine actions to contest the validity of wills;	688 689
(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;	690 691 692
(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;	693 694 695 696 697

(s) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;	698 699
(t) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;	700 701
(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;	702 703 704
(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;	705 706 707
(w) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;	708 709 710
(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;	711 712 713 714 715 716
(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;	717 718 719 720 721
(z) To hear and determine applications of attending physicians in accordance with division (B) of section 2133.15 of the Revised Code;	722 723 724
(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	725 726 727



declarations, or patients in accordance with division (E) of 728  
either section 1337.16 or 2133.12 of the Revised Code; 729

(bb) To hear and determine applications for an order 730  
relieving an estate from administration under section 2113.03 of 731  
the Revised Code; 732

(cc) To hear and determine applications for an order granting 733  
a summary release from administration under section 2113.031 of 734  
the Revised Code. 735

(2) In addition to the exclusive jurisdiction conferred upon 736  
the probate court by division (A)(1) of this section, the probate 737  
court shall have exclusive jurisdiction over a particular subject 738  
matter if both of the following apply: 739

(a) Another section of the Revised Code expressly confers 740  
jurisdiction over that subject matter upon the probate court. 741

(b) No section of the Revised Code expressly confers 742  
jurisdiction over that subject matter upon any other court or 743  
agency. 744

(B)(1) The probate court has concurrent jurisdiction with, 745  
and the same powers at law and in equity as, the general division 746  
of the court of common pleas to issue writs and orders, and to 747  
hear and determine actions as follows: 748

(a) If jurisdiction relative to a particular subject matter 749  
is stated to be concurrent in a section of the Revised Code or has 750  
been construed by judicial decision to be concurrent, any action 751  
that involves that subject matter; 752

(b) Any action that involves an inter vivos trust; a trust 753  
created pursuant to section ~~1339.51~~ 5815.28 of the Revised Code; a 754  
charitable trust or foundation; subject to divisions (A)(1)(u) and 755  
(z) of this section, a power of attorney, including, but not 756  
limited to, a durable power of attorney; the medical treatment of 757

a competent adult; or a writ of habeas corpus. 758

(2) Any action that involves a concurrent jurisdiction 759  
subject matter and that is before the probate court may be 760  
transferred by the probate court, on its order, to the general 761  
division of the court of common pleas. 762

(C) The probate court has plenary power at law and in equity 763  
to dispose fully of any matter that is properly before the court, 764  
unless the power is expressly otherwise limited or denied by a 765  
section of the Revised Code. 766

(D) The jurisdiction acquired by a probate court over a 767  
matter or proceeding is exclusive of that of any other probate 768  
court, except when otherwise provided by law. 769

**Sec. 2107.33.** (A) A will shall be revoked in the following 770  
manners: 771

(1) By the testator by tearing, canceling, obliterating, or 772  
destroying it with the intention of revoking it; 773

(2) By some person, at the request of the testator and in the 774  
testator's presence, by tearing, canceling, obliterating, or 775  
destroying it with the intention of revoking it; 776

(3) By some person tearing, canceling, obliterating, or 777  
destroying it pursuant to the testator's express written 778  
direction; 779

(4) By some other written will or codicil, executed as 780  
prescribed by this chapter; 781

(5) By some other writing that is signed, attested, and 782  
subscribed in the manner provided by this chapter. 783

(B) A will that has been declared valid and is in the 784  
possession of a probate judge also may be revoked according to 785  
division (C) of section 2107.084 of the Revised Code. 786

(C) If a testator removes a will that has been declared valid 787  
and is in the possession of a probate judge pursuant to section 788  
2107.084 of the Revised Code from the possession of the judge, the 789  
declaration of validity that was rendered no longer has any 790  
effect. 791

(D) If after executing a will, a testator is divorced, 792  
obtains a dissolution of marriage, has the testator's marriage 793  
annulled, or, upon actual separation from the testator's spouse, 794  
enters into a separation agreement pursuant to which the parties 795  
intend to fully and finally settle their prospective property 796  
rights in the property of the other, whether by expected 797  
inheritance or otherwise, any disposition or appointment of 798  
property made by the will to the former spouse or to a trust with 799  
powers created by or available to the former spouse, any provision 800  
in the will conferring a general or special power of appointment 801  
on the former spouse, and any nomination in the will of the former 802  
spouse as executor, trustee, or guardian shall be revoked unless 803  
the will expressly provides otherwise. 804

(E) Property prevented from passing to a former spouse or to 805  
a trust with powers created by or available to the former spouse 806  
because of revocation by this section shall pass as if the former 807  
spouse failed to survive the decedent, and other provisions 808  
conferring some power or office on the former spouse shall be 809  
interpreted as if the spouse failed to survive the decedent. If 810  
provisions are revoked solely by this section, they shall be 811  
deemed to be revived by the testator's remarriage with the former 812  
spouse or upon the termination of a separation agreement executed 813  
by them. 814

(F) A bond, agreement, or covenant made by a testator, for a 815  
valuable consideration, to convey property previously devised or 816  
bequeathed in a will does not revoke the devise or bequest. The 817  
property passes by the devise or bequest, subject to the remedies 818

on the bond, agreement, or covenant, for a specific performance or 819  
otherwise, against the devisees or legatees, that might be had by 820  
law against the heirs of the testator, or the testator's next of 821  
kin, if the property had descended to them. 822

(G) A testator's revocation of a will shall be valid only if 823  
the testator, at the time of the revocation, has the same capacity 824  
as the law requires for the execution of a will. 825

(H) As used in this section: 826

(1) "Trust with powers created by or available to the former 827  
spouse" means a trust that is revocable by the former spouse, with 828  
respect to which the former spouse has a power of withdrawal, or 829  
with respect to which the former spouse may take a distribution 830  
that is not subject to an ascertainable standard but does not mean 831  
a trust in which those powers of the former spouse are revoked by 832  
section ~~1339-62~~ 5815.31 of the Revised Code or similar provisions 833  
in the law of another state. 834

(2) "Ascertainable standard" means a standard that is related 835  
to a trust beneficiary's health, maintenance, support, or 836  
education. 837

**Sec. 2109.37.** (A) Except as otherwise provided by law, 838  
including division (D) of this section, or by the instrument 839  
creating the trust, a fiduciary having funds belonging to a trust 840  
which are to be invested may invest them in the following: 841

(1) Bonds or other obligations of the United States or of 842  
this state; 843

(2) Bonds or other interest-bearing obligations of any 844  
county, municipal corporation, school district, or other legally 845  
constituted political taxing subdivision within the state, 846  
provided that such county, municipal corporation, school district, 847  
or other subdivision has not defaulted in the payment of the 848

interest on any of its bonds or interest-bearing obligations, for 849  
more than one hundred twenty days during the ten years immediately 850  
preceding the investment by the fiduciary in the bonds or other 851  
obligations, and provided that such county, municipal corporation, 852  
school district, or other subdivision, is not, at the time of the 853  
investment, in default in the payment of principal or interest on 854  
any of its bonds or other interest-bearing obligations; 855

(3) Bonds or other interest-bearing obligations of any other 856  
state of the United States which, within twenty years prior to the 857  
making of such investment, has not defaulted for more than ninety 858  
days in the payment of principal or interest on any of its bonds 859  
or other interest-bearing obligations; 860

(4) Any bonds issued by or for federal land banks and any 861  
debentures issued by or for federal intermediate credit banks 862  
under the "Federal Farm Loan Act of 1916," 39 Stat. 360, 12 863  
U.S.C.A. 641, as amended; or any debentures issued by or for banks 864  
for cooperatives under the "Farm Credit Act of 1933," 48 Stat. 865  
257, 12 U.S.C.A. 131, as amended; 866

(5) Notes which are: (a) secured by a first mortgage on real 867  
estate held in fee and located in the state, improved by a unit 868  
designed principally for residential use for not more than four 869  
families or by a combination of such dwelling unit and business 870  
property, the area designed or used for nonresidential purposes 871  
not to exceed fifty per cent of the total floor area; (b) secured 872  
by a first mortgage on real estate held in fee and located in the 873  
state, improved with a building designed for residential use for 874  
more than four families or with a building used primarily for 875  
business purposes, if the unpaid principal of the notes secured by 876  
such mortgage does not exceed ten per cent of the value of the 877  
estate or trust or does not exceed five thousand dollars, 878  
whichever is greater; or (c) secured by a first mortgage on an 879  
improved farm held in fee and located in the state, provided that 880

such mortgage requires that the buildings on the mortgaged 881  
property shall be well insured against loss by fire, and so kept, 882  
for the benefit of the mortgagee, until the debt is paid, and 883  
provided that the unpaid principal of the notes secured by the 884  
mortgage shall not exceed fifty per cent of the fair value of the 885  
mortgaged real estate at the time the investment is made, and the 886  
notes shall be payable not more than five years after the date on 887  
which the investment in them is made; except that the unpaid 888  
principal of the notes may equal sixty per cent of the fair value 889  
of the mortgaged real estate at the time the investment is made, 890  
and may be payable over a period of fifteen years following the 891  
date of the investment by the fiduciary if regular installment 892  
payments are required sufficient to amortize four per cent or more 893  
of the principal of the outstanding notes per annum and if the 894  
unpaid principal and interest become due and payable at the option 895  
of the holder upon any default in the payment of any installment 896  
of interest or principal upon the notes, or of taxes, assessments, 897  
or insurance premiums upon the mortgaged premises or upon the 898  
failure to cure any such default within any grace period provided 899  
therein not exceeding ninety days in duration; 900

(6) Life, endowment, or annuity contracts of legal reserve 901  
life insurance companies regulated by sections 3907.01 to 3907.21, 902  
3909.01 to 3909.17, 3911.01 to 3911.24, 3913.01 to 3913.10, 903  
3915.01 to 3915.15, and 3917.01 to 3917.05 of the Revised Code, 904  
and licensed by the superintendent of insurance to transact 905  
business within the state, provided that the purchase of contracts 906  
authorized by this division shall be limited to executors or the 907  
successors to their powers when specifically authorized by will 908  
and to guardians and trustees, which contracts may be issued on 909  
the life of a ward, a beneficiary of a trust fund, or according to 910  
a will, or upon the life of a person in whom such ward or 911  
beneficiary has an insurable interest and the contracts shall be 912

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 943  
issued by a domestic savings and loan association organized under 944  
the laws of the state, provided that no fiduciary may invest such 945  
deposits except with the approval of the probate court, and then 946  
in an amount not to exceed the amount which the fiduciary is 947  
permitted to invest under division (A)(12) of this section; 948

(14) In savings accounts in, or certificates or other 949  
evidences of deposits issued by, a national bank located in the 950  
state or a state bank located in and organized under the laws of 951  
the state by depositing the funds in the bank, and such national 952  
or state bank when itself acting in a fiduciary capacity may 953  
deposit the funds in savings accounts in, or certificates or other 954  
evidences of deposits issued by, its own savings department or any 955  
bank subsidiary corporation owned or controlled by the bank 956  
holding company that owns or controls such national or state bank; 957  
provided that no deposit shall be made by any fiduciary, 958  
individual, or corporate, unless the deposits of the depository 959  
bank are insured by the federal deposit insurance corporation 960  
created under the "Federal Deposit Insurance Corporation Act of 961  
1933," 48 Stat. 162, 12 U.S.C. 264, as amended, and provided that 962  
the deposit of the funds of any one trust in any such savings 963  
accounts in, or certificates or other evidences of deposits issued 964  
by, any one bank shall not exceed the sum insured under that act, 965  
as amended; 966

(15) Obligations consisting of notes, bonds, debentures, or 967  
equipment trust certificates issued under an indenture, which are 968  
the direct obligations, or in the case of equipment trust 969  
certificates are secured by direct obligations, of a railroad or 970  
industrial corporation, or a corporation engaged directly and 971  
primarily in the production, transportation, distribution, or sale 972  
of electricity or gas, or the operation of telephone or telegraph 973  
systems or waterworks, or in some combination of them; provided 974



that the obligor corporation is one which is incorporated under 975  
the laws of the United States, any state, or the District of 976  
Columbia, and the obligations are rated at the time of purchase in 977  
the highest or next highest classification established by at least 978  
two standard rating services selected from a list of the standard 979  
rating services which shall be prescribed by the superintendent of 980  
financial institutions; provided that every such list shall be 981  
certified by the superintendent to the clerk of each probate court 982  
in the state, and shall continue in effect until a different list 983  
is prescribed and certified as provided in this division; 984

(16) Obligations issued, assumed, or guaranteed by the 985  
international finance corporation or by the international bank for 986  
reconstruction and development, the Asian development bank, the 987  
inter-American development bank, the African development bank, or 988  
other similar development bank in which the president, as 989  
authorized by congress and on behalf of the United States, has 990  
accepted membership, provided that the obligations are rated at 991  
the time of purchase in the highest or next highest classification 992  
established by at least one standard rating service selected from 993  
a list of standard rating services which shall be prescribed by 994  
the superintendent of financial institutions; 995

(17) Securities of any investment company, as defined in and 996  
registered under sections 3 and 8 of the "Investment Company Act 997  
of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8, that are 998  
invested exclusively in forms of investment or in instruments that 999  
are fully collateralized by forms of investment in which the 1000  
fiduciary is permitted to invest pursuant to divisions (A)(1) to 1001  
(16) of this section, provided that, in addition to such forms of 1002  
investment, the investment company may, for the purpose of 1003  
reducing risk of loss or of stabilizing investment returns, engage 1004  
in hedging transactions. 1005

(B) No administrator or executor may invest funds belonging 1006

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 1038  
and in being and who have vested or contingent interests in the 1039  
trust, and after holding a hearing, the court may terminate the 1040  
trust, in whole or in part, if it determines that all of the 1041  
following apply: 1042

(a) It is no longer economically feasible to continue the 1043  
trust. 1044

(b) The termination of the trust is for the benefit of the 1045  
beneficiaries. 1046

(c) The termination of the trust is equitable and practical. 1047

(d) The current value of the trust is less than one hundred 1048  
thousand dollars. 1049

(2) The existence of a spendthrift or similar provision in a 1050  
trust instrument or will does not preclude the termination of a 1051  
trust pursuant to this section. 1052

(B) If property is to be distributed from an estate being 1053  
probated to a trust and the termination of the trust pursuant to 1054  
this section does not clearly defeat the intent of the testator, 1055  
the probate court has jurisdiction to order the outright 1056  
distribution of the property or to make the property custodial 1057  
property under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 1058  
Revised Code. A probate court may so order whether the application 1059  
for the order is made by an inter vivos trustee named in the will 1060  
of the decedent or by a testamentary trustee. 1061

(C) Upon the termination of a trust pursuant to this section, 1062  
the probate court shall order the distribution of the trust estate 1063  
in accordance with any provision specified in the trust instrument 1064  
for the premature termination of the trust. If there is no 1065  
provision of that nature in the trust instrument, the probate 1066  
court shall order the distribution of the trust estate among the 1067  
beneficiaries of the trust in accordance with their respective 1068

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 1099  
and except to the extent that any provision of Chapters 5801. to 1100  
5811. of the Revised Code is clearly inapplicable to testamentary 1101  
trusts. 1102

(B) Section 5808.13 of the Revised Code applies to 1103  
testamentary trusts whether or not that section conflicts with any 1104  
provision of Chapter 2109. of the Revised Code or any other 1105  
provision of the Revised Code that applies specifically to 1106  
testamentary trusts. 1107

**Sec. 2111.131.** (A) The probate court may enter an order that 1108  
authorizes a person under a duty to pay or deliver money or 1109  
personal property to a minor who does not have a guardian of the 1110  
person and estate or a guardian of the estate, to perform that 1111  
duty in amounts not exceeding five thousand dollars annually, by 1112  
paying or delivering the money or property to any of the 1113  
following: 1114

(1) The guardian of the person only of the minor; 1115

(2) The minor's natural guardians, if any, as determined 1116  
pursuant to section 2111.08 of the Revised Code; 1117

(3) The ~~minor himself~~ minor's own self; 1118

(4) Any person who has the care and custody of the minor and 1119  
with whom the minor resides, other than a guardian of the person 1120  
only or a natural guardian; 1121

(5) A financial institution incident to a deposit in a 1122  
federally insured savings account in the sole name of the minor; 1123

(6) A custodian designated by the court in its order, for the 1124  
minor under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 1125  
Revised Code. 1126

(B) An order entered pursuant to division (A) of this section 1127

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 ~~1339.45~~ 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 ~~it~~ 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 1158  
of this chapter or of a rule adopted pursuant to this chapter, 1159  
divisions (C) and (D) of that section shall apply in determining 1160  
the assets or resources of the recipient, the recipient's estate, 1161  
the settlor, or the settlor's estate and to claims arising under 1162  
this chapter against the recipient, the recipient's estate, the 1163  
settlor, or the settlor's estate. 1164

**Sec. 5111.151.** (A) This section applies to eligibility 1165  
determinations for all cases involving medical assistance provided 1166  
pursuant to this chapter, qualified medicare beneficiaries, 1167  
specified low-income medicare beneficiaries, qualifying 1168  
individuals-1, qualifying individuals-2, and medical assistance 1169  
for covered families and children. 1170

(B) As used in this section: 1171

(1) "Trust" means any arrangement in which a grantor 1172  
transfers real or personal property to a trust with the intention 1173  
that it be held, managed, or administered by at least one trustee 1174  
for the benefit of the grantor or beneficiaries. "Trust" includes 1175  
any legal instrument or device similar to a trust. 1176

(2) "Legal instrument or device similar to a trust" includes, 1177  
but is not limited to, escrow accounts, investment accounts, 1178  
partnerships, contracts, and other similar arrangements that are 1179  
not called trusts under state law but are similar to a trust and 1180  
to which all of the following apply: 1181

(a) The property in the trust is held, managed, retained, or 1182  
administered by a trustee. 1183

(b) The trustee has an equitable, legal, or fiduciary duty to 1184  
hold, manage, retain, or administer the property for the benefit 1185  
of the beneficiary. 1186

(c) The trustee holds identifiable property for the 1187

beneficiary.	1188
(3) "Grantor" is a person who creates a trust, including all	1189
of the following:	1190
(a) An individual;	1191
(b) An individual's spouse;	1192
(c) A person, including a court or administrative body, with	1193
legal authority to act in place of or on behalf of an individual	1194
or an individual's spouse;	1195
(d) A person, including a court or administrative body, that	1196
acts at the direction or on request of an individual or the	1197
individual's spouse.	1198
(4) "Beneficiary" is a person or persons, including a	1199
grantor, who benefits in some way from a trust.	1200
(5) "Trustee" is a person who manages a trust's principal and	1201
income for the benefit of the beneficiaries.	1202
(6) "Person" has the same meaning as in section 1.59 of the	1203
Revised Code and includes an individual, corporation, business	1204
trust, estate, trust, partnership, and association.	1205
(7) "Applicant" is an individual who applies for medical	1206
assistance benefits or the individual's spouse.	1207
(8) "Recipient" is an individual who receives medical	1208
assistance benefits or the individual's spouse.	1209
(9) "Revocable trust" is a trust that can be revoked by the	1210
grantor or the beneficiary, including all of the following, even	1211
if the terms of the trust state that it is irrevocable:	1212
(a) A trust that provides that the trust can be terminated	1213
only by a court;	1214
(b) A trust that terminates on the happening of an event, but	1215
only if the event occurs at the direction or control of the	1216



grantor, beneficiary, or trustee.	1217
(10) "Irrevocable trust" is a trust that cannot be revoked by	1218
the grantor or terminated by a court and that terminates only on	1219
the occurrence of an event outside of the control or direction of	1220
the beneficiary or grantor.	1221
(11) "Payment" is any disbursement from the principal or income	1222
of the trust, including actual cash, noncash or property	1223
disbursements, or the right to use and occupy real property.	1224
(12) "Payments to or for the benefit of the applicant or	1225
recipient" is a payment to any person resulting in a direct or	1226
indirect benefit to the applicant or recipient.	1227
(13) "Testamentary trust" is a trust that is established by a	1228
will and does not take effect until after the death of the person	1229
who created the trust.	1230
(C) If an applicant or recipient is a beneficiary of a trust,	1231
the county department of job and family services shall determine	1232
what type of trust it is and shall treat the trust in accordance	1233
with the appropriate provisions of this section and rules adopted	1234
by the department of job and family services governing trusts. The	1235
county department of job and family services may determine that	1236
the trust or portion of the trust is one of the following:	1237
(1) A countable resource;	1238
(2) Countable income;	1239
(3) A countable resource and countable income;	1240
(4) Not a countable resource or countable income.	1241
(D)(1) A trust or legal instrument or device similar to a	1242
trust shall be considered a medicaid qualifying trust if all of	1243
the following apply:	1244
(a) The trust was established on or prior to August 10, 1993.	1245

(b) The trust was not established by a will.	1246
(c) The trust was established by an applicant or recipient.	1247
(d) The applicant or recipient is or may become the beneficiary of all or part of the trust.	1248 1249
(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.	1250 1251 1252
(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.	1253 1254 1255 1256 1257 1258 1259 1260 1261 1262
(3) Amounts that are actually distributed from a <del>Medicaid</del> <u>medicaid</u> 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.	1263 1264 1265 1266
(4) Availability of a medicaid qualifying trust shall be considered without regard to any of the following:	1267 1268
(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;	1269 1270 1271 1272 1273 1274
(b) Whether or not the trustee actually exercises discretion.	1275

(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 transfer of resources and shall be subject to rules  
adopted by the department of job and family services governing  
improper transfers of resources.

(6) The baseline date for the look-back period for transfers  
of assets involving a medicaid qualifying trust shall be the date  
on which the applicant or recipient is both institutionalized and  
first applies for medical assistance. The following conditions  
also apply to look-back periods for transfers of assets involving  
medicaid qualifying trusts:

(a) If a medicaid qualifying trust is a revocable trust and a  
portion of the trust is distributed to someone other than the  
applicant or recipient for the benefit of someone other than the  
applicant or recipient, the distribution shall be considered an  
improper transfer of resources. The look-back period shall be  
sixty months from the baseline date. The transfer shall be  
considered to have taken place on the date on which the payment to  
someone other than the applicant or recipient was made.

(b) If a medicaid qualifying trust is an irrevocable trust  
and a portion of the trust is not distributable to the applicant  
or recipient, the trust shall be treated as an improper transfer  
of resources. The look-back period shall be sixty months from the  
baseline date. The transfer is considered to have been made as of  
the later of the date the trust was established or the date on  
which payment to the applicant or recipient was foreclosed. The  
value of the assets shall not be reduced by any payments from the  
trust that may be made from these unavailable assets at a later  
date.

(c) If a medicaid qualifying trust is an irrevocable trust

and a portion or all of the trust may be disbursed to or for the benefit of the applicant or recipient, any payment that is made to another person other than the applicant or recipient shall be considered an improper transfer of resources. The look-back period shall be thirty-six months from the baseline date. The transfer shall be considered to have been made as of the date of payment to the other person.

(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 transfer of resources and shall be subject to rules adopted by the department of job and family services governing improper transfers of resources.

(3) A trust that meets the requirements of division (E)(1) of 1337  
this section and is an irrevocable trust shall be treated by the 1338  
county department of job and family services as follows: 1339

(a) If there are any circumstances under which payment from 1340  
the trust could be made to or for the benefit of the applicant or 1341  
recipient, including a payment that can be made only in the 1342  
future, the portion from which payments could be made shall be 1343  
considered a resource available to the applicant or recipient. The 1344  
county department of job and family services shall not take into 1345  
account when payments can be made. 1346

(b) Any payment that is actually made to or for the benefit 1347  
of the applicant or recipient from either the corpus or income 1348  
shall be considered unearned income. 1349

(c) If a payment is made to someone other than to the 1350  
applicant or recipient and the payment is not for the benefit of 1351  
the applicant or recipient, the payment shall be considered an 1352  
improper transfer of resources and shall be subject to rules 1353  
adopted by the department of job and family services governing 1354  
improper transfers of resources. 1355

(d) The date of the transfer shall be the later of the date 1356  
of establishment of the trust or the date of the occurrence of the 1357  
event. 1358

(e) When determining the value of the transferred resource 1359  
under this provision, the value of the trust shall be its value on 1360  
the date payment to the applicant or recipient was foreclosed. 1361

(f) Any income earned or other resources added subsequent to 1362  
the foreclosure date shall be added to the total value of the 1363  
trust. 1364

(g) Any payments to or for the benefit of the applicant or 1365  
recipient after the foreclosure date but prior to the application 1366

date shall be subtracted from the total value. Any other payments 1367  
shall not be subtracted from the value. 1368

(h) Any addition of resources after the foreclosure date 1369  
shall be considered a separate transfer. 1370

(4) If a trust is funded with assets of another person or 1371  
persons in addition to assets of the applicant or recipient, the 1372  
applicable provisions of this section and rules adopted by the 1373  
department of job and family services governing trusts shall apply 1374  
only to the portion of the trust attributable to the applicant or 1375  
recipient. 1376

(5) The availability of a self-settled trust shall be 1377  
considered without regard to any of the following: 1378

(a) The purpose for which the trust is established; 1379

(b) Whether the trustees have exercised or may exercise 1380  
discretion under the trust; 1381

(c) Any restrictions on when or whether distributions may be 1382  
made from the trust; 1383

(d) Any restrictions on the use of distributions from the 1384  
trust. 1385

(6) The baseline date for the look-back period for transfers 1386  
of assets involving a self-settled trust shall be the date on 1387  
which the applicant or recipient is both institutionalized and 1388  
first applies for medical assistance. The following conditions 1389  
also apply to look-back periods for transfers of assets involving 1390  
self-settled trusts: 1391

(a) If a self-settled trust is a revocable trust and a 1392  
portion of the trust is distributed to someone other than the 1393  
applicant or recipient for the benefit of someone other than the 1394  
applicant or recipient, the distribution shall be considered an 1395  
improper transfer of resources. The look-back period shall be 1396

sixty months from the baseline date. The transfer shall be 1397  
considered to have taken place on the date on which the payment to 1398  
someone other than the applicant or recipient was made. 1399

(b) If a self-settled trust is an irrevocable trust and a 1400  
portion of the trust is not distributable to the applicant or 1401  
recipient, the trust shall be treated as an improper transfer of 1402  
resources. The look-back period shall be sixty months from the 1403  
baseline date. The transfer is considered to have been made as of 1404  
the later of the date the trust was established or the date on 1405  
which payment to the applicant or recipient was foreclosed. The 1406  
value of these assets shall not be reduced by any payments from 1407  
the trust that may be made from these unavailable assets at a 1408  
later date. 1409

(c) If a self-settled trust is an irrevocable trust and a 1410  
portion or all of the trust may be disbursed to or for the benefit 1411  
of the applicant or recipient, any payment that is made to another 1412  
person other than the applicant or recipient shall be considered 1413  
an improper transfer of resources. The look-back period shall be 1414  
thirty-six months from the baseline date. The transfer shall be 1415  
considered to have been made as of the date of payment to the 1416  
other person. 1417

(F) The principal or income from any of the following shall 1418  
be exempt from being counted as a resource by a county department 1419  
of job and family services: 1420

(1)(a) A special needs trust that meets all of the following 1421  
requirements: 1422

(i) The trust contains assets of an applicant or recipient 1423  
under sixty-five years of age and may contain the assets of other 1424  
individuals. 1425

(ii) The applicant or recipient is disabled as defined in 1426  
rules adopted by the department of job and family services. 1427

(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 medical assistance 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 transfer of resources.

(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, 1459  
and other income to the applicant or recipient, including 1460  
accumulated interest in the trust. 1461

(ii) The income is received by the individual and the right 1462  
to receive the income is not assigned or transferred to the trust. 1463

(iii) The trust requires that on the death of the applicant 1464  
or recipient the state will receive all amounts remaining in the 1465  
trust up to an amount equal to the total amount of medical 1466  
assistance paid on behalf of the applicant or recipient. 1467

(b) No resources shall be used to establish or augment the 1468  
trust. 1469

(c) If an applicant or recipient has irrevocably transferred 1470  
or assigned the applicant's or recipient's right to receive income 1471  
to the trust, the trust shall not be considered a qualifying 1472  
income trust by the county department of job and family services. 1473

(d) Income placed in a qualifying income trust shall not be 1474  
counted in determining an applicant's or recipient's eligibility 1475  
for medical assistance. The recipient of the funds may place any 1476  
income directly into a qualifying income trust without those funds 1477  
adversely affecting the applicant's or recipient's eligibility for 1478  
medical assistance. Income generated by the trust that remains in 1479  
the trust shall not be considered as income to the applicant or 1480  
recipient. 1481

(e) All income placed in a qualifying income trust shall be 1482  
combined with any countable income not placed in the trust to 1483  
arrive at a base income figure to be used for spend down 1484  
calculations. 1485

(f) The base income figure shall be used for post-eligibility 1486  
deductions, including personal needs allowance, monthly income 1487  
allowance, family allowance, and medical expenses not subject to 1488

third party payment. Any income remaining shall be used toward 1489  
payment of patient liability. Payments made from a qualifying 1490  
income trust shall not be combined with the base income figure for 1491  
post-eligibility calculations. 1492

(g) The base income figure shall be used when determining the 1493  
spend down budget for the applicant or recipient. Any income 1494  
remaining after allowable deductions are permitted as provided 1495  
under rules adopted by the department of job and family services 1496  
shall be considered the applicant's or recipient's spend down 1497  
liability. 1498

(3)(a) A pooled trust that meets all of the following 1499  
requirements: 1500

(i) The trust contains the assets of the applicant or 1501  
recipient of any age who is disabled as defined in rules adopted 1502  
by the department of job and family services. 1503

(ii) The trust is established and managed by a nonprofit 1504  
association. 1505

(iii) A separate account is maintained for each beneficiary 1506  
of the trust but, for purposes of investment and management of 1507  
funds, the trust pools the funds in these accounts. 1508

(iv) Accounts in the trust are established by the applicant 1509  
or recipient, the applicant's or recipient's parent, grandparent, 1510  
or legal guardian, or a court solely for the benefit of 1511  
individuals who are disabled. 1512

(v) The trust requires that, to the extent that any amounts 1513  
remaining in the beneficiary's account on the death of the 1514  
beneficiary are not retained by the trust, the trust pay to the 1515  
state the amounts remaining in the trust up to an amount equal to 1516  
the total amount of medical assistance paid on behalf of the 1517  
beneficiary. 1518

(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 transfer of resources. 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 1549  
services from one of the agencies listed in division (F)(4)(a) of 1550  
this section at the time of the creation of the trust. 1551

(c) At the time the trust is created, the trust principal 1552  
does not exceed the maximum amount permitted. The maximum amount 1553  
permitted in calendar year 2002 is two hundred fourteen thousand 1554  
dollars. Each year thereafter, the maximum amount permitted is the 1555  
prior year's amount plus two thousand dollars. 1556

(d) A county department of job and family services shall 1557  
review the trust to determine whether it complies with the 1558  
provisions of section ~~1339.51~~ 5815.28 of the Revised Code. 1559

(e) Payments from supplemental services trusts shall be 1560  
exempt as long as the payments are for supplemental services as 1561  
defined in rules adopted by the department of job and family 1562  
services. All supplemental services shall be purchased by the 1563  
trustee and shall not be purchased through direct cash payments to 1564  
the beneficiary. 1565

(f) If a trust is represented as a supplemental services 1566  
trust and a county department of job and family services 1567  
determines that the trust does not meet the requirements provided 1568  
in division (F)(4) of this section and section ~~1339.51~~ 5815.28 of 1569  
the Revised Code, the county department of job and family services 1570  
shall not consider it an exempt trust. 1571

(G)(1) A trust or legal instrument or device similar to a 1572  
trust shall be considered a trust established by an individual for 1573  
the benefit of the applicant or recipient if all of the following 1574  
apply: 1575

(a) The trust is created by a person other than the applicant 1576  
or recipient. 1577

(b) The trust names the applicant or recipient as a 1578

beneficiary. 1579

(c) The trust is funded with assets or property in which the 1580  
applicant or recipient has never held an ownership interest prior 1581  
to the establishment of the trust. 1582

(2) Any portion of a trust that meets the requirements of 1583  
division (G)(1) of this section shall be an available resource 1584  
only if the trust permits the trustee to expend principal, corpus, 1585  
or assets of the trust for the applicant's or recipient's medical 1586  
care, care, comfort, maintenance, health, welfare, general well 1587  
being, or any combination of these purposes. 1588

(3) A trust that meets the requirements of division (G)(1) of 1589  
this section shall be considered an available resource even if the 1590  
trust contains any of the following types of provisions: 1591

(a) A provision that prohibits the trustee from making 1592  
payments that would supplant or replace medical assistance or 1593  
other public assistance; 1594

(b) A provision that prohibits the trustee from making 1595  
payments that would impact or have an effect on the applicant's or 1596  
recipient's right, ability, or opportunity to receive medical 1597  
assistance or other public assistance; 1598

(c) A provision that attempts to prevent the trust or its 1599  
corpus or principal from being counted as an available resource. 1600

(4) A trust that meets the requirements of division (G)(1) of 1601  
this section shall not be counted as an available resource if at 1602  
least one of the following circumstances applies: 1603

(a) If a trust contains a clear statement requiring the 1604  
trustee to preserve a portion of the trust for another beneficiary 1605  
or remainderman, that portion of the trust shall not be counted as 1606  
an available resource. Terms of a trust that grant discretion to 1607  
preserve a portion of the trust shall not qualify as a clear 1608

statement requiring the trustee to preserve a portion of the trust. 1609  
1610

(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. 1611  
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(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. 1619  
1620  
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(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. 1626  
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(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. 1632  
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(f) If a trust is specifically exempt from being counted as an available resource by a provision of the Revised Code, rules, 1638  
1639

or federal law, the trust shall not be counted as a resource. 1640

(g) If an applicant or recipient presents a final judgment 1641  
from a court demonstrating that the applicant or recipient was 1642  
unsuccessful in a civil action against the trustee to compel 1643  
payments from the trust, the trust shall not be counted as an 1644  
available resource. 1645

(h) If an applicant or recipient presents a final judgment 1646  
from a court demonstrating that in a civil action against the 1647  
trustee the applicant or recipient was only able to compel limited 1648  
or periodic payments, the trust shall not be counted as an 1649  
available resource and payments shall be treated in accordance 1650  
with rules adopted by the department of job and family services 1651  
governing income. 1652

(i) If an applicant or recipient provides written 1653  
documentation showing that the cost of a civil action brought to 1654  
compel payments from the trust would be cost prohibitive, the 1655  
trust shall not be counted as an available resource. 1656

(5) Any actual payments to the applicant or recipient from a 1657  
trust that meet the requirements of division (G)(1) of this 1658  
section, including trusts that are not counted as an available 1659  
resource, shall be treated as provided in rules adopted by the 1660  
department of job and family services governing income. Payments 1661  
to any person other than the applicant or recipient shall not be 1662  
considered income to the applicant or recipient. Payments from the 1663  
trust to a person other than the applicant or recipient shall not 1664  
be considered an improper transfer of assets. 1665

**Sec. 5119.17.** (A) As used in this section, "supplemental 1666  
services" has the same meaning as in section ~~1339.51~~ 5815.28 of 1667  
the Revised Code. 1668

(B) There is hereby created in the state treasury the 1669

services fund for individuals with mental illness. On the death of 1670  
the beneficiary of a trust created pursuant to section ~~1339.51~~ 1671  
5815.28 of the Revised Code, the portion of the remaining assets 1672  
of the trust specified in the trust instrument shall be deposited 1673  
to the credit of the fund. Money credited to the fund shall be 1674  
used for individuals with mental illness. 1675

Supplemental services may be provided through the department 1676  
or boards of alcohol, drug addiction, and mental health services. 1677  
In accordance with Chapter 119. of the Revised Code, the 1678  
department of mental health may adopt any rules necessary to 1679  
implement this section. 1680

**Sec. 5121.04.** (A) The department of mental retardation and 1681  
developmental disabilities shall investigate the financial 1682  
condition of the residents in institutions, residents whose care 1683  
or treatment is being paid for in a private facility or home under 1684  
the control of the department, and of the relatives named in 1685  
section 5121.06 of the Revised Code as liable for the support of 1686  
such residents, in order to determine the ability of any resident 1687  
or liable relatives to pay for the support of the resident and to 1688  
provide suitable clothing as required by the superintendent of the 1689  
institution. 1690

(B) The department shall follow the provisions of this 1691  
division in determining the ability to pay of a resident or the 1692  
resident's liable relatives and the amount to be charged such 1693  
resident or liable relatives. 1694

(1) Subject to divisions (B)(10) and (11) of this section, a 1695  
resident without dependents shall be liable for the full 1696  
applicable cost. A resident without dependents who has a gross 1697  
annual income equal to or exceeding the sum of the full applicable 1698  
cost, plus fifty dollars per month, regardless of the source of 1699  
such income, shall pay currently the full amount of the applicable 1700



cost; if the resident's gross annual income is less than such sum, 1701  
not more than fifty dollars per month shall be kept for personal 1702  
use by or on behalf of the resident, except as permitted in the 1703  
state plan for providing medical assistance under Title XIX of the 1704  
"Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as 1705  
amended, and the balance shall be paid currently on the resident's 1706  
support. Subject to divisions (B)(10) and (11) of this section, 1707  
the estate of a resident without dependents shall pay currently 1708  
any remaining difference between the applicable cost and the 1709  
amounts prescribed in this section, or shall execute an agreement 1710  
with the department for payment to be made at some future date 1711  
under terms suitable to the department. However, no security 1712  
interest, mortgage, or lien shall be taken, granted, or charged 1713  
against any principal residence of a resident without dependents 1714  
under an agreement or otherwise to secure support payments, and no 1715  
foreclosure actions shall be taken on security interests, 1716  
mortgages, or liens taken, granted, or charged against principal 1717  
residences of residents prior to October 7, 1977. 1718

(2) The ability to pay of a resident with dependents, or of a 1719  
liable relative of a resident either with or without dependents, 1720  
shall be determined in accordance with the resident's or liable 1721  
relative's income or other assets, the needs of others who are 1722  
dependent on such income and other assets for support, and, if 1723  
applicable, divisions (B)(10) and (11) of this section. 1724

For the first thirty days of care and treatment of each 1725  
admission, but in no event for more than thirty days in any 1726  
calendar year, the resident with dependents or the liable relative 1727  
of a resident either with or without dependents shall be charged 1728  
an amount equal to the percentage of the average applicable cost 1729  
determined in accordance with the schedule of adjusted gross 1730  
annual income contained after this paragraph. After such first 1731  
thirty days of care and treatment, such resident or such liable 1732

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 1741

Income of Resident 1742

or Liable Relative (FN a) Number of Dependents (FN b) 1743

8 or 1744

1 2 3 4 5 6 7 more 1745

Rate of Support (In Percentages) 1746

\$15,000 or less -- -- -- -- -- -- -- -- 1747

15,001 to 17,500 20 -- -- -- -- -- -- -- 1748

17,501 to 20,000 25 20 -- -- -- -- -- -- 1749

20,001 to 21,000 30 25 20 -- -- -- -- -- 1750

21,001 to 22,000 35 30 25 20 -- -- -- -- 1751

22,001 to 23,000 40 35 30 25 20 -- -- -- 1752

23,001 to 24,000 45 40 35 30 25 20 -- -- 1753

24,001 to 25,000 50 45 40 35 30 25 20 -- 1754

25,001 to 26,000 55 50 45 40 35 30 25 20 1755

26,001 to 27,000 60 55 50 45 40 35 30 25 1756

27,001 to 28,000 70 60 55 50 45 40 35 30 1757

28,001 to 30,000 80 70 60 55 50 45 40 35 1758

30,001 to 40,000 90 80 70 60 55 50 45 40 1759

40,001 and over 100 90 80 70 60 55 50 45 1760

Footnote a. The resident or relative shall furnish a copy of 1761

the resident's or relative's federal income tax return as evidence 1762

of gross annual income. 1763

Footnote b. The number of dependents includes the liable 1764

relative but excludes a resident in an institution. "Dependent" 1765  
includes any person who receives more than half the person's 1766  
support from the resident or the resident's liable relative. 1767

(3) A resident or liable relative having medical, funeral, or 1768  
related expenses in excess of four per cent of the adjusted gross 1769  
annual income, which expenses were not covered by insurance, may 1770  
adjust such gross annual income by reducing the adjusted gross 1771  
annual income by the full amount of such expenses. Proof of such 1772  
expenses satisfactory to the department must be furnished. 1773

(4) Additional dependencies may be claimed if: 1774

(a) The liable relative is blind; 1775

(b) The liable relative is over sixty-five; 1776

(c) A child is a college student with expenses in excess of 1777  
fifty dollars per month; 1778

(d) The services of a housekeeper, costing in excess of fifty 1779  
dollars per month, are required if the person who normally keeps 1780  
house for minor children is the resident. 1781

(5) If with respect to any resident with dependents there is 1782  
chargeable under division (B)(2) of this section less than fifty 1783  
per cent of the applicable cost or, if the base support rate was 1784  
used, less than fifty per cent of the amount determined by use of 1785  
the base support rate, and if with respect to such resident there 1786  
is a liable relative who has an estate having a value in excess of 1787  
fifteen thousand dollars or if such resident has a dependent and 1788  
an estate having a value in excess of fifteen thousand dollars, 1789  
there shall be paid with respect to such resident a total of fifty 1790  
per cent of the applicable cost or the base support rate amount, 1791  
as the case may be, on a current basis or there shall be executed 1792  
with respect to such resident an agreement with the department for 1793  
payment to be made at some future date under terms suitable to the 1794

department. 1795

(6) When a person has been a resident for fifteen years and 1796  
the support charges for which a relative is liable have been paid 1797  
for the fifteen-year period, the liable relative shall be relieved 1798  
of any further support charges. 1799

(7) The department shall accept voluntary payments from 1800  
residents or liable relatives whose incomes are below the minimum 1801  
shown in the schedule set forth in this division. The department 1802  
also shall accept voluntary payments in excess of required amounts 1803  
from both liable and nonliable relatives. 1804

(8) If a resident is covered by an insurance policy, or other 1805  
contract that provides for payment of expenses for care and 1806  
treatment for mental retardation or other developmental disability 1807  
at or from an institution or facility (including a community 1808  
service unit under the jurisdiction of the department), the other 1809  
provisions of this section, except divisions (B)(8), (10), and 1810  
(11) of this section, and of section 5121.01 of the Revised Code 1811  
shall be suspended to the extent that such insurance policy or 1812  
other contract is in force, and such resident shall be charged the 1813  
full amount of the applicable cost. Any insurance carrier or other 1814  
third party payor providing coverage for such care and treatment 1815  
shall pay for this support obligation in an amount equal to the 1816  
lesser of either the applicable cost or the benefits provided 1817  
under the policy or other contract. Whether or not an insured, 1818  
owner of, or other person having an interest in such policy or 1819  
other contract is liable for support payments under other 1820  
provisions of this chapter, the insured, policy owner, or other 1821  
person shall assign payment directly to the department of all 1822  
assignable benefits under the policy or other contract and shall 1823  
pay over to the department, within ten days of receipt, all 1824  
insurance or other benefits received as reimbursement or payment 1825  
for expenses incurred by the resident or for any other reason. If 1826

the insured, policy owner, or other person refuses to assign such 1827  
payment to the department or refuses to pay such received 1828  
reimbursements or payments over to the department within ten days 1829  
of receipt, the insured's, policy owners', or other person's total 1830  
liability for the services equals the applicable statutory 1831  
liability for payment for the services as determined under other 1832  
provisions of this chapter, plus the amounts payable under the 1833  
terms of the policy or other contract. In no event shall this 1834  
total liability exceed the full amount of the applicable cost. 1835  
Upon its request, the department is entitled to a court order that 1836  
compels the insured, owner of, or other person having an interest 1837  
in the policy or other contract to comply with the assignment 1838  
requirements of this division or that itself serves as a legally 1839  
sufficient assignment in compliance with such requirements. 1840  
Notwithstanding section 5123.89 of the Revised Code and any other 1841  
law relating to confidentiality of records, the managing officer 1842  
of the institution or facility where a person is or has been a 1843  
resident shall disclose pertinent medical information concerning 1844  
the resident to the insurance carrier or other third party payor 1845  
in question, in order to effect collection from the carrier or 1846  
payor of the state's claim for care and treatment under this 1847  
division. For such disclosure, the managing officer is not subject 1848  
to any civil or criminal liability. 1849

(9) The rate to be charged for pre-admission care, 1850  
after-care, day-care, or routine consultation and treatment 1851  
services shall be based upon the ability of the resident or the 1852  
resident's liable relatives to pay. When it is determined by the 1853  
department that a charge shall be made, such charge shall be 1854  
computed as provided in divisions (B)(1) and (2) of this section. 1855

(10) If a resident with or without dependents is the 1856  
beneficiary of a trust created pursuant to section ~~1339.51~~ 5815.28 1857  
of the Revised Code, then, notwithstanding any contrary provision 1858

of this chapter or of a rule adopted pursuant to this chapter, 1859  
divisions (C) and (D) of that section shall apply in determining 1860  
the assets or resources of the resident, the resident's estate, 1861  
the settlor, or the settlor's estate and to claims arising under 1862  
this chapter against the resident, the resident's estate, the 1863  
settlor, or the settlor's estate. 1864

(11) If the department waives the liability of an individual 1865  
and the individual's liable relatives pursuant to section 5123.194 1866  
of the Revised Code, the liability of the individual and relative 1867  
ceases in accordance with the waiver's terms. 1868

(C) The department may enter into agreements with a resident 1869  
or a liable relative for support payments to be made in the 1870  
future. However, no security interest, mortgage, or lien shall be 1871  
taken, granted, or charged against any principal family residence 1872  
of a resident with dependents or a liable relative under an 1873  
agreement or otherwise to secure support payments, and no 1874  
foreclosure actions shall be taken on security interests, 1875  
mortgages or liens taken, granted, or charged against principal 1876  
residences of residents or liable relatives prior to October 7, 1877  
1977. 1878

(D) The department shall make all investigations and 1879  
determinations required by this section within ninety days after a 1880  
resident is admitted to an institution under the department's 1881  
control and immediately shall notify by mail the persons liable of 1882  
the amount to be charged. 1883

(E) All actions to enforce the collection of payments agreed 1884  
upon or charged by the department shall be commenced within six 1885  
years after the date of default of an agreement to pay support 1886  
charges or the date such payment becomes delinquent. If a payment 1887  
is made pursuant to an agreement which is in default, a new 1888  
six-year period for actions to enforce the collection of payments 1889  
under such agreement shall be computed from the date of such 1890

payment. For purposes of this division an agreement is in default 1891  
or a payment is delinquent if a payment is not made within thirty 1892  
days after it is incurred or a payment, pursuant to an agreement, 1893  
is not made within thirty days after the date specified for such 1894  
payment. In all actions to enforce the collection of payment for 1895  
the liability for support, every court of record shall receive 1896  
into evidence the proof of claim made by the state together with 1897  
all debts and credits, and it shall be prima-facie evidence of the 1898  
facts contained in it. 1899

**Sec. 5121.10.** Upon the death of a resident or former resident 1900  
of any institution under the jurisdiction of the department of 1901  
mental retardation and developmental disabilities, or upon the 1902  
death of a person responsible under section 5121.06 of the Revised 1903  
Code for the support of a resident, the department may waive the 1904  
presentation of any claim for support against the estate of such 1905  
decedent, when in its judgment an otherwise dependent person will 1906  
be directly benefited by the estate. Claims against an estate for 1907  
support of a resident are subject to section ~~1339.51~~ 5815.28 and 1908  
Chapter 2117. of the Revised Code, and shall be treated, and may 1909  
be barred, the same as the claims of other creditors of the 1910  
estate, pursuant to that section or chapter. 1911

The department may accept from a guardian or trustee of a 1912  
resident a contract agreeing to pay to the state from the property 1913  
of the guardian's or trustee's ward before or at the death of the 1914  
ward a fixed annual amount for the support of the ward while the 1915  
ward is a resident, with interest at four per cent per annum. A 1916  
copy of the contract shall be filed in the probate court of the 1917  
proper county and duly entered as a part of the records concerning 1918  
the ward. 1919

**Sec. 5121.30.** As used in sections 5121.30 to 5121.56 of the 1920

Revised Code:	1921
(A) "Community mental health services client" or "client"	1922
means a person receiving state-operated community mental health	1923
services.	1924
(B) "Countable assets" means all of the following:	1925
(1) Cash;	1926
(2) Bank deposits;	1927
(3) Securities;	1928
(4) Individual retirement accounts;	1929
(5) Qualified employer plans, including 401(k) and Keogh	1930
plans;	1931
(6) Annuities;	1932
(7) Funds in a trust created under section <del>1339.51</del> <u>5815.28</u> of	1933
the Revised Code;	1934
(8) Investment property and income;	1935
(9) The cash surrender values of life insurance policies;	1936
(10) Assets acquired by gift, bequest, devise, or	1937
inheritance;	1938
(11) Any other asset determined by the department of mental	1939
health to be equivalent to the assets enumerated in this division.	1940
(C) "Federal poverty level" or "FPL" means the income level	1941
represented by the poverty guidelines as revised annually by the	1942
United States department of health and human services in	1943
accordance with section 673(2) of the "Omnibus Reconciliation Act	1944
of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, for a family	1945
size equal to the size of the family of the person whose income is	1946
being determined.	1947
(D) "Federal poverty guidelines" means the poverty guidelines	1948



as revised annually by the United States department of health and 1949  
human services in accordance with section 673(2) of the "Omnibus 1950  
Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, 1951  
as amended, for a family size equal to the size of the family of 1952  
the person whose income is being determined. 1953

(E) "Hospital" means an institution, hospital, or other place 1954  
established, controlled, or supervised by the department of mental 1955  
health under Chapter 5119. of the Revised Code. 1956

(F) "Liable relative" means all of the following: 1957

(1) A patient's spouse; 1958

(2) A patient's mother or father, or both, if the patient is 1959  
under eighteen years of age; 1960

(3) A patient's guardian. 1961

(G) "Patient" means a person admitted to a hospital for 1962  
inpatient care or treatment, including a person transferred to a 1963  
hospital from a state correctional institution or a person under 1964  
indictment or conviction who has been transferred to a hospital. 1965

**Sec. 5121.52.** On the death of a person who is a patient, or 1966  
has been a patient in a hospital, or on the death of a person 1967  
responsible under section 5121.34 of the Revised Code for the 1968  
support of a patient, the department of mental health may waive 1969  
the presentation of any claim for support against the estate of 1970  
such decedent, when in its judgment an otherwise dependent person 1971  
will be directly benefited by the estate. Claims against an estate 1972  
for support of a patient are subject to section ~~1339.51~~ 5815.28 1973  
and Chapter 2117. of the Revised Code, and shall be treated, and 1974  
may be barred, the same as the claims of other creditors of the 1975  
estate, pursuant to that section or chapter. 1976

The department of mental health may accept from a guardian or 1977  
trustee of a patient a contract agreeing to pay to the state from 1978

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. 2010  
2011

(E) The director shall adopt rules in accordance with Chapter 2012  
119. of the Revised Code that do all of the following: 2013

(1) Specify the supplemental services that may be provided 2014  
through a trust authorized by section ~~1339.51~~ 5815.28 of the 2015  
Revised Code; 2016

(2) Establish standards for the maintenance and distribution 2017  
to a beneficiary of assets of a trust authorized by section 2018  
~~1339.51~~ 5815.28 of the Revised Code. 2019

(F) The director shall provide monitoring of county boards of 2020  
mental retardation and developmental disabilities. 2021

**Sec. 5123.28.** (A) Except as otherwise provided in this 2022  
division, money or property deposited with managing officers of 2023  
institutions under the jurisdiction of the department of mental 2024  
retardation and developmental disabilities by any resident under 2025  
the department's control or by relatives, guardians, conservators, 2026  
and others for the special benefit of such resident, as well as 2027  
all other funds and all other income paid to the resident, to ~~his~~ 2028  
the resident's estate, or on ~~his~~ the resident's behalf, or paid to 2029  
the managing officer or to the institution as representative payee 2030  
or otherwise paid on the resident's behalf, shall remain in the 2031  
hands of such managing officers in appropriate accounts for use 2032  
accordingly. Each such managing officer shall keep itemized book 2033  
accounts of the receipt and disposition of such money and 2034  
property, which book shall be open at all times to the inspection 2035  
of the department. The director of mental retardation and 2036  
developmental disabilities shall adopt rules governing the 2037  
deposit, transfer, withdrawal, or investment of such funds and the 2038  
income of the funds, as well as rules under which such funds and 2039

income shall be paid by managing officers, institutions, or 2040  
district managers for the support of such residents pursuant to 2041  
Chapter 5121. of the Revised Code, or for their other needs. 2042

This division does not require, and shall not be construed as 2043  
requiring, the deposit of the principal or income of a trust 2044  
created pursuant to section ~~1339.51~~ 5815.28 of the Revised Code 2045  
with managing officers of institutions under the jurisdiction of 2046  
the department. 2047

(B) Whenever any resident confined in a state institution 2048  
under the jurisdiction of the department dies, escapes, or is 2049  
discharged from the institution, any personal funds of the 2050  
resident remain in the hands of the managing officer of the 2051  
institution, and no demand is made upon the managing officer by 2052  
the owner of the funds or ~~his~~ the owner's legally appointed 2053  
representative, the managing officer shall hold the funds in the 2054  
personal deposit fund for a period of at least one year during 2055  
which time the managing officer shall make every effort possible 2056  
to locate the owner or ~~his~~ the owner's legally appointed 2057  
representative. If, at the end of this period, no demand has been 2058  
made for the funds, the managing officer shall dispose of the 2059  
funds as follows: 2060

(1) All money in a personal deposit fund in excess of ten 2061  
dollars due for the support of a resident, shall be paid in 2062  
accordance with Chapter 5121. of the Revised Code. 2063

(2) All money in a personal deposit fund in excess of ten 2064  
dollars not due for the support of a resident, shall be placed to 2065  
the credit of the institution's local account designated as the 2066  
"industrial and entertainment" fund. 2067

(3) The first ten dollars to the credit of a resident shall 2068  
be placed to the credit of the institution's local account 2069  
designated as the "industrial and entertainment" fund. 2070

(C) Whenever any resident in any state institution subject to 2071  
the jurisdiction of the department dies, escapes, or is discharged 2072  
from the institution, any personal effects of the resident remain 2073  
in the hands of the managing officer of the institution, and no 2074  
demand is made upon the managing officer by the owner of the 2075  
personal effects or ~~his~~ the owner's legally appointed 2076  
representative, the managing officer shall hold and dispose of the 2077  
personal effects in the following manner. All the miscellaneous 2078  
personal effects shall be held for a period of at least one year, 2079  
during which time the managing officer shall make every effort 2080  
possible to locate the owner or ~~his~~ the owner's legal 2081  
representative. If, at the end of this period, no demand has been 2082  
made by the owner of the property or ~~his~~ the owner's legal 2083  
representative, the managing officer shall file with the county 2084  
recorder of the county of commitment of such owner, all deeds, 2085  
wills, contract mortgages, or assignments. The balance of the 2086  
personal effects shall be sold at public auction after being duly 2087  
advertised, and the funds turned over to the treasurer of state 2088  
for credit to the general revenue fund. If any of the property is 2089  
not of a type to be filed with the county recorder and is not 2090  
salable at public auction, the managing officer of the institution 2091  
shall destroy that property. 2092

**Sec. 5123.40.** There is hereby created in the state treasury 2093  
the services fund for individuals with mental retardation and 2094  
developmental disabilities. On the death of the beneficiary of a 2095  
trust created pursuant to section ~~1339.51~~ 5815.28 of the Revised 2096  
Code, the portion of the remaining assets of the trust specified 2097  
in the trust instrument shall be deposited to the credit of the 2098  
fund. 2099

Money credited to the fund shall be used for individuals with 2100  
mental retardation and developmental disabilities. In accordance 2101

with Chapter 119. of the Revised Code, the department of mental 2102  
retardation and developmental disabilities may adopt any rules 2103  
necessary to implement this section. 2104

Sec. 5801.01. As used in Chapters 5801. to 5811. of the 2105  
Revised Code: 2106

(A) "Action," with respect to an act of a trustee, includes a 2107  
failure to act. 2108

(B) "Ascertainable standard" means a standard relating to an 2109  
individual's health, education, support, or maintenance within the 2110  
meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal 2111  
Revenue Code. 2112

(C) "Beneficiary" means a person that has a present or future 2113  
beneficial interest in a trust, whether vested or contingent, or 2114  
that, in a capacity other than that of trustee, holds a power of 2115  
appointment over trust property. 2116

(D) "Beneficiary surrogate" means a person, other than a 2117  
trustee, designated by the settlor in the trust instrument to 2118  
receive notices, information, and reports otherwise required to be 2119  
provided to a current beneficiary under divisions (B)(8) and (9) 2120  
of section 5801.04 of the Revised Code. 2121

(E) "Charitable trust" means a trust, or portion of a trust, 2122  
created for a charitable purpose described in division (A) of 2123  
section 5804.05 of the Revised Code. 2124

(F) "Current beneficiary" means a beneficiary, other than a 2125  
charitable organization not expressly designated in the trust 2126  
instrument to receive distributions, who, on the date the 2127  
beneficiary's qualification is determined, is a distributee or 2128  
permissible distributee of trust income or principal. 2129

(G) "Environmental law" means a federal, state, or local law, 2130  
rule, regulation, or ordinance relating to protection of the 2131

environment. 2132

(H) "Guardian of the estate" means a guardian appointed by a 2133  
court to administer the estate of any individual or to serve as 2134  
conservator of the property of an individual eighteen years of age 2135  
or older under section 2111.021 of the Revised Code. 2136

(I) "Guardian of the person" means a guardian appointed by a 2137  
court to make decisions regarding the support, care, education, 2138  
health, and welfare of any individual or to serve as conservator 2139  
of the person of an individual eighteen years of age or older 2140  
under section 2111.021 of the Revised Code. "Guardian of the 2141  
person" does not include a guardian ad litem. 2142

(J) "Internal Revenue Code" means the "Internal Revenue Code 2143  
of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended. 2144

(K) "Interests of the beneficiaries" means the beneficial 2145  
interests provided in the terms of the trust. 2146

(L) "Jurisdiction," with respect to a geographic area, 2147  
includes a state or country. 2148

(M) "Mandatory distribution" means a distribution of income 2149  
or principal, including a distribution upon termination of the 2150  
trust, that the trustee is required to make to a beneficiary under 2151  
the terms of the trust. Mandatory distributions do not include 2152  
distributions that a trustee is directed or authorized to make 2153  
pursuant to a support or other standard, regardless of whether the 2154  
terms of the trust provide that the trustee "may" or "shall" make 2155  
the distributions pursuant to a support or other standard. 2156

(N) "Person" means an individual, corporation, business 2157  
trust, estate, trust, partnership, limited liability company, 2158  
association, joint venture, government, governmental agency or 2159  
instrumentality, public corporation, or any other legal or 2160  
commercial entity. 2161

(O) "Power of withdrawal" means a presently exercisable 2162  
general power of appointment other than a power exercisable by a 2163  
trustee that is limited by an ascertainable standard or that is 2164  
exercisable by another person only upon consent of the trustee or 2165  
a person holding an adverse interest. 2166

(P) "Property" means anything or any interest in anything 2167  
that may be the subject of ownership. 2168

(Q) "Qualified beneficiary" means a living beneficiary to 2169  
whom, on the date the beneficiary's qualification is determined, 2170  
any of the following applies: 2171

(1) The beneficiary is a distributee or permissible 2172  
distributee of trust income or principal. 2173

(2) The beneficiary would be a distributee or permissible 2174  
distributee of trust income or principal if the interests of the 2175  
distributees described in division (Q)(1) of this section 2176  
terminated on that date, but the termination of those interests 2177  
would not cause the trust to terminate. 2178

(3) The beneficiary would be a distributee or permissible 2179  
distributee of trust income or principal if the trust terminated 2180  
on that date. 2181

(R) "Revocable," as applied to a trust, means revocable by 2182  
the settlor at the time of determination without the consent of 2183  
the trustee or a person holding an adverse interest. 2184

(S) "Settlor" means a person, including a testator, who 2185  
creates, or contributes property to, a trust. If more than one 2186  
person creates or contributes property to a trust, each person is 2187  
a settlor of the portion of the trust property attributable to 2188  
that person's contribution except to the extent another person has 2189  
the power to revoke or withdraw that portion. 2190

(T) "Spendthrift provision" means a term of a trust that 2191



restrains both voluntary and involuntary transfer of a 2192  
beneficiary's interest. 2193

(U) "State" means a state of the United States, the District 2194  
of Columbia, the Commonwealth of Puerto Rico, a territory or 2195  
possession of the United States, or an Indian tribe or band 2196  
recognized by federal law or formally acknowledged by a state. 2197

(V) "Terms of a trust" means the manifestation of the 2198  
settlor's intent regarding a trust's provisions as expressed in 2199  
the trust instrument or as may be established by other evidence 2200  
that would be admissible in a judicial proceeding. 2201

(W) "Trust instrument" means an instrument executed by the 2202  
settlor that contains terms of the trust and any amendments to 2203  
that instrument. 2204

(X) "Trustee" includes an original, additional, and successor 2205  
trustee and a cotrustee. 2206

(Y)(1) "Wholly discretionary trust" means a trust to which 2207  
all of the following apply: 2208

(a) The trust is irrevocable. 2209

(b) Distributions of income or principal from the trust may 2210  
or shall be made to or for the benefit of the beneficiary only at 2211  
the trustee's discretion. 2212

(c) The beneficiary does not have a power of withdrawal from 2213  
the trust. 2214

(d) The terms of the trust use "sole," "absolute," 2215  
"uncontrolled," or language of similar import to describe the 2216  
trustee's discretion to make distributions to or for the benefit 2217  
of the beneficiary. 2218

(e) The terms of the trust do not provide any standards to 2219  
guide the trustee in exercising its discretion to make 2220  
distributions to or for the benefit of the beneficiary. 2221

(f) The beneficiary is not the settlor, the trustee, or a 2222  
cotrustee. 2223

(g) The beneficiary does not have the power to become the 2224  
trustee or a cotrustee. 2225

(2) A trust may be a wholly discretionary trust with respect 2226  
to one or more but less than all beneficiaries. 2227

(3) If a beneficiary has a power of withdrawal, the trust may 2228  
be a wholly discretionary trust with respect to that beneficiary 2229  
during any period in which the beneficiary may not exercise the 2230  
power. During a period in which the beneficiary may exercise the 2231  
power, both of the following apply: 2232

(a) The portion of the trust the beneficiary may withdraw may 2233  
not be a wholly discretionary trust with respect to that 2234  
beneficiary; 2235

(b) The portion of the trust the beneficiary may not withdraw 2236  
may be a wholly discretionary trust with respect to that 2237  
beneficiary. 2238

(4) If the beneficiary and one or more others have made 2239  
contributions to the trust, the portion of the trust attributable 2240  
to the beneficiary's contributions may not be a wholly 2241  
discretionary trust with respect to that beneficiary, but the 2242  
portion of the trust attributable to the contributions of others 2243  
may be a wholly discretionary trust with respect to that 2244  
beneficiary. If a beneficiary has a power of withdrawal, then upon 2245  
the lapse, release, or waiver of the power, the beneficiary is 2246  
treated as having made contributions to the trust only to the 2247  
extent the value of the property affected by the lapse, release, 2248  
or waiver exceeds the greatest of the following amounts: 2249

(a) The amount specified in section 2041(b)(2) or 2514(e) of 2250  
the Internal Revenue Code; 2251

(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; 2252  
2253  
2254  
2255

(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. 2256  
2257  
2258  
2259

(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: 2260  
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2262  
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2266  
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2268

(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; 2269  
2270  
2271  
2272

(b) A prohibition against providing food, clothing, and shelter to the beneficiary. 2273  
2274

Sec. 5801.011. Chapters 5801. to 5811. of the Revised Code may be cited as the Ohio trust code. 2275  
2276

Sec. 5801.02. Chapters 5801. to 5811. of the Revised Code 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 2277  
2278  
2279  
2280  
2281

to testamentary trusts to the extent provided by section 2109.69 2282  
of the Revised Code. 2283

Sec. 5801.03. (A) Subject to division (B) of this section, a 2284  
person has knowledge of a fact if any of the following apply: 2285

(1) The person has actual knowledge of the fact. 2286

(2) The person has received notice or notification of the 2287  
fact. 2288

(3) From all the facts and circumstances known to the person 2289  
at the time in question, the person has reason to know the fact. 2290

(B) An organization that conducts activities through 2291  
employees has notice or knowledge of a fact involving a trust only 2292  
from the time an employee having responsibility to act for the 2293  
trust received the information or the information would have been 2294  
brought to the employee's attention if the organization had 2295  
exercised reasonable diligence. An organization exercises 2296  
reasonable diligence if it maintains reasonable routines for 2297  
communicating significant information to the employee having 2298  
responsibility to act for the trust and there is reasonable 2299  
compliance with the routines. Reasonable diligence does not 2300  
require an employee of the organization to communicate information 2301  
unless the communication is part of the individual's regular 2302  
duties or the individual knows a matter involving the trust would 2303  
be materially affected by the information. 2304

Sec. 5801.04. (A) Except as otherwise provided in the terms 2305  
of the trust, Chapters 5801. to 5811. of the Revised Code govern 2306  
the duties and powers of a trustee, relations among trustees, and 2307  
the rights and interests of a beneficiary. 2308

(B) The terms of a trust prevail over any provision of 2309  
Chapters 5801. to 5811. of the Revised Code except the following: 2310

<u>(1) The requirements for creating a trust;</u>	2311
<u>(2) The duty of a trustee to act in good faith and in accordance with the purposes of the trust;</u>	2312 2313
<u>(3) The requirement that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;</u>	2314 2315
<u>(4) The power of the court to modify or terminate a trust under sections 5804.10 to 5804.16 of the Revised Code;</u>	2316 2317
<u>(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;</u>	2318 2319 2320
<u>(6) The power of the court under section 5807.02 of the Revised Code to require, dispense with, or modify or terminate a bond;</u>	2321 2322 2323
<u>(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;</u>	2324 2325 2326 2327
<u>(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;</u>	2328 2329 2330 2331 2332 2333
<u>(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;</u>	2334 2335 2336 2337 2338
<u>(10) The effect of an exculpatory term under section 5810.08 of the Revised Code;</u>	2339 2340

<u>(11) The rights under sections 5810.10 to 5810.13 of the</u>	2341
<u>Revised Code of a person other than a trustee or beneficiary;</u>	2342
<u>(12) Periods of limitation for commencing a judicial</u>	2343
<u>proceeding;</u>	2344
<u>(13) The power of the court to take any action and exercise</u>	2345
<u>any jurisdiction that may be necessary in the interests of</u>	2346
<u>justice;</u>	2347
<u>(14) The subject-matter jurisdiction of the court for</u>	2348
<u>commencing a proceeding as provided in section 5802.03 of the</u>	2349
<u>Revised Code.</u>	2350
<u>(C) With respect to one or more of the current beneficiaries,</u>	2351
<u>the settlor, in the trust instrument, may waive or modify the</u>	2352
<u>duties of the trustee described in divisions (B)(8) and (9) of</u>	2353
<u>this section. The waiver or modification may be made only by the</u>	2354
<u>settlor designating in the trust instrument one or more</u>	2355
<u>beneficiary surrogates to receive any notices, information, or</u>	2356
<u>reports otherwise required under those divisions to be provided to</u>	2357
<u>the current beneficiaries. If the settlor makes a waiver or</u>	2358
<u>modification pursuant to this division, the trustee shall provide</u>	2359
<u>the notices, information, and reports to the beneficiary surrogate</u>	2360
<u>or surrogates in lieu of providing them to the current</u>	2361
<u>beneficiaries. The beneficiary surrogate or surrogates shall act</u>	2362
<u>in good faith to protect the interests of the current</u>	2363
<u>beneficiaries for whom the notices, information, or reports are</u>	2364
<u>received. A waiver or modification made under this division shall</u>	2365
<u>be effective for so long as the beneficiary surrogate or</u>	2366
<u>surrogates, or their successor or successors designated in</u>	2367
<u>accordance with the terms of the trust instrument, act in that</u>	2368
<u>capacity.</u>	2369
<u>Sec. 5801.05. The common law of trusts and principles of</u>	2370

equity continue to apply in this state, except to the extent 2371  
modified by Chapters 5801. to 5811. or another section of the 2372  
Revised Code. 2373

Sec. 5801.06. The law of the jurisdiction designated in the 2374  
terms of a trust determines the meaning and effect of the terms 2375  
unless the designation of that jurisdiction's law is contrary to a 2376  
strong public policy of the jurisdiction having the most 2377  
significant relationship to the matter at issue. In the absence of 2378  
a controlling designation in the terms of the trust, the law of 2379  
the jurisdiction having the most significant relationship to the 2380  
matter at issue determines the meaning and effect of the terms. 2381

Sec. 5801.07. (A) Without precluding other means for 2382  
establishing a sufficient connection with the designated 2383  
jurisdiction, the terms of a trust designating the principal place 2384  
of administration of the trust are valid and controlling if a 2385  
trustee's principal place of business is located in or a trustee 2386  
is a resident of the designated jurisdiction or if all or part of 2387  
the administration occurs in the designated jurisdiction. 2388

(B) A trustee is under a continuing duty to administer the 2389  
trust at a place appropriate to its purposes, its administration, 2390  
and the interests of the beneficiaries. 2391

(C) Without precluding the right of the court to order, 2392  
approve, or disapprove a transfer, the trustee, in furtherance of 2393  
the duty prescribed by division (B) of this section, may transfer 2394  
the trust's principal place of administration to another state or 2395  
to a jurisdiction outside of the United States. 2396

(D) The trustee shall notify the current beneficiaries of a 2397  
proposed transfer of a trust's principal place of administration 2398  
not less than sixty days before initiating the transfer. The 2399

notice of a proposed transfer shall include all of the following: 2400

(1) The name of the jurisdiction to which the principal place 2401  
of administration is to be transferred; 2402

(2) The address and telephone number at the new location at 2403  
which the trustee can be contacted; 2404

(3) An explanation of the reasons for the proposed transfer; 2405

(4) The date on which the trustee expects the proposed 2406  
transfer to occur. 2407

(E) In connection with a transfer of the trust's principal 2408  
place of administration, the trustee may transfer some or all of 2409  
the trust property to a successor trustee designated in the terms 2410  
of the trust or appointed pursuant to section 5807.04 of the 2411  
Revised Code. 2412

Sec. 5801.08. (A) Notice to a person or the sending of a 2413  
document to a person under Chapters 5801. to 5811. of the Revised 2414  
Code shall be accomplished in a manner reasonably suitable under 2415  
the circumstances and likely to result in receipt of the notice or 2416  
document. Permissible methods of notice or for sending a document 2417  
include first-class mail, personal delivery, delivery to the 2418  
person's last known place of residence or place of business, or a 2419  
properly directed electronic message. 2420

(B) Notice otherwise required or a document otherwise 2421  
required to be sent under Chapters 5801. to 5811. of the Revised 2422  
Code is not required to be provided to a person whose identity or 2423  
location is unknown to and not reasonably ascertainable by the 2424  
trustee. 2425

(C) The person to be notified or sent a document may waive 2426  
notice or the sending of a document under Chapters 5801. to 5811. 2427  
of the Revised Code. 2428



(D) Notice of a judicial proceeding must be given as provided 2429  
in the applicable rules of civil procedure. 2430

Sec. 5801.09. (A) Whenever Chapters 5801. to 5811. of the 2431  
Revised Code require notice to current or qualified beneficiaries 2432  
of a trust, the trustee shall also give notice to any other 2433  
beneficiary who has sent the trustee a request for notice. 2434

(B) A person appointed to enforce a trust created for the 2435  
care of an animal or another noncharitable purpose as provided in 2436  
section 5804.08 or 5804.09 of the Revised Code has the rights of a 2437  
current beneficiary under Chapters 5801. to 5811. of the Revised 2438  
Code. 2439

Sec. 5801.10. (A) As used in this section, "creditor" means 2440  
any of the following: 2441

(1) A person holding a debt or security for a debt entered 2442  
into by a trustee on behalf of the trust; 2443

(2) A person holding a debt secured by one or more assets of 2444  
the trust; 2445

(3) A person having a claim against the trustee or the assets 2446  
of the trust under section 5805.06 of the Revised Code; 2447

(4) A person who has attached through legal process a 2448  
beneficiary's interest in the trust. 2449

(B) The parties to an agreement under this section shall be 2450  
all of the following, or their representatives under the 2451  
representation provisions of Chapter 5803. of the Revised Code, 2452  
except that only the settlor and any trustee are required to be 2453  
parties to an amendment of any revocable trust: 2454

(1) The settlor if living and if no adverse income or 2455  
transfer tax results would arise from the settlor's participation; 2456

<u>(2) All beneficiaries;</u>	2457
<u>(3) All currently serving trustees;</u>	2458
<u>(4) Creditors, if their interest is to be affected by the agreement.</u>	2459 2460
<u>(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:</u>	2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475
<u>(1) Determining classes of creditors, beneficiaries, heirs, next of kin, or other persons;</u>	2476 2477
<u>(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;</u>	2478 2479 2480 2481 2482
<u>(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</u>	2483 2484 2485 2486 2487

instrument, are necessary for the due administration of the trust instrument; 2488  
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(4) Modifying the trust instrument, if the modification is not inconsistent with any dominant purpose or objective of the trust; 2490  
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(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; 2493  
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(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; 2501  
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(7) Resolving any other matter that arises under Chapters 5801. to 5811. of the Revised Code. 2510  
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(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. 2512  
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(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, 2516  
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all beneficiaries, and their heirs, successors and assigns. 2519

(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. 2520  
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(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. 2529  
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(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. 2535  
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(I) Nothing in this section affects any of the following: 2538

(1) The right of a beneficiary to disclaim under section 5815.36 of the Revised Code; 2539  
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(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; 2541  
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(3) The ability of a trustee to divide or consolidate a trust under section 5804.17 of the Revised Code. 2544  
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(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 2546  
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<u>appointed by that court.</u>	2549
<u>(K) This section shall be liberally construed to favor the validity and enforceability of agreements entered into under it.</u>	2550 2551
<u>(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.</u>	2552 2553 2554 2555 2556
<b><u>Sec. 5802.01.</u></b> (A) <u>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.</u>	2557 2558 2559
(B) <u>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.</u>	2560 2561 2562 2563 2564 2565
(C) <u>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.</u>	2566 2567 2568
<b><u>Sec. 5802.02.</u></b> (A) <u>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.</u>	2569 2570 2571 2572 2573
(B) <u>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.</u>	2574 2575 2576 2577

By accepting a distribution from the trust, the recipient submits 2578  
personally to the jurisdiction of the courts of this state 2579  
regarding any matter involving the trust. 2580

(C) This section does not preclude other methods of obtaining 2581  
jurisdiction over a trustee, beneficiary, or other person 2582  
receiving property from the trust. 2583

Sec. 5802.03. The probate division of the court of common 2584  
pleas has concurrent jurisdiction with, and the same powers at law 2585  
and in equity as, the general division of the court of common 2586  
pleas to issue writs and orders and to hear and determine any 2587  
action that involves an inter vivos trust. 2588

Sec. 5803.01. (A) Notice to a person who may represent and 2589  
bind another person under this chapter has the same effect as if 2590  
notice were given directly to the other person. 2591

(B) The consent of a person who may represent and bind 2592  
another person under this chapter is binding on the person 2593  
represented unless the person represented objects to the 2594  
representation before the consent would otherwise have become 2595  
effective. 2596

(C) Except as otherwise provided in sections 5804.11 and 2597  
5806.02 of the Revised Code, a person who under this chapter may 2598  
represent a settlor who lacks capacity may receive notice and give 2599  
a binding consent on the settlor's behalf. 2600

(D) A settlor may not represent and bind a beneficiary under 2601  
this chapter with respect to the termination or modification of a 2602  
trust under division (A) of section 5804.11 of the Revised Code. 2603

Sec. 5803.02. To the extent there is no conflict of interest 2604  
between the holder of a general testamentary power of appointment 2605  
and the persons represented with respect to the particular 2606

question or dispute, the holder may represent and bind persons 2607  
whose interests, as permissible appointees, takers in default, or 2608  
otherwise, are subject to the power. 2609

**Sec. 5803.03.** To the extent there is no conflict of interest 2610  
between the representative and the person represented or among 2611  
those being represented with respect to a particular question or 2612  
dispute, all of the following apply: 2613

(A) A guardian of the estate may represent and bind the 2614  
estate that the guardian of the estate controls. 2615

(B) A guardian of the person may represent and bind the ward 2616  
if a guardian of the estate has not been appointed. 2617

(C) An agent having authority to act with respect to the 2618  
particular question or dispute may represent and bind the 2619  
principal. 2620

(D) Except as provided in division (F) of section 5801.10 of 2621  
the Revised Code, a trustee may represent and bind the 2622  
beneficiaries of the trust. 2623

(E) A personal representative of a decedent's estate may 2624  
represent and bind persons interested in the estate. 2625

(F) A parent may represent and bind the parent's minor or 2626  
unborn child if neither a guardian for the child's estate or a 2627  
guardian of the person has been appointed. 2628

**Sec. 5803.04.** Unless otherwise represented, a minor, 2629  
incapacitated individual, unborn individual, or person whose 2630  
identity or location is unknown and not reasonably ascertainable 2631  
may be represented by and bound by another having a substantially 2632  
identical interest with respect to the particular question or 2633  
dispute, but only to the extent there is no conflict of interest 2634

between the representative and the person represented. 2635

Sec. 5803.05. (A) If the court determines that an interest is 2636  
not represented under this chapter or that the otherwise available 2637  
representation might be inadequate, the court may appoint a 2638  
representative to receive notice, give consent, and otherwise 2639  
represent, bind, and act on behalf of a minor, incapacitated 2640  
individual, unborn individual, or person whose identity or 2641  
location is unknown. A representative may be appointed to 2642  
represent several persons or interests. 2643

(B) A representative may act on behalf of the individual 2644  
represented with respect to any matter arising under Chapters 2645  
5801. to 5811. of the Revised Code, whether or not a judicial 2646  
proceeding concerning the trust is pending. 2647

(C) In making decisions, a representative may consider 2648  
general benefit accruing to the living members of the individual's 2649  
family. 2650

Sec. 5804.01. A trust may be created by any of the following 2651  
methods: 2652

(A) Transfer of property to another person as trustee during 2653  
the settlor's lifetime or by will or other disposition taking 2654  
effect upon the settlor's death; 2655

(B) Declaration by the owner of property that the owner holds 2656  
identifiable property as trustee; 2657

(C) Exercise of a power of appointment in favor of a trustee; 2658

(D) A court order. 2659

Sec. 5804.02. (A) A trust is created only if all of the 2660  
following apply: 2661



<u>(1) The settlor of the trust, other than the settlor of a trust created by a court order, has capacity to create a trust.</u>	2662
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<u>(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.</u>	2664
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<u>(3) The trust has a definite beneficiary or is one of the following:</u>	2667
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<u>(a) A charitable trust;</u>	2669
<u>(b) A trust for the care of an animal, as provided in section 5804.08 of the Revised Code;</u>	2670
	2671
<u>(c) A trust for a noncharitable purpose, as provided in section 5804.09 of the Revised Code.</u>	2672
	2673
<u>(4) The trustee has duties to perform.</u>	2674
<u>(5) The same person is not the sole trustee and sole beneficiary.</u>	2675
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<u>(B) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.</u>	2677
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<u>(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.</u>	2680
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<u>(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.</u>	2685
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<u>(E) A trust is not invalid because a person, including, but not limited to, the creator of the trust, is or may become the</u>	2689
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sole trustee and the sole holder of the present beneficial 2691  
enjoyment of the corpus of the trust, provided that one or more 2692  
other persons hold a vested, contingent, or expectant interest 2693  
relative to the enjoyment of the corpus of the trust upon the 2694  
cessation of the present beneficial enjoyment. A merger of the 2695  
legal and equitable titles to the corpus of a trust described in 2696  
this division does not occur in its creator, and, notwithstanding 2697  
any contrary provision of Chapter 2107. of the Revised Code, the 2698  
trust is not a testamentary trust that is required to comply with 2699  
that chapter in order for its corpus to be legally distributed to 2700  
other beneficiaries in accordance with the provisions of the trust 2701  
upon the cessation of the present beneficial enjoyment. This 2702  
division applies to any trust that satisfies the provisions of 2703  
this division, whether the trust was executed prior to, on, or 2704  
after October 10, 1991. 2705

**Sec. 5804.03.** A trust not created by will is validly created 2706  
if its creation complies with the law of the jurisdiction in which 2707  
the trust instrument was executed or the law of the jurisdiction 2708  
in which, at the time of creation, any of the following applies: 2709

(A) The settlor was domiciled in, had a place of abode in, or 2710  
was a national of the jurisdiction. 2711

(B) A trustee was domiciled or had a place of business in the 2712  
jurisdiction. 2713

(C) Any trust property was located in the jurisdiction. 2714

**Sec. 5804.04.** A trust may be created only to the extent that 2715  
its purposes are lawful, not contrary to public policy, and 2716  
possible to achieve. A trust exists, and its assets shall be held, 2717  
for the benefit of its beneficiaries in accordance with the 2718  
interests of the beneficiaries in the trust. 2719

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 2748  
enforce a trust authorized by this section. A person having an 2749  
interest in the welfare of an animal that is provided care by a 2750  
trust authorized by this section may request the court to appoint 2751  
a person to enforce the trust or to remove a person appointed. 2752

(C) The property of a trust authorized by this section may be 2753  
applied only to its intended use, except to the extent the court 2754  
determines that the value of the trust property exceeds the amount 2755  
required for the intended use. Except as otherwise provided in the 2756  
terms of the trust, property not required for the intended use 2757  
must be distributed to the settlor if then living or to the 2758  
settlor's successors in interest. 2759

**Sec. 5804.09. Except as otherwise provided in section 5804.08** 2760  
**of the Revised Code or any other section of the Revised Code:** 2761  
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(A) A trust may be created for a noncharitable purpose 2763  
without a definite or definitely ascertainable beneficiary or for 2764  
a noncharitable but otherwise valid purpose to be selected by the 2765  
trustee. A trust created for a noncharitable purpose may not be 2766  
enforced for more than twenty-one years. 2767

(B) A trust authorized by this section may be enforced by a 2768  
person appointed in the terms of the trust or, if no person is so 2769  
appointed, by a person appointed by the court. 2770

(C) The property of a trust authorized by this section may be 2771  
applied only to its intended use, except to the extent the court 2772  
determines that the value of the trust property exceeds the amount 2773  
required for the intended use. Except as otherwise provided in the 2774  
terms of the trust, property not required for the intended use 2775  
must be distributed to the settlor if then living or to the 2776  
settlor's successors in interest. 2777

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. 2778  
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(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. 2785  
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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 2794  
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guardianship if an agent is not so authorized and a guardian of 2809  
the estate has not been appointed. This division applies only to 2810  
irrevocable trusts created on or after the effective date of 2811  
Chapters 5801. through 5811. of the Revised Code and to revocable 2812  
trusts that become irrevocable on or after the effective date of 2813  
Chapters 5801. through 5811. of the Revised Code. This division 2814  
does not apply to a noncharitable irrevocable trust described in 2815  
42 U.S.C. 1396p(d)(4). 2816

(B) A noncharitable irrevocable trust may be terminated upon 2817  
consent of all of the beneficiaries if the court concludes that 2818  
continuance of the trust is not necessary to achieve any material 2819  
purpose of the trust. A noncharitable irrevocable trust may be 2820  
modified, but not to remove or replace the trustee, upon consent 2821  
of all of the beneficiaries if the court concludes that 2822  
modification is not inconsistent with a material purpose of the 2823  
trust. A spendthrift provision in the terms of the trust may, but 2824  
is not presumed to, constitute a material purpose of the trust. 2825

(C) Upon termination of a trust under division (A) or (B) of 2826  
this section, the trustee shall distribute the trust property as 2827  
agreed by the beneficiaries. 2828

(D) If not all of the beneficiaries consent to a proposed 2829  
modification or termination of the trust under division (A) or (B) 2830  
of this section, the court may approve the modification or 2831  
termination if the court is satisfied of both of the following: 2832

(1) That if all of the beneficiaries had consented, the trust 2833  
could have been modified or terminated under this section; 2834

(2) That the interests of a beneficiary who does not consent 2835  
will be adequately protected. 2836

**Sec. 5804.12.** (A) The court may modify the administrative or 2837  
dispositive terms of a trust or terminate the trust if because of 2838

circumstances not anticipated by the settlor modification or 2839  
termination will further the purposes of the trust. To the extent 2840  
practicable, the court shall make the modification in accordance 2841  
with the settlor's probable intention. 2842

(B) The court may modify the administrative terms of a trust 2843  
if continuation of the trust on its existing terms would be 2844  
impracticable or impair the trust's administration. 2845

(C) Upon termination of a trust under this section, the 2846  
trustee shall distribute the trust property in a manner consistent 2847  
with the purposes of the trust. 2848

**Sec. 5804.13.** (A) Except as otherwise provided in division 2849  
(B) of this section, if a particular charitable purpose becomes 2850  
unlawful, impracticable, or impossible to achieve, all of the 2851  
following apply: 2852

(1) The trust does not fail in whole or in part. 2853

(2) The trust property does not revert to the settlor or the 2854  
settlor's successors in interest. 2855

(3) The court may apply cy pres to modify or terminate the 2856  
trust by directing that the trust property be applied or 2857  
distributed, in whole or in part, in a manner consistent with the 2858  
settlor's charitable purposes. In accordance with section 109.25 2859  
of the Revised Code, the attorney general is a necessary party to 2860  
a judicial proceeding brought under this section. 2861

(B) A provision in the terms of a charitable trust for the 2862  
distribution of the trust property to a noncharitable beneficiary 2863  
prevails over the power of the court under division (A) of this 2864  
section to apply cy pres to modify or terminate the trust. 2865

**Sec. 5804.14.** (A) After notice to the qualified 2866

beneficiaries, the trustee of an inter vivos trust consisting of 2867  
trust property having a total value of less than one hundred 2868  
thousand dollars may terminate the trust if the trustee concludes 2869  
that the value of the trust property is insufficient to justify 2870  
the cost of administration. 2871

(B) If an inter vivos trust consists of trust property having 2872  
a total value of less than one hundred thousand dollars, the court 2873  
may modify or terminate the trust or remove the trustee and 2874  
appoint a different trustee if it determines that the value of the 2875  
trust property is insufficient to justify the cost of 2876  
administration. 2877

(C) Upon the termination of a trust pursuant to division (A) 2878  
of this section, the trustee shall distribute the trust estate in 2879  
accordance with any provision specified in the trust instrument 2880  
for the premature termination of the trust. If there is no 2881  
provision of that nature in the trust instrument, the trustee 2882  
shall distribute the trust estate among the beneficiaries of the 2883  
trust in accordance with their respective beneficial interests and 2884  
in a manner that the trustee determines to be equitable. For 2885  
purposes of distributing the trust estate among the beneficiaries 2886  
of the trust under this division, the trustee shall consider all 2887  
of the following: 2888

(1) The existence of any agreement among the beneficiaries 2889  
with respect to their beneficial interests; 2890

(2) The actuarial values of the separate beneficial interests 2891  
of the beneficiaries; 2892

(3) Any expression of preference of the beneficiaries that is 2893  
contained in the trust instrument. 2894

(D) Upon the termination of a trust pursuant to division (B) 2895  
of this section, the probate court shall order the distribution of 2896



the trust estate in accordance with any provision specified in the 2897  
trust instrument for the premature termination of the trust. If 2898  
there is no provision of that nature in the trust instrument, the 2899  
probate court shall order the distribution of the trust estate 2900  
among the beneficiaries of the trust in accordance with their 2901  
respective beneficial interests and in a manner that the court 2902  
determines to be equitable. For purposes of ordering the 2903  
distribution of the trust estate among the beneficiaries of the 2904  
trust under this division, the court shall consider the three 2905  
factors listed in division (C) of this section. 2906

(E) The existence of a spendthrift or similar provision in a 2907  
trust instrument or will does not preclude the termination of a 2908  
trust pursuant to this section. 2909

(F) This section does not apply to an easement for 2910  
conservation or preservation. 2911

**Sec. 5804.15.** The court may reform the terms of a trust, even 2912  
if they are unambiguous, to conform the terms to the settlor's 2913  
intention if it is proved by clear and convincing evidence that 2914  
both the settlor's intent and the terms of the trust were affected 2915  
by a mistake of fact or law, whether in expression or inducement. 2916  
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**Sec. 5804.16.** To achieve the settlor's tax objectives, the 2918  
court may modify the terms of a trust in a manner that is not 2919  
contrary to the settlor's probable intention. The court may 2920  
provide that the modification has retroactive effect. 2921

**Sec. 5804.17.** After notice to the qualified beneficiaries, a 2922  
trustee may combine two or more trusts into a single trust or 2923  
divide a trust into two or more separate trusts if the result does 2924  
not impair rights of any beneficiary or adversely affect 2925

achievement of the purposes of the trust. 2926

Sec. 5804.18. A trust described in 42 U.S.C. 1396p(d)(4) is 2927  
irrevocable if the terms of the trust prohibit the settlor from 2928  
revoking it, whether or not the settlor's estate or the settlor's 2929  
heirs are named as the remainder beneficiary or beneficiaries of 2930  
the trust upon the settlor's death. 2931

Sec. 5805.01. (A) A spendthrift provision is valid only if it 2932  
restrains both voluntary and involuntary transfer of a 2933  
beneficiary's interest or if it restrains involuntary transfer of 2934  
a beneficiary's interest and permits voluntary transfer of a 2935  
beneficiary's interest only with the consent of a trustee who is 2936  
not the beneficiary. 2937

(B) A term of a trust providing that the interest of a 2938  
beneficiary is held subject to a "spendthrift trust," or words of 2939  
similar import, is sufficient to restrain both voluntary and 2940  
involuntary transfer of the beneficiary's interest. 2941

(C) A beneficiary may not transfer an interest in a trust in 2942  
violation of a valid spendthrift provision and, except as 2943  
otherwise provided in this chapter and in section 5810.04 of the 2944  
Revised Code, a creditor or assignee of the beneficiary may not 2945  
reach the interest or a distribution by the trustee before its 2946  
receipt by the beneficiary. Real property or tangible personal 2947  
property that is owned by the trust but that is made available for 2948  
a beneficiary's use or occupancy in accordance with the trustee's 2949  
authority under the trust instrument shall not be considered to 2950  
have been distributed by the trustee or received by the 2951  
beneficiary for purposes of allowing a creditor or assignee of the 2952  
beneficiary to reach the property. 2953

Sec. 5805.02. (A) As used in this section, "child" includes 2954

any person for whom an order or judgment for child support has 2955  
been entered in this or another state. 2956

(B) Subject to section 5805.03 of the Revised Code, a 2957  
spendthrift provision is unenforceable against either of the 2958  
following: 2959

(1) The beneficiary's child or spouse who has a judgment or 2960  
court order against the beneficiary for support, but only if 2961  
distributions can be made for the beneficiary's support under the 2962  
terms of the trust; 2963

(2) A claim of this state or the United States to the extent 2964  
provided by the Revised Code or federal law. 2965

(C) A spendthrift provision is enforceable against the 2966  
beneficiary's former spouse. 2967

(D) A claimant described in division (B) of this section may 2968  
obtain from the court an order attaching present or future 2969  
distributions to or for the benefit of the beneficiary. The court 2970  
may limit the award to the relief that is appropriate under the 2971  
circumstances, considering among any other factors determined 2972  
appropriate by the court the support needs of the beneficiary, the 2973  
beneficiary's spouse, and the beneficiary's dependent children or, 2974  
with respect to a beneficiary who is the recipient of public 2975  
benefits, the supplemental needs of the beneficiary if the trust 2976  
was not intended to provide for the beneficiary's basic support. 2977

(E) The only exceptions to the effectiveness of a spendthrift 2978  
provision are those described in divisions (B) and (D) of this 2979  
section, in division (B) of section 5805.05 of the Revised Code, 2980  
and in sections 5805.06 and 5810.04 of the Revised Code. 2981

**Sec. 5805.03.** Notwithstanding anything to the contrary in 2982  
division (B) of section 5805.02 of the Revised Code, no creditor 2983

or assignee of a beneficiary of a wholly discretionary trust may 2984  
reach the beneficiary's interest in the trust, or a distribution 2985  
by the trustee before its receipt by the beneficiary, whether by 2986  
attachment of present or future distributions to or for the 2987  
benefit of the beneficiary, by judicial sale, by obtaining an 2988  
order compelling the trustee to make distributions from the trust, 2989  
or by any other means, regardless of whether the trust instrument 2990  
includes a spendthrift provision. 2991

**Sec. 5805.04.** (A) As used in this section, "child" includes 2992  
any person for whom an order or judgment for child support has 2993  
been entered in this or any other state. 2994

(B) Except as otherwise provided in divisions (C) and (D) of 2995  
this section, whether or not a trust contains a spendthrift 2996  
provision, a creditor of a beneficiary may not compel a 2997  
distribution that is subject to the trustee's discretion, even if 2998  
the discretion is expressed in the form of a standard of 2999  
distribution or the trustee has abused the discretion. 3000

(C) Division (B) of this section does not apply to this state 3001  
for any claim for support of a beneficiary in a state institution 3002  
if the terms of the trust do not include a spendthrift provision 3003  
and do include a standard for distributions to or for the 3004  
beneficiary under which the trustee may make distributions for the 3005  
beneficiary's support. 3006

(D) Unless the settlor has explicitly provided in the trust 3007  
that the beneficiary's child or spouse or both are excluded from 3008  
benefiting from the trust, to the extent a trustee of a trust that 3009  
is not a wholly discretionary trust has not complied with a 3010  
standard of distribution or has abused a discretion, both of the 3011  
following apply: 3012

(1) The court may order a distribution to satisfy a judgment 3013

or court order against the beneficiary for support of the 3014  
beneficiary's child or spouse, provided that the court may order 3015  
the distributions only if distributions can be made for the 3016  
beneficiary's support under the terms of the trust and that the 3017  
court may not order any distributions under this division to 3018  
satisfy a judgment or court order against the beneficiary for 3019  
alimony. 3020

(2) The court shall direct the trustee to pay to the child or 3021  
spouse the amount that is equitable under the circumstances but 3022  
not more than the amount the trustee would have been required to 3023  
distribute to or for the benefit of the beneficiary had the 3024  
trustee complied with the standard or not abused the discretion. 3025

(E) Even if a trust does not contain a spendthrift provision, 3026  
to the extent a beneficiary's interest in a trust is subject to 3027  
the exercise of the trustee's discretion, whether or not such 3028  
discretion is subject to one or more standards of distribution, 3029  
the interest may not be ordered sold to satisfy or partially 3030  
satisfy a claim of the beneficiary's creditor or assignee. 3031

(F) If the trustee's or cotrustee's discretion to make 3032  
distributions for the trustee's or cotrustee's own benefit is 3033  
limited by an ascertainable standard, a creditor may not reach or 3034  
compel distribution of the beneficial interest except to the 3035  
extent the interest would be subject to the creditor's claim if 3036  
the beneficiary were not acting as trustee or cotrustee. 3037

**Sec. 5805.05.** (A) To the extent that a trust that gives a 3038  
beneficiary the right to receive one or more mandatory 3039  
distributions does not contain a spendthrift provision, the court 3040  
may authorize a creditor or assignee of the beneficiary to attach 3041  
present or future mandatory distributions to or for the benefit of 3042  
the beneficiary or to reach the beneficiary's interest by other 3043  
means. The court may limit an award under this section to the 3044

relief that is appropriate under the circumstances, considering 3045  
among any other factors determined appropriate by the court, the 3046  
support needs of the beneficiary, the beneficiary's spouse, and 3047  
the beneficiary's dependent children or, with respect to a 3048  
beneficiary who is the recipient of public benefits, the 3049  
supplemental needs of the beneficiary if the trust was not 3050  
intended to provide for the beneficiary's basic support. If in 3051  
exercising its power under this section the court decides to order 3052  
either a sale of a beneficiary's interest or that a lien be placed 3053  
on the interest, in deciding between the two types of action, the 3054  
court shall consider among any other factors it considers relevant 3055  
the amount of the claim of the creditor or assignee and the 3056  
proceeds a sale would produce relative to the potential value of 3057  
the interest to the beneficiary. 3058

(B) Whether or not a trust contains a spendthrift provision, 3059  
a creditor or assignee of a beneficiary may reach a mandatory 3060  
distribution the beneficiary is entitled to receive if the trustee 3061  
has not made the distribution to the beneficiary within a 3062  
reasonable time after the designated distribution date. 3063

**Sec. 5805.06.** (A) Whether or not the terms of a trust contain 3064  
a spendthrift provision, all of the following apply: 3065

(1) During the lifetime of the settlor, the property of a 3066  
revocable trust is subject to claims of the settlor's creditors. 3067

(2) With respect to an irrevocable trust, a creditor or 3068  
assignee of the settlor may reach the maximum amount that can be 3069  
distributed to or for the settlor's benefit. If a trust has more 3070  
than one settlor, the amount the creditor or assignee of a 3071  
particular settlor may reach may not exceed the settlor's interest 3072  
in the portion of the trust attributable to that settlor's 3073  
contribution. 3074

(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. 3075  
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(B) For purposes of this section, all of the following apply: 3081

(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. 3082  
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(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: 3086  
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(a) The amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code; 3090  
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(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; 3092  
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(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. 3096  
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(3) A beneficiary who is a trustee or the sole trustee of the trust, but who is not a settlor of the trust, shall not be treated in the same manner as the settlor of a revocable trust if the beneficiary-trustee's power to make distributions to the beneficiary-trustee is limited by an ascertainable standard. 3100  
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Sec. 5805.07. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt. 3105  
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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. 3108  
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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. 3112  
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(B) If a revocable trust is created or funded by more than one settlor, all of the following apply: 3117  
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(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. 3119  
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(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. 3122  
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(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. 3126  
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(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 3129  
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revoked or amended by a will or codicil, regardless of whether it 3134  
refers to the trust or specifically devises property that would 3135  
otherwise have passed according to the terms of the trust unless 3136  
the terms of the trust expressly allow it to be revoked or amended 3137  
by a will or codicil. 3138

(D) Upon revocation of a revocable trust, the trustee shall 3139  
deliver the trust property as the settlor directs. 3140

(E) An agent under a power of attorney may exercise a 3141  
settlor's powers with respect to revocation, amendment, or 3142  
distribution of trust property only to the extent expressly 3143  
authorized by both the terms of the trust and the power. 3144

(F) A guardian of the estate of the settlor or, if no 3145  
guardian of the estate has been appointed, a guardian of the 3146  
person of the settlor may exercise a settlor's powers with respect 3147  
to revocation, amendment, or distribution of trust property only 3148  
with the approval of the court supervising the guardianship. 3149

(G) A trustee who does not know that a trust has been revoked 3150  
or amended is not liable to the settlor or settlor's successors in 3151  
interest for distributions made and other actions taken on the 3152  
assumption that the trust had not been amended or revoked. 3153

**Sec. 5806.03.** (A) During the lifetime of the settlor of a 3154  
revocable trust, whether or not the settlor has capacity to revoke 3155  
the trust, rights of the beneficiaries are subject to the control 3156  
of, and the duties of the trustee are owed exclusively to, the 3157  
settlor. If the trustee breaches its duty during the lifetime of 3158  
the settlor, any recovery obtained from the trustee after the 3159  
settlor becomes incapacitated or dies shall be apportioned between 3160  
the trust and the settlor if the settlor is living or between the 3161  
trust and the settlor's estate if the settlor is deceased. 3162

(B) During the period the power may be exercised, the holder 3163

of a power of withdrawal has the rights of a settlor of a 3164  
revocable trust under this section to the extent of the property 3165  
subject to the power. 3166

**Sec. ~~2305.121~~ 5806.04.** (A) Any of the following actions 3167  
pertaining to a revocable trust that is made irrevocable by the 3168  
death of the ~~grantor~~ settlor of the trust shall be commenced 3169  
within two years after the date of the death of the ~~grantor~~ 3170  
settlor of the trust: 3171

(1) An action to contest the validity of the trust; 3172

(2) An action to contest the validity of any amendment to the 3173  
trust that was made during the lifetime of the ~~grantor~~ settlor of 3174  
the trust; 3175

(3) An action to contest the revocation of the trust during 3176  
the lifetime of the ~~grantor~~ settlor of the trust; 3177

(4) An action to contest the validity of any transfer made to 3178  
the trust during the lifetime of the ~~grantor~~ settlor of the trust. 3179

(B) Upon the death of the ~~grantor~~ settlor of a revocable 3180  
trust that was made irrevocable by the death of the ~~grantor~~ 3181  
settlor, the trustee, without liability, may proceed to distribute 3182  
the trust property in accordance with the terms of the trust 3183  
unless either of the following applies: 3184

(1) The trustee has actual knowledge of a pending action to 3185  
contest the validity of the trust, any amendment to the trust, the 3186  
revocation of the trust, or any transfer made to the trust during 3187  
the lifetime of the ~~grantor~~ settlor of the trust. 3188

(2) The trustee receives written notification from a 3189  
potential contestant of a potential action to contest the validity 3190  
of the trust, any amendment to the trust, the revocation of the 3191  
trust, or any transfer made to the trust during the lifetime of 3192  
the ~~grantor~~ settlor of the trust, and the action is actually filed 3193

within ninety days after the written notification was given to the trustee. 3194  
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(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. 3196  
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(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. 3202  
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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. 3206  
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(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. 3214  
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(C) A person designated as trustee, without accepting the trusteeship, may do either or both of the following: 3219  
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(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 3221  
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<u>capacity, to a qualified beneficiary;</u>	3224
<u>(2) Inspect or investigate trust property to determine</u>	3225
<u>potential liability under environmental or other law or for any</u>	3226
<u>other purpose.</u>	3227
<b><u>Sec. 5807.02.</u></b> (A) <u>A trustee shall give bond to secure</u>	3228
<u>performance of the trustee's duties only if the court finds that a</u>	3229
<u>bond is needed to protect the interests of the beneficiaries or is</u>	3230
<u>required by the terms of the trust and the court has not dispensed</u>	3231
<u>with the requirement.</u>	3232
<u>(B) The court may specify the amount of a bond, its</u>	3233
<u>liabilities, and whether sureties are necessary. The court may</u>	3234
<u>modify or terminate a bond at any time.</u>	3235
<u>(C) A regulated financial-service institution qualified to do</u>	3236
<u>trust business in this state need not give bond, even if required</u>	3237
<u>by the terms of the trust.</u>	3238
<b><u>Sec. 5807.03.</u></b> (A) <u>If there are three or more cotrustees</u>	3239
<u>serving, the cotrustees may act by majority decision.</u>	3240
<u>(B) If a vacancy occurs in a cotrusteeship, the remaining</u>	3241
<u>cotrustees may act for the trust.</u>	3242
<u>(C) A cotrustee must participate in the performance of a</u>	3243
<u>trustee's function unless the cotrustee is unavailable to perform</u>	3244
<u>the function because of absence, illness, disqualification under</u>	3245
<u>other law, or other temporary incapacity or the cotrustee has</u>	3246
<u>properly delegated the performance of the function to another</u>	3247
<u>trustee.</u>	3248
<u>(D) If a cotrustee is unavailable to perform duties because</u>	3249
<u>of absence, illness, disqualification under other law, or other</u>	3250
<u>temporary incapacity and prompt action is necessary to achieve the</u>	3251
<u>purposes of the trust or to avoid injury to the trust property,</u>	3252

the remaining cotrustee or a majority of the remaining cotrustees 3253  
may act for the trust. 3254

(E) A trustee may delegate to a cotrustee duties and powers 3255  
that a prudent trustee of comparable skills could properly 3256  
delegate under the circumstances. A delegation made under this 3257  
division shall be governed by section 5808.07 of the Revised Code. 3258  
Unless a delegation was irrevocable, a trustee may revoke a 3259  
delegation previously made. 3260

(F) Except as otherwise provided in division (G) of this 3261  
section, and subject to divisions (C) and (E) of this section, a 3262  
trustee who does not join in an action of another trustee is not 3263  
liable for the action. 3264

(G) Except as otherwise provided in this division, each 3265  
trustee shall exercise reasonable care to prevent a cotrustee from 3266  
committing a serious breach of trust and to compel a cotrustee to 3267  
redress a serious breach of trust. A trustee is not required to 3268  
exercise reasonable care of that nature under this division, and a 3269  
trustee is not liable for resulting losses, when section 5815.25 3270  
of the Revised Code is applicable or there is more than one other 3271  
trustee and the other trustees act by majority vote. 3272

(H) A dissenting trustee who joins in an action at the 3273  
direction of the majority of the trustees and who notified any 3274  
cotrustee of the dissent at or before the time of the action is 3275  
not liable for the action. 3276

**Sec. 5807.04.** (A) A vacancy in a trusteeship occurs under any 3277  
of the following circumstances: 3278

(1) A person designated as trustee rejects the trusteeship; 3279

(2) A person designated as trustee cannot be identified or 3280  
does not exist; 3281

(3) A trustee resigns; 3282

<u>(4) A trustee is disqualified or removed;</u>	3283
<u>(5) A trustee dies;</u>	3284
<u>(6) A guardian of the estate or person is appointed for an individual serving as trustee.</u>	3285 3286
<u>(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.</u>	3287 3288 3289
<u>(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:</u>	3290 3291 3292
<u>(1) By a person designated in the terms of the trust to act as successor trustee;</u>	3293 3294
<u>(2) By a person appointed by someone designated in the terms of the trust to appoint a successor trustee;</u>	3295 3296
<u>(3) By a person appointed by unanimous agreement of the qualified beneficiaries;</u>	3297 3298
<u>(4) By a person appointed by the court.</u>	3299
<u>(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:</u>	3300 3301 3302
<u>(1) By a person designated in the terms of the trust to act as successor trustee;</u>	3303 3304
<u>(2) By a person appointed by someone designated in the terms of the trust to appoint a successor trustee;</u>	3305 3306
<u>(3) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust;</u>	3307 3308 3309
<u>(4) By a person appointed by the court.</u>	3310

(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. 3311  
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**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. 3315  
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(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. 3318  
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(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. 3321  
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**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. 3324  
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(B) The court may remove a trustee for any of the following reasons: 3327  
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(1) The trustee has committed a serious breach of trust; 3329

(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust; 3330  
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(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. 3332  
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(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 3336  
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the trust property or the interests of the beneficiaries. 3340

Sec. 5807.07. (A) Unless a cotrustee remains in office or the 3341  
court otherwise orders, and until the trust property is delivered 3342  
to a successor trustee or other person entitled to it, a trustee 3343  
who has resigned or been removed has the duties of a trustee and 3344  
the powers necessary to protect the trust property. 3345

(B) A trustee who has resigned or been removed shall proceed 3346  
expeditiously to deliver the trust property within the trustee's 3347  
possession to the cotrustee, successor trustee, or other person 3348  
entitled to it. 3349

Sec. 5807.08. (A) If the terms of a trust do not specify the 3350  
trustee's compensation, a trustee is entitled to compensation that 3351  
is reasonable under the circumstances. 3352

(B) If the terms of a trust specify the trustee's 3353  
compensation, the trustee is entitled to be compensated as 3354  
specified, but the court may allow more or less compensation if 3355  
the duties of the trustee are substantially different from those 3356  
contemplated when the trust was created or the compensation 3357  
specified by the terms of the trust would be unreasonably low or 3358  
high. 3359

Sec. 5807.09. (A) A trustee is entitled to be reimbursed out 3360  
of the trust property, with interest as appropriate, for expenses 3361  
that were properly incurred in the administration of the trust 3362  
and, to the extent necessary to prevent unjust enrichment of the 3363  
trust, expenses that were not properly incurred in the 3364  
administration of the trust. 3365

(B) An advance by the trustee of money for the protection of 3366  
the trust gives rise to a lien against trust property to secure 3367  
reimbursement with reasonable interest. 3368



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. 3369  
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Sec. 5808.02. (A) A trustee shall administer the trust solely in the interests of the beneficiaries. 3373  
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(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: 3375  
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(1) The transaction was authorized by the terms of the trust or by other provisions of the Revised Code. 3383  
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(2) The transaction was approved by the court. 3385

(3) The beneficiary did not commence a judicial proceeding within the time allowed by section 5810.05 of the Revised Code. 3386  
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(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. 3388  
3389  
3390

(5) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee. 3391  
3392  
3393

(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: 3394  
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<u>(1) The trustee's spouse;</u>	3398
<u>(2) The trustee's descendant, sibling, or parent or the spouse of a trustee's descendant, sibling, or parent;</u>	3399
	3400
<u>(3) An agent or attorney of the trustee;</u>	3401
<u>(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.</u>	3402
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	3405
<u>(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.</u>	3406
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<u>(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.</u>	3411
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<u>(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.</u>	3416
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<u>(G) This section does not preclude either of the following:</u>	3423
<u>(1) Any transaction authorized by another section of the Revised Code;</u>	3424
	3425
<u>(2) Unless the beneficiaries establish that it is unfair, any of the following transactions:</u>	3426
	3427

<u>(a) An agreement between a trustee and a beneficiary relating</u>	3428
<u>to the appointment or compensation of the trustee;</u>	3429
<u>(b) Payment of reasonable compensation to the trustee;</u>	3430
<u>(c) A transaction between a trust and another trust,</u>	3431
<u>decedent's estate, or guardianship of which the trustee is a</u>	3432
<u>fiduciary or in which a beneficiary has an interest;</u>	3433
<u>(d) A deposit of trust money in a regulated</u>	3434
<u>financial-services institution that is an affiliate of the</u>	3435
<u>trustee; or</u>	3436
<u>(e) An advance by the trustee of money for the protection of</u>	3437
<u>the trust.</u>	3438
<u>(H) The court may appoint a special fiduciary to make a</u>	3439
<u>decision with respect to any proposed transaction that might</u>	3440
<u>violate this section if entered into by the trustee.</u>	3441
<del>Sec. 1339.55</del> <u>5808.03.</u> <del>(A) A trustee shall invest and manage</del>	3442
<del>the trust assets solely in the interest of the beneficiaries.</del>	3443
<del>(B) If a trust has two or more beneficiaries, the trustee</del>	3444
<del>shall act impartially in investing and, managing, and distributing</del>	3445
<del>the trust assets taking into account any differing property,</del>	3446
<del>giving due regard to the beneficiaries' respective interests of</del>	3447
<del>the beneficiaries.</del>	3448
<u>Sec. 5808.04.</u> <u>A trustee shall administer the trust as a</u>	3449
<u>prudent person would and shall consider the purposes, terms,</u>	3450
<u>distributional requirements, and other circumstances of the trust.</u>	3451
<u>In satisfying this standard, the trustee shall exercise reasonable</u>	3452
<u>care, skill, and caution.</u>	3453
<del>Sec. 1339.57</del> <u>5808.05.</u> <u>Except as otherwise permitted by law,</u>	3454
<u>in investing and managing administering a trust assets, a trustee</u>	3455

may ~~only~~ incur only costs that are appropriate and reasonable in 3456  
relation to the assets, the purposes of the trust, and the skills 3457  
of the trustee. 3458

Sec. 5808.06. A trustee who has special skills or expertise, 3459  
or is named trustee in reliance upon the trustee's representation 3460  
that the trustee has special skills or expertise, shall use those 3461  
special skills or expertise. 3462

~~Sec. 1339.59~~ 5808.07. (A) A trustee may delegate ~~investment~~ 3463  
~~duties~~ and ~~management functions of a trust~~ powers that a prudent 3464  
trustee having comparable skills could properly delegate under the 3465  
circumstances. In accordance with this division, a trustee shall 3466  
exercise reasonable care, skill, and caution in doing all of the 3467  
following: 3468

(1) Selecting an agent, cotrustee, or other fiduciary to whom 3469  
the delegation is made; 3470

(2) Establishing the scope and terms of the delegation 3471  
consistent with the purposes and terms of the trust; 3472

(3) Periodically reviewing the agent's, cotrustee's, or other 3473  
fiduciary's actions in order to monitor the agent's, cotrustee's, 3474  
or other fiduciary's performance and compliance with the terms of 3475  
the delegation. 3476

(B) In performing ~~investment or management functions of a~~ 3477  
~~trust that are delegated to an agent function,~~ an agent, 3478  
cotrustee, or other fiduciary owes a duty to the trust to exercise 3479  
reasonable care to comply with the terms of the delegation. 3480

(C) A trustee who complies with division (A) of this section 3481  
is not liable to the beneficiaries of the trust or to the trust 3482  
for the decisions or actions of the agent, cotrustee, or other 3483  
fiduciary to whom the function was delegated. 3484

(D) By accepting the delegation of investment powers or 3485  
management functions duties from the trustee of a trust that is 3486  
subject to the laws of this state, an agent, cotrustee, or other 3487  
fiduciary submits to the jurisdiction of this state. 3488

**Sec. 5808.08.** (A) While a trust is revocable, the trustee may 3489  
follow a direction of the settlor that is contrary to the terms of 3490  
the trust. 3491

(B) As provided in section 5815.25 of the Revised Code, a 3492  
trustee is not liable for losses resulting from certain actions or 3493  
failures to act when other persons are granted certain powers with 3494  
respect to the administration of the trust. 3495

(C) The terms of a trust may confer upon a trustee or other 3496  
person a power to direct the modification or termination of the 3497  
trust. 3498

(D) A person other than a beneficiary who holds a power to 3499  
direct is presumptively a fiduciary who, as a fiduciary, is 3500  
required to act in good faith with regard to the purposes of the 3501  
trust and the interests of the beneficiaries. The holder of a 3502  
power to direct is liable for any loss that results from breach of 3503  
a fiduciary duty. 3504

**Sec. 5808.09.** A trustee shall take reasonable steps to take 3505  
control of and protect the trust property. 3506

**Sec. 5808.10.** (A) A trustee shall keep adequate records of 3507  
the administration of the trust. 3508

(B) A trustee shall keep trust property separate from the 3509  
trustee's own property. 3510

(C) Except as otherwise provided in division (D) of this 3511  
section and in section 2131.21 of the Revised Code, a trustee not 3512

subject to federal or state banking regulation shall cause the 3513  
trust property to be designated so that the interest of the trust, 3514  
to the extent feasible, appears in records maintained by a party 3515  
other than a trustee or beneficiary. 3516

(D) If the trustee maintains records clearly indicating the 3517  
respective interests, a trustee may invest as a whole the property 3518  
of two or more separate trusts. 3519

Sec. 5808.11. A trustee shall take reasonable steps to 3520  
enforce claims of the trust and to defend claims against the 3521  
trust. 3522

Sec. 5808.12. A trustee shall take reasonable steps to 3523  
collect trust property held by third persons. The responsibility 3524  
of a successor trustee with respect to the administration of the 3525  
trust by a prior trustee shall be governed by section 5815.24 of 3526  
the Revised Code. 3527

Sec. 5808.13. (A) A trustee shall keep the current 3528  
beneficiaries of the trust reasonably informed about the 3529  
administration of the trust and of the material facts necessary 3530  
for them to protect their interests. Unless unreasonable under the 3531  
circumstances, a trustee shall promptly respond to a beneficiary's 3532  
request for information related to the administration of the 3533  
trust. 3534

(B) A trustee shall do all of the following: 3535

(1) Upon the request of a beneficiary, promptly furnish to 3536  
the beneficiary a copy of the trust instrument. If the settlor of 3537  
a revocable trust that has become irrevocable has completely 3538  
restated the terms of the trust, the trust instrument furnished by 3539  
the trustee shall be the restated trust instrument, including any 3540  
amendments to the restated trust instrument. Nothing in division 3541

(B)(1) of this section limits the ability of a beneficiary to 3542  
obtain a copy of the original trust instrument, any other 3543  
restatements of the original trust instrument, or amendments to 3544  
the original trust instrument and any other restatements of the 3545  
original trust instrument in a judicial proceeding with respect to 3546  
the trust. 3547

(2) Within sixty days after accepting a trusteeship, notify 3548  
the current beneficiaries of the acceptance and of the trustee's 3549  
name, address, and telephone number; 3550

(3) Within sixty days after the date the trustee acquires 3551  
knowledge of the creation of an irrevocable trust, or the date the 3552  
trustee acquires knowledge that a formerly revocable trust has 3553  
become irrevocable, whether by the death of the settlor or 3554  
otherwise, notify the current beneficiaries of the trust's 3555  
existence, of the identity of the settlor or settlors, of the 3556  
right to request a copy of the trust instrument, and of the right 3557  
to a trustee's report as provided in division (C) of this section; 3558

(4) Notify the current beneficiaries in advance of any change 3559  
in the method or rate of the trustee's compensation. 3560

(C) A trustee shall send to the current beneficiaries, and to 3561  
other beneficiaries who request it, at least annually and at the 3562  
termination of the trust, a report of the trust property, 3563  
liabilities, receipts, and disbursements, including the source and 3564  
amount of the trustee's compensation, a listing of the trust 3565  
assets, and, if feasible, the trust assets respective market 3566  
values. Upon a vacancy in a trusteeship, unless a cotrustee 3567  
remains in office, a report for the period during which the former 3568  
trustee served must be sent to the current beneficiaries by the 3569  
former trustee. A personal representative or guardian may send the 3570  
current beneficiaries a report on behalf of a deceased or 3571  
incapacitated trustee. 3572

(D) A beneficiary may waive the right to a trustee's report 3573  
or other information otherwise required to be furnished under this 3574  
section. A beneficiary, with respect to future reports and other 3575  
information, may withdraw a waiver previously given. 3576

(E) The trustee may provide information and reports to 3577  
beneficiaries to whom the provided information and reports are not 3578  
required to be provided under this section. 3579

(F) Divisions (B)(2) and (3) of this section apply only to a 3580  
trustee who accepts a trusteeship on or after the effective date 3581  
of this section, to an irrevocable trust created on or after the 3582  
effective date of this section, and to a revocable trust which 3583  
becomes irrevocable on or after the effective date of this 3584  
section. 3585

**Sec. 5808.14.** (A) The judicial standard of review for 3586  
discretionary trusts is that the trustee shall exercise a 3587  
discretionary power reasonably, in good faith, and in accordance 3588  
with the terms and purposes of the trust and the interests of the 3589  
beneficiaries, except that a reasonableness standard shall not be 3590  
applied to the exercise of discretion by the trustee of a wholly 3591  
discretionary trust. The greater the grant of discretion by the 3592  
settlor to the trustee, the broader the range of permissible 3593  
conduct by the trustee in exercising it. 3594

(B) Subject to division (D) of this section, and unless the 3595  
terms of the trust expressly indicate that a rule in this division 3596  
does not apply: 3597

(1) A person other than a settlor who is a beneficiary and 3598  
trustee of a trust that confers on the trustee a power to make 3599  
discretionary distributions to or for the trustee's personal 3600  
benefit may exercise the power only in accordance with an 3601  
ascertainable standard; 3602



(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. 3603  
3604  
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(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. 3606  
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(D) Division (B) of this section does not apply to any of the following: 3612  
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(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; 3614  
3615  
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(2) Any trust during any period that the trust may be revoked or amended by its settlor; 3618  
3619

(3) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code. 3620  
3621  
3622

**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: 3623  
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(1) All powers over the trust property that an unmarried competent owner has over individually owned property; 3627  
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(2) Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; 3629  
3630

(3) Any other powers conferred by Chapters 5801. to 5811. of 3631

<u>the Revised Code.</u>	3632
<u>(B) The exercise of a power is subject to the fiduciary</u>	3633
<u>duties prescribed by Chapter 5808. of the Revised Code.</u>	3634
<u>Sec. 5808.16. Without limiting the authority conferred by</u>	3635
<u>section 5808.15 of the Revised Code, a trustee may do all of the</u>	3636
<u>following:</u>	3637
<u>(A) Collect trust property and accept or reject additions to</u>	3638
<u>the trust property from a settlor or any other person;</u>	3639
<u>(B) Acquire or sell property, for cash or on credit, at</u>	3640
<u>public or private sale;</u>	3641
<u>(C) Exchange, partition, or otherwise change the character of</u>	3642
<u>trust property;</u>	3643
<u>(D) Deposit trust money in an account in a regulated</u>	3644
<u>financial-service institution;</u>	3645
<u>(E) Borrow money, with or without security, and mortgage or</u>	3646
<u>pledge trust property for a period within or extending beyond the</u>	3647
<u>duration of the trust;</u>	3648
<u>(F) With respect to an interest in a proprietorship,</u>	3649
<u>partnership, limited liability company, business trust,</u>	3650
<u>corporation, or other form of business or enterprise, continue the</u>	3651
<u>business or other enterprise and take any action that may be taken</u>	3652
<u>by shareholders, members, or property owners, including merging,</u>	3653
<u>dissolving, or otherwise changing the form of business</u>	3654
<u>organization or contributing additional capital;</u>	3655
<u>(G) With respect to stocks or other securities, exercise the</u>	3656
<u>rights of an absolute owner, including the right to do any of the</u>	3657
<u>following:</u>	3658
<u>(1) Vote, or give proxies to vote, with or without power of</u>	3659
<u>substitution, or enter into or continue a voting trust agreement;</u>	3660

<u>(2) Hold a security in the name of a nominee or in other form</u>	3661
<u>without disclosure of the trust so that title may pass by</u>	3662
<u>delivery;</u>	3663
<u>(3) Pay calls, assessments, and other sums chargeable or</u>	3664
<u>accruing against the securities and sell or exercise stock</u>	3665
<u>subscription or conversion rights;</u>	3666
<u>(4) Deposit the securities with a depository or other</u>	3667
<u>regulated financial-service institution.</u>	3668
<u>(H) With respect to an interest in real property, construct,</u>	3669
<u>or make ordinary or extraordinary repairs to, alterations to, or</u>	3670
<u>improvements in, buildings or other structures, demolish</u>	3671
<u>improvements, raze existing or erect new party walls or buildings,</u>	3672
<u>subdivide or develop land, dedicate land to public use or grant</u>	3673
<u>public or private easements, and make or vacate plats and adjust</u>	3674
<u>boundaries;</u>	3675
<u>(I) Enter into a lease for any purpose as lessor or lessee,</u>	3676
<u>including a lease or other arrangement for exploration and removal</u>	3677
<u>of natural resources, with or without the option to purchase or</u>	3678
<u>renew, for a period within or extending beyond the duration of the</u>	3679
<u>trust;</u>	3680
<u>(J) Grant an option involving a sale, lease, or other</u>	3681
<u>disposition of trust property or acquire an option for the</u>	3682
<u>acquisition of property, including an option exercisable beyond</u>	3683
<u>the duration of the trust, and exercise an option so acquired;</u>	3684
<u>(K) Insure the property of the trust against damage or loss</u>	3685
<u>and insure the trustee, the trustee's agents, and beneficiaries</u>	3686
<u>against liability arising from the administration of the trust;</u>	3687
<u>(L) Abandon or decline to administer property of no value or</u>	3688
<u>of insufficient value to justify its collection or continued</u>	3689
<u>administration;</u>	3690

<u>(M) With respect to possible liability for violation of</u>	3691
<u>environmental law, do any of the following:</u>	3692
<u>(1) Inspect or investigate property the trustee holds or has</u>	3693
<u>been asked to hold, or property owned or operated by an</u>	3694
<u>organization in which the trustee holds or has been asked to hold</u>	3695
<u>an interest, for the purpose of determining the application of</u>	3696
<u>environmental law with respect to the property;</u>	3697
<u>(2) Take action to prevent, abate, or otherwise remedy any</u>	3698
<u>actual or potential violation of any environmental law affecting</u>	3699
<u>property held directly or indirectly by the trustee, whether taken</u>	3700
<u>before or after the assertion of a claim or the initiation of</u>	3701
<u>governmental enforcement;</u>	3702
<u>(3) Decline to accept property into trust or disclaim any</u>	3703
<u>power with respect to property that is or may be burdened with</u>	3704
<u>liability for violation of environmental law;</u>	3705
<u>(4) Compromise claims against the trust that may be asserted</u>	3706
<u>for an alleged violation of environmental law; and</u>	3707
<u>(5) Pay the expense of any inspection, review, abatement, or</u>	3708
<u>remedial action to comply with environmental law.</u>	3709
<u>(N) Pay or contest any claim, settle a claim by or against</u>	3710
<u>the trust, and release, in whole or in part, a claim belonging to</u>	3711
<u>the trust;</u>	3712
<u>(O) Pay taxes, assessments, compensation of the trustee and</u>	3713
<u>of employees and agents of the trust, and other expenses incurred</u>	3714
<u>in the administration of the trust;</u>	3715
<u>(P) Exercise elections with respect to federal, state, and</u>	3716
<u>local taxes;</u>	3717
<u>(O) Select a mode of payment under any employee benefit or</u>	3718
<u>retirement plan, annuity, or life insurance policy payable to the</u>	3719
<u>trustee, exercise rights under any employee benefit or retirement</u>	3720

plan, annuity, or life insurance policy payable to the trustee, 3721  
including the right to indemnification for expenses and against 3722  
liabilities, and take appropriate action to collect the proceeds; 3723

(R) Make loans out of trust property, including loans to a 3724  
beneficiary on terms and conditions the trustee considers to be 3725  
fair and reasonable under the circumstances, and the trustee has a 3726  
lien on future distributions for repayment of those loans; 3727

(S) Pledge the property of a revocable trust to guarantee 3728  
loans made by others to the settlor of the revocable trust, or, if 3729  
the settlor so directs, to guarantee loans made by others to a 3730  
third party; 3731

(T) Appoint a trustee to act in another jurisdiction with 3732  
respect to trust property located in the other jurisdiction, 3733  
confer upon the appointed trustee all of the powers and duties of 3734  
the appointing trustee, require that the appointed trustee furnish 3735  
security, and remove any trustee so appointed; 3736

(U) Pay an amount distributable to a beneficiary who is under 3737  
a legal disability or who the trustee reasonably believes is 3738  
incapacitated, by paying it directly to the beneficiary or 3739  
applying it for the beneficiary's benefit, or by doing any of the 3740  
following: 3741

(1) Paying it to the beneficiary's guardian of the estate, 3742  
or, if the beneficiary does not have a guardian of the estate, the 3743  
beneficiary's guardian of the person; 3744

(2) Paying it to the beneficiary's custodian under sections 3745  
5814.01 to 5814.09 of the Revised Code and, for that purpose, 3746  
creating a custodianship; 3747

(3) If the trustee does not know of a guardian of the person 3748  
or estate, or custodian, paying it to an adult relative or other 3749  
person having legal or physical care or custody of the 3750

<u>beneficiary, to be expended on the beneficiary's behalf;</u>	3751
<u>(4) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.</u>	3752
	3753
	3754
<u>(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;</u>	3755
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	3758
	3759
<u>(W) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;</u>	3760
	3761
	3762
<u>(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;</u>	3763
	3764
	3765
<u>(Y) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;</u>	3766
	3767
	3768
<u>(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.</u>	3769
	3770
	3771
<b><u>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.</u></b>	3772
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<u>(B) Upon the occurrence of an event terminating or partially</u>	3780

terminating a trust, the trustee shall proceed expeditiously to 3781  
distribute the trust property to the persons entitled to it, 3782  
subject to the right of the trustee to retain a reasonable reserve 3783  
for the payment of debts, expenses, and taxes. 3784

(C) A release by a beneficiary of a trustee from liability 3785  
for breach of trust is invalid to the extent that it was induced 3786  
by improper conduct of the trustee or that the beneficiary, at the 3787  
time of the release, did not know of the beneficiary's rights or 3788  
of the material facts relating to the breach. 3789

**Sec. ~~1339.52~~ 5809.01.** (A)(1) As used in the Revised Code, the 3790  
"Ohio Uniform Prudent Investor Act" means sections 5809.01 to 3791  
5809.08, 5808.03, 5808.05, and 5808.06, division (A) of section 3792  
5808.02, and division (B) of section 5808.07 of the Revised Code, 3793  
and those sections may be cited as the "Ohio Uniform Prudent 3794  
Investor Act." 3795

(2) As used in ~~sections 1339.52 to 1339.61~~ of the Revised 3796  
Code ~~the Ohio Uniform Prudent Investor Act,~~ "trustee" means a 3797  
trustee under any testamentary, inter vivos, or other trust. 3798

(B) Except as provided in division (C) or (D) of this 3799  
section, a trustee who invests and manages trust assets under 3800  
~~sections 1339.52 to 1339.61~~ of the Revised Code the Ohio Uniform 3801  
Prudent Investor Act owes a duty to the beneficiaries of the trust 3802  
to comply with ~~sections 1339.52 to 1339.61~~ of the Revised Code the 3803  
Ohio Uniform Prudent Investor Act. 3804

(C) ~~Sections 1339.52 to 1339.61~~ of the Revised Code The Ohio 3805  
Uniform Prudent Investor Act may be expanded, restricted, 3806  
eliminated, or otherwise altered, without express reference ~~to~~ 3807  
~~these sections~~ by the instrument creating a trust to the Ohio 3808  
Uniform Prudent Investor Act or any section of the Revised Code 3809  
that is part of that act. 3810

(D) A trustee is not liable to a beneficiary of a trust to 3811  
the extent the trustee acted in reasonable reliance on the 3812  
provisions of the trust. 3813

**Sec. ~~1339.53~~ 5809.02.** (A) A trustee shall invest and manage 3814  
trust assets as a prudent investor would, by considering the 3815  
purposes, terms, distribution requirements, and other 3816  
circumstances of the trust. In satisfying this requirement, the 3817  
trustee shall exercise reasonable care, skill, and caution. 3818

(B) A trustee shall make a reasonable effort to verify facts 3819  
relevant to the investment and management of trust assets. 3820

~~(C) A trustee who has special skills or expertise, or is 3821  
named trustee in reliance upon the trustee's representation that 3822  
the trustee has special skills or expertise, has a duty to use 3823  
those special skills or expertise. 3824~~

~~(D)~~ A trustee's investment and management decisions 3825  
respecting individual trust assets shall not be evaluated in 3826  
isolation but in the context of the trust portfolio as a whole and 3827  
as part of an overall investment strategy having risk and return 3828  
objectives reasonably suited to the trust. 3829

~~(E)~~(D) Among circumstances that a trustee shall consider in 3830  
investing and managing trust assets are the following as are 3831  
relevant to the trust or its beneficiaries: 3832

(1) The general economic conditions; 3833

(2) The possible effect of inflation or deflation; 3834

(3) The expected tax consequences of investment decisions or 3835  
strategies; 3836

(4) The role that each investment or course of action plays 3837  
within the overall trust portfolio, which may include financial 3838  
assets, interests in closely held enterprises, tangible and 3839



intangible personal property, and real property;	3840
(5) The expected total return from income and appreciation of capital;	3841 3842
(6) Other resources of the beneficiaries;	3843
(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;	3844 3845
(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.	3846 3847 3848
<b>Sec. <del>1339.54</del> 5809.03.</b> (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 <del>sections 1339.52 to 1339.61</del> of the Revised Code <u>the Ohio Uniform Prudent Investor Act</u> .	3849 3850 3851 3852 3853
(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.	3854 3855 3856 3857
<b>Sec. <del>1339.56</del> 5809.04.</b> 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 <del>sections 1339.52 to 1339.61</del> of the Revised Code <u>the Ohio Uniform Prudent Investor Act</u> .	3858 3859 3860 3861 3862 3863 3864 3865 3866
<b>Sec. <del>1339.58</del> 5809.05.</b> Compliance with <del>sections 1339.52 to</del>	3867

~~1339.61~~ of the Revised Code the Ohio Uniform Prudent Investor Act 3868  
shall be determined in light of the facts and circumstances 3869  
existing at the time of a trustee's decision or action and not by 3870  
hindsight. 3871

**Sec. 5809.06.** (A) A trustee may delegate investment and 3872  
management functions of a trust that a prudent trustee having 3873  
comparable skills could properly delegate under the circumstances. 3874  
A trustee that exercises its delegation authority under this 3875  
division shall comply with the requirements of division (B) of 3876  
section 5808.07 of the Revised Code. 3877

(B) In performing investment or management functions of a 3878  
trust that are delegated to an agent, an agent owes a duty to the 3879  
trust to exercise reasonable care to comply with the terms of the 3880  
delegation. 3881

(C) A trustee who delegates a function to an agent in 3882  
compliance with division (A) of this section is not liable to the 3883  
beneficiaries of the trust or to the trust for the decisions or 3884  
actions of the agent to whom the function was delegated. 3885

(D) By accepting the delegation of investment or management 3886  
functions of a trust that is subject to the laws of this state, an 3887  
agent submits to the jurisdiction of this state. 3888

**Sec. ~~1339.60~~ 5809.07.** The following terms or comparable 3889  
language in the provisions of a trust, unless otherwise limited or 3890  
modified, authorizes any investment or strategy permitted by 3891  
~~sections 1339.52 to 1339.61~~ of the Revised Code the Ohio Uniform 3892  
Prudent Investor Act: "investments permissible by law for 3893  
investment of trust funds"; "legal investments"; "authorized 3894  
investments"; "using the judgment and care under the circumstances 3895  
then prevailing that persons of prudence, discretion, and 3896  
intelligence exercise in the management of their own affairs, not 3897

in regard to speculation but in regard to the permanent 3898  
disposition of their funds considering the probable income as well 3899  
as the probable safety of their capital"; "prudent man rule"; 3900  
"prudent trustee rule"; "prudent person rule"; and "prudent 3901  
investor rule." 3902

**Sec. ~~1339.61~~ 5809.08.** (A) ~~Sections 1339.52 to 1339.61 of the~~ 3903  
~~Revised Code~~ The Ohio Uniform Prudent Investor Act shall be 3904  
applied and construed to effectuate the general purpose to make 3905  
uniform the law with respect to the subject of these sections 3906  
among the states enacting it. ~~These sections may be cited as the~~ 3907  
~~"Ohio Uniform Prudent Investor Act."~~ 3908

(B) ~~Sections 1339.52 to 1339.61 of the Revised Code apply~~ The 3909  
Ohio Uniform Prudent Investor Act ~~applies~~ to trusts existing on or 3910  
created after ~~the effective date of these sections~~ March 22, 1999. 3911  
As applied to trusts existing on ~~the effective date of these~~ 3912  
~~sections~~ March 22, 1999, ~~sections 1339.52 to 1339.61 of the~~ 3913  
~~Revised Code govern~~ Ohio Uniform Prudent Investor Act ~~governs~~ only 3914  
decisions or actions occurring after ~~the effective date of these~~ 3915  
~~sections~~ March 22, 1999. 3916

(C) The temporary investment of cash or funds pursuant to 3917  
section ~~1339.44~~ 5815.26 or 2109.372 of the Revised Code shall be 3918  
considered a prudent investment in compliance with ~~sections~~ 3919  
~~1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform Prudent 3920  
Investor Act. 3921

**Sec. 5810.01.** (A) A violation by a trustee of a duty the 3922  
trustee owes to a beneficiary is a breach of trust. 3923

(B) To remedy a breach of trust that has occurred or may 3924  
occur, the court may do any of the following: 3925

(1) Compel the trustee to perform the trustee's duties; 3926

(2) Enjoin the trustee from committing a breach of trust; 3927

<u>(3) Compel the trustee to redress a breach of trust by paying</u>	3928
<u>money, restoring property, or other means;</u>	3929
<u>(4) Order a trustee to account;</u>	3930
<u>(5) Appoint a special fiduciary to take possession of the</u>	3931
<u>trust property and administer the trust;</u>	3932
<u>(6) Suspend the trustee;</u>	3933
<u>(7) Remove the trustee as provided in section 5807.06 of the</u>	3934
<u>Revised Code;</u>	3935
<u>(8) Reduce or deny compensation to the trustee;</u>	3936
<u>(9) Subject to section 5810.12 of the Revised Code, void an</u>	3937
<u>act of the trustee, impose a lien or a constructive trust on trust</u>	3938
<u>property, or trace trust property wrongfully disposed of and</u>	3939
<u>recover the property or its proceeds;</u>	3940
<u>(10) Order any other appropriate relief.</u>	3941
<u>Sec. 5810.02. (A) A trustee who commits a breach of trust is</u>	3942
<u>liable to the beneficiaries affected for the greater of the</u>	3943
<u>following:</u>	3944
<u>(1) The amount required to restore the value of the trust</u>	3945
<u>property and trust distributions to what they would have been had</u>	3946
<u>the breach not occurred;</u>	3947
<u>(2) The profit the trustee made by reason of the breach.</u>	3948
<u>(B) Except as otherwise provided in this division, if more</u>	3949
<u>than one trustee is liable to the beneficiaries for a breach of</u>	3950
<u>trust, a trustee is entitled to contribution from the other</u>	3951
<u>trustee or trustees. A trustee is not entitled to contribution if</u>	3952
<u>the trustee was substantially more at fault than another trustee</u>	3953
<u>or if the trustee committed the breach of trust in bad faith or</u>	3954
<u>with reckless indifference to the purposes of the trust or the</u>	3955
<u>interests of the beneficiaries. A trustee who received a benefit</u>	3956

from the breach of trust is not entitled to contribution from 3957  
another trustee to the extent of the benefit received. 3958

Sec. 5810.03. (A) Absent a breach of trust, a trustee is not 3959  
accountable to a beneficiary for any profit made by the trustee 3960  
arising from the administration of the trust. 3961

(B) Absent a breach of trust, a trustee is not liable to a 3962  
beneficiary for a loss or depreciation in the value of trust 3963  
property or for not having made a profit. 3964

Sec. 5810.04. In a judicial proceeding involving the 3965  
administration of a trust, including a trust that contains a 3966  
spendthrift provision, the court, as justice and equity may 3967  
require, may award costs, expenses, and reasonable attorney's fees 3968  
to any party, to be paid by another party, from the trust that is 3969  
the subject of the controversy, or from a party's interest in the 3970  
trust that is the subject of the controversy. 3971

Sec. 5810.05. (A) A beneficiary may not commence a proceeding 3972  
against a trustee for breach of trust more than two years after 3973  
the date the beneficiary, a representative of the beneficiary, or 3974  
a beneficiary surrogate is sent a report that adequately discloses 3975  
the existence of a potential claim for breach of trust and informs 3976  
the beneficiary, the representative of the beneficiary, or the 3977  
beneficiary surrogate of the time allowed for commencing a 3978  
proceeding against a trustee. 3979

(B) A report adequately discloses the existence of a 3980  
potential claim for breach of trust if it provides sufficient 3981  
information so that the beneficiary or the representative of the 3982  
beneficiary knows of the potential claim or should know of the 3983  
existence of the potential claim. 3984

(C) If division (A) of this section does not apply, 3985

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: 3986  
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(1) The removal, resignation, or death of the trustee; 3990

(2) The termination of the beneficiary's interest in the trust; 3991  
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(3) The termination of the trust; 3993

(4) The time at which the beneficiary knew or should have known of the breach of trust. 3994  
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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. 3996  
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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. 4000  
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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. 4006  
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Sec. 5810.09. A trustee is not liable to a beneficiary for 4013

breach of trust if the beneficiary consented to the conduct 4014  
constituting the breach, released the trustee from liability for 4015  
the breach, or ratified the transaction constituting the breach, 4016  
unless the consent, release, or ratification of the beneficiary 4017  
was induced by improper conduct of the trustee or, at the time of 4018  
the consent, release, or ratification, the beneficiary did not 4019  
know of the beneficiary's rights or of the material facts relating 4020  
to the breach. 4021

**Sec. 5810.10.** (A) Except as otherwise provided in the 4022  
contract, for contracts entered into on or after March 22, 1984, a 4023  
trustee is not personally liable on a contract properly entered 4024  
into in the trustee's fiduciary capacity in the course of 4025  
administering the trust if the trustee in the contract disclosed 4026  
the fiduciary capacity. The words "trustee," "as trustee," 4027  
"fiduciary," or "as fiduciary," or other words that indicate one's 4028  
trustee capacity, following the name or signature of a trustee are 4029  
sufficient disclosure for purposes of this division. 4030

(B) A trustee is personally liable for torts committed in the 4031  
course of administering a trust or for obligations arising from 4032  
ownership or control of trust property, including liability for 4033  
violation of environmental law, only if the trustee is personally 4034  
at fault. 4035

(C) A claim based on a contract entered into by a trustee in 4036  
the trustee's fiduciary capacity, on an obligation arising from 4037  
ownership or control of trust property, or on a tort committed in 4038  
the course of administering a trust may be asserted in a judicial 4039  
proceeding against the trustee in the trustee's fiduciary 4040  
capacity, whether or not the trustee is personally liable for the 4041  
claim. 4042

**Sec. 5810.11.** (A)(1) Except as otherwise provided in division 4043

(C) of this section or unless personal liability is imposed in the 4044  
contract, a trustee who holds an interest as a general partner in 4045  
a general or limited partnership is not personally liable on a 4046  
contract entered into by the partnership after the trust's 4047  
acquisition of the interest if the fiduciary capacity was 4048  
disclosed. A partnership certificate that is filed pursuant to 4049  
Chapter 1777. or another chapter of the Revised Code and that 4050  
indicates that a trustee holds a general partnership interest in a 4051  
fiduciary capacity by the use following the name or signature of 4052  
the trustee of the words "as trustee" or other words that indicate 4053  
the trustee's fiduciary capacity constitutes a sufficient 4054  
disclosure for purposes of this division. 4055

(2) If a partnership certificate is not required to be filed 4056  
pursuant to Chapter 1777. or another chapter of the Revised Code, 4057  
a sufficient disclosure for purposes of division (A) of this 4058  
section can be made by a trustee if a certificate that is filed 4059  
with the recorder of the county in which the partnership's 4060  
principal office or place of business is situated and with the 4061  
recorder of each county in which the partnership owns real estate 4062  
satisfies all of the following requirements: 4063

(a) The certificate states in full the names of all persons 4064  
holding interests in the partnership and their places of 4065  
residence. 4066

(b) The certificate is signed by all persons who are general 4067  
partners in the partnership and is acknowledged by a person 4068  
authorized to take acknowledgements of deeds. 4069

(c) The certificate uses the words "trustee under the (will 4070  
or trust) of (name of decedent or settlor)," or other words that 4071  
indicate the trustee's fiduciary capacity, following the trustee's 4072  
name or signature. 4073



(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. 4074  
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(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. 4086  
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(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. 4092  
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(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. 4097  
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**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 4101  
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protected from liability as if the trustee properly exercised the 4105  
power. 4106

(B) A person other than a beneficiary who in good faith deals 4107  
with a trustee is not required to inquire into the extent of the 4108  
trustee's powers or the propriety of their exercise. 4109

(C) A person who in good faith delivers assets to a trustee 4110  
is not required to ensure their proper application. 4111

(D) A person other than a beneficiary who in good faith 4112  
assists a former trustee, or who in good faith and for value deals 4113  
with a former trustee, without knowledge that the trusteeship has 4114  
terminated is protected from liability as if the former trustee 4115  
were still a trustee. 4116

(E) Comparable protective provisions of other laws relating 4117  
to commercial transactions or transfer of securities by 4118  
fiduciaries prevail over the protection provided by this section. 4119

**Sec. 5810.13.** (A) Instead of furnishing a copy of the trust 4120  
instrument to a person other than a beneficiary, the trustee may 4121  
furnish to the person a certification of trust containing all of 4122  
the following information: 4123

(1) A statement that the trust exists and the date the trust 4124  
instrument was executed; 4125

(2) The identity of the settlor; 4126

(3) The identity and address of the currently acting trustee; 4127

(4) The powers of the trustee; 4128

(5) The revocability or irrevocability of the trust and the 4129  
identity of any person holding a power to revoke the trust; 4130

(6) The authority of cotrustees to sign or otherwise 4131  
authenticate and whether all or less than all are required in 4132

<u>order to exercise powers of the trustee;</u>	4133
<u>(7) The trust's taxpayer identification number;</u>	4134
<u>(8) The manner of taking title to trust property.</u>	4135
<u>(B) Any trustee may sign or otherwise authenticate a certification of trust.</u>	4136 4137
<u>(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.</u>	4138 4139 4140 4141
<u>(D) A certification of trust is not required to contain the dispositive terms of a trust.</u>	4142 4143
<u>(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.</u>	4144 4145 4146 4147 4148
<u>(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.</u>	4149 4150 4151 4152 4153 4154 4155 4156
<u>(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.</u>	4157 4158 4159 4160
<u>(H) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for</u>	4161 4162

damages if the court determines that the person did not act in 4163  
good faith in demanding the trust instrument. 4164

(I) This section does not limit the right of a person to 4165  
obtain a copy of the trust instrument in a judicial proceeding 4166  
concerning the trust. 4167

Sec. 5811.01. In applying and construing Chapters 5801. to 4168  
5811. of the Revised Code, a court may consider the need to 4169  
promote uniformity of the law with respect to the subject matter 4170  
of those chapters among states that enact the uniform trust code. 4171

Sec. 5811.02. The provisions of Chapters 5801. to 5811. of 4172  
the Revised Code governing the legal effect, validity, or 4173  
enforceability of electronic records or electronic signatures and 4174  
of contracts formed or performed with the use of electronic 4175  
records or electronic signatures conform to the requirements of 4176  
section 102 of the Electronic Signatures in Global and National 4177  
Commerce Act, 15 U.S.C. 7002, 114 Stat. 467, and supersede, 4178  
modify, and limit the requirements of the Electronic Signatures in 4179  
Global and National Commerce Act. 4180

Sec. 5811.03. (A) Except as otherwise provided in Chapters 4181  
5801. to 5811. of the Revised Code, all of the following apply: 4182

(1) Chapters 5801. to 5811. of the Revised Code apply to all 4183  
trusts created before, on, or after their effective date. 4184

(2) Chapters 5801. to 5811. of the Revised Code apply to all 4185  
judicial proceedings concerning trusts commenced on or after their 4186  
effective date. 4187

(3) Chapters 5801. to 5811. of the Revised Code apply to 4188  
judicial proceedings concerning trusts commenced before the 4189  
effective date of those chapters unless the court finds that 4190  
application of a particular provision of those chapters would 4191

substantially interfere with the effective conduct of the judicial 4192  
proceedings or prejudice the rights of the parties, in which case 4193  
the particular provision does not apply, and the superseded law 4194  
applies. 4195

(4) Any rule of construction or presumption provided in 4196  
Chapters 5801. to 5811. of the Revised Code applies to trust 4197  
instruments executed before the effective date of those chapters 4198  
unless there is a clear indication of a contrary intent in the 4199  
terms of the trust. 4200

(5) Chapters 5801. to 5811. of the Revised Code do not affect 4201  
an act done before the effective date of those chapters. 4202

(B) If a right is acquired, extinguished, or barred upon the 4203  
expiration of a prescribed period that has commenced to run under 4204  
any other statute before the effective date of Chapters 5801. to 4205  
5811. of the Revised Code, that statute continues to apply to the 4206  
right even if it has been repealed or superseded. 4207

**Sec. ~~1340.40~~ 5812.01.** As used in sections ~~1340.40~~ 5812.01 to 4208  
~~1340.91~~ 5812.52 of the Revised Code: 4209

(A) "Accounting period" means a calendar year unless another 4210  
twelve-month period is selected by a fiduciary. "Accounting 4211  
period" includes a portion of a calendar year or other 4212  
twelve-month period that begins when an income interest begins or 4213  
ends when an income interest ends. 4214

(B) "Beneficiary" includes, in the case of a decedent's 4215  
estate, an heir, legatee, and devisee and, in the case of a trust, 4216  
an income beneficiary and a remainder beneficiary. 4217

(C) "Fiduciary" means a personal representative or a trustee. 4218  
The term includes an executor, administrator, successor personal 4219  
representative, special administrator, and a person performing 4220  
substantially the same function. 4221

(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 4252  
by written or spoken words or by conduct. 4253

(M) "Trustee" includes an original, additional, or successor 4254  
trustee, whether or not appointed or confirmed by a court. 4255

**Sec. ~~1340.41~~ 5812.02.** (A) In allocating receipts and 4256  
disbursements to or between principal and income, and with respect 4257  
to any matter within the scope of sections ~~1340.46~~ 5812.07 to 4258  
~~1340.53~~ 5812.14 of the Revised Code, all of the following apply: 4259

(1) A fiduciary shall administer a trust or estate in 4260  
accordance with the terms of the trust or the will, even if there 4261  
is a different provision in sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 4262  
5812.52 of the Revised Code. 4263

(2) A fiduciary may administer a trust or estate by the 4264  
exercise of a discretionary power of administration given to the 4265  
fiduciary by the terms of the trust or the will, even if the 4266  
exercise of the power produces a result different from a result 4267  
required or permitted by any provision of sections ~~1340.40~~ 5812.01 4268  
to ~~1340.91~~ 5812.52 of the Revised Code. 4269

(3) A fiduciary shall administer a trust or estate in 4270  
accordance with sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the 4271  
Revised Code if the terms of the trust or the will do not contain 4272  
a different provision or do not give the fiduciary a discretionary 4273  
power of administration. 4274

(4) A fiduciary shall add a receipt, or charge a 4275  
disbursement, to principal to the extent that the terms of the 4276  
trust and any provision of sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 4277  
5812.52 of the Revised Code do not provide for allocating the 4278  
receipt or disbursement to or between principal and income. 4279

(B) In exercising the power to adjust under division (A) of 4280  
section ~~1340.42~~ 5812.03 of the Revised Code or a discretionary 4281

power of administration regarding a matter within the scope of 4282  
sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code, 4283  
whether granted by the terms of a trust, a will, or a provision of 4284  
any such section, a fiduciary shall administer a trust or estate 4285  
impartially, based on what is fair and reasonable to all of the 4286  
beneficiaries, except to the extent that the terms of the trust or 4287  
the will clearly manifest an intention that the fiduciary shall or 4288  
may favor one or more of the beneficiaries. A determination in 4289  
accordance with sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the 4290  
Revised Code is presumed to be fair and reasonable to all of the 4291  
beneficiaries. 4292

(C) In allocating receipts and disbursements to or between 4293  
principal and income, a fiduciary may credit a receipt or charge 4294  
an expenditure to income or principal with respect to a decedent's 4295  
estate, a trust, or property passing to a trust, that is eligible 4296  
for a federal estate tax marital deduction or Ohio estate tax 4297  
marital deduction, or for a federal estate tax charitable 4298  
deduction or Ohio estate tax charitable deduction, or for a 4299  
federal gift tax marital deduction or federal gift tax charitable 4300  
deduction only to the extent that the credit of the receipt or 4301  
charge of the expenditure will not cause the reduction or loss of 4302  
the deduction. 4303

(D) As used in division (C) of this section: 4304

(1) "Federal estate tax charitable deduction" means the 4305  
estate tax charitable deduction allowed by subtitle B, Chapter 11 4306  
of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2055, as 4307  
amended. 4308

(2) "Federal estate tax marital deduction" means the estate 4309  
tax marital deduction allowed by subtitle B, Chapter 11 of the 4310  
"Internal Revenue Code of 1986," 26 U.S.C.A. 2056, as amended. 4311

(3) "Federal gift tax charitable deduction" means the gift 4312



tax charitable deduction allowed by subtitle B, Chapter 12 of the	4313
"Internal Revenue Code of 1986," 26 U.S.C.A. 2522, as amended.	4314
(4) "Federal gift tax marital deduction" means the gift tax	4315
marital deduction allowed by subtitle B, Chapter 12 of the	4316
"Internal Revenue Code of 1986," 26 U.S.C.A. 2523, as amended.	4317
(5) "Ohio estate tax charitable deduction" means the estate	4318
tax charitable deduction allowed by division (A) of section	4319
5731.17 of the Revised Code.	4320
(6) "Ohio estate tax marital deduction" means the estate tax	4321
marital deduction allowed by section 5731.15 of the Revised Code.	4322
<b>Sec. <del>1340.42</del> <u>5812.03</u>.</b> (A) A trustee may adjust between	4323
principal and income to the extent the trustee considers necessary	4324
if the trustee invests and manages the trust assets as a prudent	4325
investor, the terms of the trust describe the amount that may or	4326
must be distributed to a beneficiary by referring to the trust's	4327
income, and the trustee determines, after applying division (A) of	4328
section <del>1340.41</del> <u>5812.02</u> of the Revised Code, that the trustee is	4329
unable to comply with division (B) of that section.	4330
(B) In deciding whether and to what extent to exercise the	4331
power conferred by division (A) of this section, a trustee shall	4332
consider all factors relevant to the trust and its beneficiaries,	4333
including all of the following factors to the extent they are	4334
relevant:	4335
(1) The nature, purpose, and expected duration of the trust;	4336
(2) The intent of the settlor;	4337
(3) The identity and circumstances of the beneficiaries;	4338
(4) The needs for liquidity, regularity of income, and	4339
preservation and appreciation of capital;	4340
(5) The assets held in the trust; the extent to which they	4341

consist of financial assets, interests in closely held 4342  
enterprises, tangible and intangible personal property, or real 4343  
property; the extent to which an asset is used by a beneficiary; 4344  
and whether an asset was purchased by the trustee or received from 4345  
the settlor; 4346

(6) The net amount allocated to income under sections ~~1340.40~~ 4347  
5812.01, ~~1340.41~~ 5812.02, and ~~1340.46~~ 5812.07 to ~~1340.91~~ 5812.52 4348  
of the Revised Code; and the increase or decrease in the value of 4349  
the principal assets, which the trustee may estimate as to assets 4350  
for which market values are not readily available; 4351

(7) Whether and to what extent the terms of the trust give 4352  
the trustee the power to invade principal or accumulate income or 4353  
prohibit the trustee from invading principal or accumulating 4354  
income, and the extent to which the trustee has exercised a power 4355  
from time to time to invade principal or accumulate income; 4356

(8) The actual and anticipated effect of economic conditions 4357  
on principal and income and effects of inflation and deflation; 4358

(9) The anticipated tax consequences of an adjustment. 4359

(C) A trustee shall not make an adjustment if any of the 4360  
following applies: 4361

(1) The adjustment diminishes the income interest in a trust 4362  
that requires all of the income to be paid at least annually to a 4363  
spouse and for which an estate tax or gift tax marital deduction 4364  
would be allowed, in whole or in part, if the trustee did not have 4365  
the power to make the adjustment. 4366

(2) The adjustment reduces the actuarial value of the income 4367  
interest in a trust to which a person transfers property with the 4368  
intent to qualify for a gift tax exclusion. 4369

(3) The adjustment changes the amount payable to a 4370  
beneficiary as a fixed annuity or a fixed fraction of the value of 4371

the trust assets. 4372

(4) The adjustment is from any amount that is permanently set 4373  
aside for charitable purposes under a will or the terms of a trust 4374  
unless both income and principal are so set aside. 4375

(5) If possessing or exercising the power to make the 4376  
adjustment causes an individual to be treated as the owner of all 4377  
or part of the trust for income tax purposes, and the individual 4378  
would not be treated as the owner if the trustee did not possess 4379  
the power to make the adjustment; 4380

(6) If possessing or exercising the power to make the 4381  
adjustment causes all or part of the trust assets to be included 4382  
for estate tax purposes in the estate of an individual who has the 4383  
power to remove a trustee or appoint a trustee, or both, and the 4384  
assets would not be included in the estate of the individual if 4385  
the trustee did not possess the power to make the adjustment; 4386

(7) If the trustee is a beneficiary of the trust; 4387

(8) If the trustee is not a beneficiary, but the adjustment 4388  
would benefit the trustee directly or indirectly. 4389

(D) If division (C)(5), (6), (7), or (8) of this section 4390  
applies to a trustee and there is more than one trustee, a 4391  
cotrustee to whom the provision does not apply may make the 4392  
adjustment unless the exercise of the power by the remaining 4393  
trustee or trustees is not permitted by the terms of the trust. 4394

(E) A trustee may release the entire power conferred by 4395  
division (A) of this section or may release only the power to 4396  
adjust from income to principal or the power to adjust from 4397  
principal to income if the trustee is uncertain about whether 4398  
possessing or exercising the power will cause a result described 4399  
in division (C)(1), (2), (3), (4), (5), (6), or (8) of this 4400  
section or if the trustee determines that possessing or exercising 4401

the power will or may deprive the trust of a tax benefit or impose 4402  
a tax burden not described in division (C) of this section. The 4403  
release may be permanent or for a specified period, including a 4404  
period measured by the life of an individual. 4405

(F) Terms of a trust that limit the power of a trustee to 4406  
make an adjustment between principal and income do not affect the 4407  
application of this section unless it is clear from the terms of 4408  
the trust that the terms are intended to deny the trustee the 4409  
power of adjustment conferred by division (A) of this section. 4410

(G) The liability of a trustee relative to the exercise of 4411  
adjustment authority conferred by divisions (A) to (F) of this 4412  
section shall be limited in the following manner: 4413

(1) Unless a court determines that a trustee has acted in bad 4414  
faith, no trustee shall be held liable for damages for choosing 4415  
not to make an adjustment. 4416

(2) Unless a court determines that a trustee has acted in bad 4417  
faith with respect to an adjustment, the sole remedy to be ordered 4418  
by a court shall be a prospective correction of the adjustment. 4419

(3) For purposes of this section, and subject to division (C) 4420  
of this section, from time to time a trustee may make a 4421  
safe-harbor adjustment to increase net trust accounting income up 4422  
to and including an amount equal to four per cent of the trust's 4423  
fair market value determined as of the first business day of the 4424  
current year. If a trustee determines to make this safe-harbor 4425  
adjustment, the propriety of this adjustment shall be conclusively 4426  
presumed. Nothing in division (G)(3) of this section prohibits any 4427  
other type of adjustment authorized under any provision of this 4428  
section. 4429

**Sec. ~~1340.46~~ 5812.07.** After a decedent dies, in the case of 4430  
an estate, or after an income interest in a trust ends, all of the 4431

following apply: 4432

(A) The fiduciary of the estate or of the terminating income 4433  
interest shall determine, under the provisions of sections ~~1340.51~~ 4434  
5812.12 to ~~1340.86~~ 5812.47 of the Revised Code that apply to 4435  
trustees and under division (E) of this section, the amount of net 4436  
income and net principal receipts received from property 4437  
specifically given to a beneficiary. The fiduciary shall 4438  
distribute the net income and net principal receipts to the 4439  
beneficiary that is to receive the specific property. 4440

(B) A fiduciary shall determine the remaining net income of a 4441  
decedent's estate or a terminating income interest under the 4442  
provisions of sections ~~1340.51~~ 5812.12 to ~~1340.86~~ 5812.47 of the 4443  
Revised Code that apply to trustees and by doing all of the 4444  
following: 4445

(1) Including in net income all income from property used to 4446  
discharge liabilities; 4447

(2) Paying from income or principal, in the fiduciary's 4448  
discretion, fees of attorneys, accountants, and fiduciaries; court 4449  
costs and other expenses of administration; and interest on death 4450  
taxes. However, the fiduciary may pay those expenses from income 4451  
of property passing to a trust for which the fiduciary claims an 4452  
estate tax marital or charitable deduction only to the extent that 4453  
the payment of those expenses from income will not cause the 4454  
reduction or loss of the deduction. 4455

(3) Paying from principal all other disbursements made or 4456  
incurred in connection with the settlement of a decedent's estate 4457  
or the winding up of a terminating income interest, including 4458  
debts, funeral expenses, disposition of remains, family 4459  
allowances, and death taxes and related penalties that are 4460  
apportioned to the estate or terminating income interest by the 4461  
will, the terms of the trust, or applicable law. 4462

(C) A fiduciary shall distribute to a beneficiary that 4463  
receives a pecuniary amount outright the interest or any other 4464  
amount provided by the will, the terms of the trust, or applicable 4465  
law from net income determined under division (B) of this section 4466  
or from principal to the extent that net income is insufficient. 4467  
If a beneficiary is to receive a pecuniary amount outright from a 4468  
trust after an income interest ends and no interest or other 4469  
amount is provided for by the terms of the trust or applicable 4470  
law, the fiduciary shall distribute the interest or other amount 4471  
to which the beneficiary would be entitled under applicable law if 4472  
the pecuniary amount were required to be paid under a will. 4473

(D) A fiduciary shall distribute the net income remaining 4474  
after distributions required by division (C) of this section, in 4475  
the manner described in section ~~1340.47~~ 5812.08 of the Revised 4476  
Code, to all other beneficiaries, including a beneficiary that 4477  
receives a pecuniary amount in trust, even if the beneficiary 4478  
holds an unqualified power to withdraw assets from the trust or 4479  
other presently exercisable, general power of appointment over the 4480  
trust. 4481

(E) A fiduciary shall not reduce principal or income receipts 4482  
from property described in division (A) of this section because of 4483  
a payment described in section ~~1340.81~~ 5812.42 or ~~1340.82~~ 5812.43 4484  
of the Revised Code to the extent that the will, the terms of the 4485  
trust, or applicable law requires the fiduciary to make the 4486  
payment from assets other than the property or to the extent that 4487  
the fiduciary recovers or expects to recover the payment from a 4488  
third party. The net income and principal receipts from the 4489  
property are determined by including all of the amounts the 4490  
fiduciary receives or pays with respect to the property, whether 4491  
those amounts accrued or became due before, on, or after the date 4492  
of a decedent's death or an income interest's terminating event, 4493  
and by making a reasonable provision for amounts that the 4494

fiduciary believes the estate or terminating income interest may 4495  
become obligated to pay after the property is distributed. 4496

**Sec. ~~1340.47~~ 5812.08.** (A) Each beneficiary described in 4497  
division (D) of section ~~1340.46~~ 5812.07 of the Revised Code is 4498  
entitled to receive a portion of the net income equal to the 4499  
beneficiary's fractional interest in undistributed principal 4500  
assets, using values as of the distribution date. If a fiduciary 4501  
makes more than one distribution of assets to beneficiaries to 4502  
whom this section applies, each beneficiary, including one that 4503  
does not receive part of the distribution, is entitled, as of each 4504  
distribution date, to the net income the fiduciary has received 4505  
after the date of the decedent's death or terminating event or 4506  
earlier distribution date but has not distributed as of the 4507  
current distribution date. 4508

(B) In determining a beneficiary's share of net income for 4509  
the purpose of this section, all of the following apply: 4510

(1) The beneficiary is entitled to receive a portion of the 4511  
net income equal to the beneficiary's fractional interest in the 4512  
undistributed principal assets immediately before the distribution 4513  
date, including assets that later may be sold to meet principal 4514  
obligations. 4515

(2) The beneficiary's fractional interest in the 4516  
undistributed principal assets must be calculated without regard 4517  
to property specifically given to a beneficiary and property 4518  
required to pay pecuniary amounts not in trust. 4519

(3) The beneficiary's fractional interest in the 4520  
undistributed principal assets must be calculated on the basis of 4521  
the aggregate value of those assets as of the distribution date 4522  
without reducing the value by any unpaid principal obligation. 4523

(4) The distribution date for purposes of this section may be 4524

the date as of which the fiduciary calculates the value of the 4525  
assets if that date is reasonably near the date on which assets 4526  
are actually distributed. 4527

(C) If a fiduciary does not distribute all of the collected 4528  
but undistributed net income described in divisions (A) and (B) of 4529  
this section to each person as of a distribution date, the 4530  
fiduciary shall maintain appropriate records showing the interest 4531  
of each. 4532

(D) To the extent that a fiduciary considers it appropriate, 4533  
the fiduciary may apply the provisions of divisions (A) to (C) of 4534  
this section to any net gain or loss, realized after the date of 4535  
the decedent's death or an income interest termination or earlier 4536  
distribution date, from the disposition of a principal asset to 4537  
which such provisions apply. 4538

**Sec. ~~1340.51~~ 5812.12.** (A) An income beneficiary is entitled 4539  
to net income from the date on which the income interest begins. 4540  
An income interest begins on the date specified in the terms of 4541  
the trust or, if no date is specified, on the date an asset 4542  
becomes subject to a trust or successive income interest. 4543

(B) An asset becomes subject to a trust on any of the 4544  
following dates: 4545

(1) The date it is transferred to the trust, in the case of 4546  
an asset that is transferred to a trust during the transferor's 4547  
life; 4548

(2) The date of a testator's death, in the case of an asset 4549  
that becomes subject to a trust by reason of a will, even if there 4550  
is an intervening period of administration of the testator's 4551  
estate; 4552

(3) The date of an individual's death, in the case of an 4553  
asset that is transferred to a fiduciary by a third party because 4554



of the individual's death. 4555

(C) An asset becomes subject to a successive income interest 4556  
on the day after the preceding income interest ends, as determined 4557  
under division (D) of this section, even if there is an 4558  
intervening period of administration to wind up the preceding 4559  
income interest. 4560

(D) An income interest ends on the day before an income 4561  
beneficiary dies or another terminating event occurs, or on the 4562  
last day of a period during which there is no beneficiary to whom 4563  
a trustee may distribute income. 4564

**Sec. ~~1340.52~~ 5812.13.** (A) A trustee shall allocate to 4565  
principal an income receipt or disbursement other than one to 4566  
which division (A) of section ~~1340.46~~ 5812.07 of the Revised Code 4567  
applies, if its due date occurs before a decedent dies in the case 4568  
of an estate or before an income interest begins in the case of a 4569  
trust or successive income interest. 4570

(B) A trustee shall allocate an income receipt or 4571  
disbursement to income if its due date occurs on or after the date 4572  
on which a decedent dies or an income interest begins and if it is 4573  
a periodic due date. An income receipt or disbursement shall be 4574  
treated as accruing from day to day if its due date is not 4575  
periodic or it has no due date. The portion of the receipt or 4576  
disbursement accruing before the date on which a decedent dies or 4577  
an income interest begins shall be allocated to principal, and the 4578  
balance shall be allocated to income. 4579

(C) For the purposes of this section, an item of income or an 4580  
obligation is due on the date the payer is required to make a 4581  
payment. If a payment date is not stated, there is no due date. 4582  
Distributions to shareholders or other owners from an entity to 4583  
which section ~~1340.57~~ 5812.18 of the Revised Code applies are 4584

deemed to be due on the date fixed by the entity for determining 4585  
who is entitled to receive the distribution or, if no date is 4586  
fixed, on the declaration date for the distribution. A due date is 4587  
periodic for receipts or disbursements that must be paid at 4588  
regular intervals under a lease or an obligation to pay interest 4589  
or if an entity customarily makes distributions at regular 4590  
intervals. 4591

**Sec. ~~1340.53~~ 5812.14.** (A) As used in this section, 4592  
"undistributed income" means net income received before the date 4593  
on which an income interest ends. "Undistributed income" excludes 4594  
an item of income or expense that is due or accrued or net income 4595  
that has been added or is required to be added to principal under 4596  
the terms of the trust. 4597

(B) When a mandatory income interest ends, the trustee shall 4598  
pay to a mandatory income beneficiary that survives that date, or 4599  
the estate of a deceased mandatory income beneficiary whose death 4600  
causes the interest to end, the beneficiary's share of the 4601  
undistributed income that is not disposed of under the terms of 4602  
the trust, unless the beneficiary has an unqualified power to 4603  
revoke more than five per cent of the trust immediately before the 4604  
income interest ends. If the beneficiary has such power, the 4605  
undistributed income from the portion of the trust that may be 4606  
revoked shall be added to principal. 4607

(C) When a trustee's obligation to pay a fixed annuity or a 4608  
fixed fraction of the value of the trust's assets ends, the 4609  
trustee shall prorate the final payment if and to the extent 4610  
required by applicable law to accomplish a purpose of the trust or 4611  
its settlor relating to income, gift, estate, or other tax 4612  
requirements. 4613

**Sec. ~~1340.57~~ 5812.18.** (A) As used in this section, "entity" 4614

means a corporation, partnership, limited liability company, 4615  
regulated investment company, real estate investment trust, common 4616  
trust fund, or any other organization in which a trustee has an 4617  
interest other than a trust or estate to which section ~~1340.58~~ 4618  
5812.19 of the Revised Code applies, a business or activity to 4619  
which section ~~1340.59~~ 5812.20 of the Revised Code applies, or an 4620  
asset-backed security to which section ~~1340.77~~ 5812.38 of the 4621  
Revised Code applies. 4622

(B) Except as otherwise provided in this section, a trustee 4623  
shall allocate to income money received from an entity. 4624

(C) A trustee shall allocate all of the following receipts 4625  
from an entity to principal: 4626

(1) Property other than money; 4627

(2) Money received in one distribution or a series of related 4628  
distributions in exchange for part or all of a trust's interest in 4629  
the entity; 4630

(3) Money received in total or partial liquidation of the 4631  
entity; 4632

(4) Money received from an entity that is a regulated 4633  
investment company or a real estate investment trust if the money 4634  
distributed is a capital gain dividend for federal income tax 4635  
purposes. 4636

(D) Money is received in partial liquidation in either of the 4637  
following circumstances: 4638

(1) To the extent that the entity, at or near the time of a 4639  
distribution, indicates that it is a distribution in partial 4640  
liquidation; 4641

(2) If the total amount of money and property received in a 4642  
distribution or series of related distributions is greater than 4643  
twenty per cent of the entity's gross assets, as shown by the 4644

entity's year-end financial statements immediately preceding the  
initial receipt.

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(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.

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(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.

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**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.

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**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.

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(B) A trustee that accounts separately for a business or

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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 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 4704  
a payer under a contract naming the trust or its trustee as 4705  
beneficiary; 4706

(B) Money or other property received from the sale, exchange, 4707  
liquidation, or change in form of a principal asset, including 4708  
realized profit, subject to sections ~~1340.57~~ 5812.18 to ~~1340.77~~ 4709  
5812.38 of the Revised Code; 4710

(C) Amounts recovered from third parties to reimburse the 4711  
trust because of disbursements described in division (A)(7) of 4712  
section ~~1340.82~~ 5812.43 of the Revised Code or for other reasons 4713  
to the extent not based on the loss of income; 4714

(D) Proceeds of property taken by eminent domain, but a 4715  
separate award made for the loss of income with respect to an 4716  
accounting period during which a current income beneficiary had a 4717  
mandatory income interest is income; 4718

(E) Net income received in an accounting period during which 4719  
there is no beneficiary to whom a trustee may or must distribute 4720  
income; 4721

(F) Other receipts as provided in sections ~~1340.70~~ 5812.31 to 4722  
~~1340.77~~ 5812.38 of the Revised Code. 4723

**Sec. ~~1340.64~~ 5812.25.** To the extent that a trustee accounts 4724  
for receipts from rental property pursuant to this section, the 4725  
trustee shall allocate to income an amount received as rent of 4726  
real or personal property, including an amount received for 4727  
cancellation or renewal of a lease. An amount received as a 4728  
refundable deposit, including a security deposit or a deposit that 4729  
is to be applied as rent for future periods, shall be added to 4730  
principal and held subject to the terms of the lease and shall not 4731  
be available for distribution to a beneficiary until the trustee's 4732  
contractual obligations have been satisfied with respect to that 4733

amount. 4734

**Sec. ~~1340.65~~ 5812.26.** (A) An amount received as interest, 4735  
whether determined at a fixed, variable, or floating rate, on an 4736  
obligation to pay money to the trustee, including an amount 4737  
received as consideration for prepaying principal, shall be 4738  
allocated to income without any provision for amortization of 4739  
premium. 4740

(B) A trustee shall allocate to principal an amount received 4741  
from the sale, redemption, or other disposition of an obligation 4742  
to pay money to the trustee more than one year after the date it 4743  
is purchased or acquired by the trustee, including an obligation 4744  
whose purchase price or value when it is acquired is less than its 4745  
value at maturity. If the obligation matures within one year after 4746  
the date it is purchased or acquired by the trustee, an amount 4747  
received in excess of its purchase price or its value when 4748  
acquired by the trust shall be allocated to income. 4749

(C) This section does not apply to an obligation to which 4750  
section ~~1340.71~~ 5812.32, ~~1340.72~~ 5812.33, ~~1340.73~~ 5812.34, ~~1340.74~~ 4751  
5812.35, ~~1340.76~~ 5812.37, or ~~1340.77~~ 5812.38 of the Revised Code 4752  
applies. 4753

**Sec. ~~1340.66~~ 5812.27.** (A) Except as otherwise provided in 4754  
division (B) of this section, a trustee shall allocate to 4755  
principal the proceeds of a life insurance policy or other 4756  
contract in which the trust or its trustee is named as 4757  
beneficiary, including a contract that insures the trust or its 4758  
trustee against loss for damage to, destruction of, or loss of 4759  
title to a trust asset. The trustee shall allocate dividends on an 4760  
insurance policy to income if the premiums on the policy are paid 4761  
from income, and to principal if the premiums are paid from 4762  
principal. 4763

(B) A trustee shall allocate to income proceeds of a contract 4764  
that insures the trustee against loss of occupancy or other use by 4765  
an income beneficiary, loss of income, or, subject to section 4766  
~~1340.59~~ 5812.20 of the Revised Code, loss of profits from a 4767  
business. 4768

(C) This section does not apply to a contract to which 4769  
section ~~1340.71~~ 5812.32 of the Revised Code applies. 4770

**Sec. ~~1340.70~~ 5812.31.** If a trustee determines that an 4771  
allocation between principal and income required by section 4772  
~~1340.71~~ 5812.32, ~~1340.72~~ 5812.33, ~~1340.73~~ 5812.34, ~~1340.74~~ 4773  
5812.35, or ~~1340.77~~ 5812.38 of the Revised Code is insubstantial, 4774  
the trustee may allocate the entire amount to principal unless one 4775  
of the circumstances described in division (C) of section ~~1340.42~~ 4776  
5812.03 of the Revised Code applies to the allocation. This power 4777  
may be exercised by a cotrustee in the circumstances described in 4778  
division (D) of that section and may be released for the reasons 4779  
and in the manner described in division (E) of the section. An 4780  
allocation is presumed to be insubstantial if either of the 4781  
following applies: 4782

(A) The amount of the allocation would increase or decrease 4783  
net income in an accounting period, as determined before the 4784  
allocation, by less than ten per cent. 4785

(B) The value of the asset producing the receipt for which 4786  
the allocation would be made is less than ten per cent of the 4787  
total value of the trust's assets at the beginning of the 4788  
accounting period. 4789

**Sec. ~~1340.71~~ 5812.32.** (A) As used in this section, "payment" 4790  
means a payment that a trustee may receive over a fixed number of 4791  
years or during the life of one or more individuals because of 4792  
services rendered or property transferred to the payer in exchange 4793



for future payments. "Payment" includes a payment made in money or 4794  
property from the payer's general assets or from a separate fund 4795  
created by the payer, including a private or commercial annuity, 4796  
an individual retirement account, or a pension, profit-sharing, 4797  
stock-bonus, or stock-ownership plan. 4798

(B) To the extent that a payment is characterized as interest 4799  
or a dividend or a payment made in lieu of interest or a dividend, 4800  
a trustee shall allocate it to income. The trustee shall allocate 4801  
to principal the balance of the payment and any other payment 4802  
received in the same accounting period that is not characterized 4803  
as interest, a dividend, or an equivalent payment. 4804

(C) If no part of a payment is characterized as interest, a 4805  
dividend, or an equivalent payment, and all or part of the payment 4806  
is required to be made, a trustee shall allocate to income ten per 4807  
cent of the part that is required to be made during the accounting 4808  
period and the balance to principal. If no part of a payment is 4809  
required to be made or the payment received is the entire amount 4810  
to which the trustee is entitled, the trustee shall allocate the 4811  
entire payment to principal. For purposes of this division, a 4812  
payment is not "required to be made" to the extent that it is made 4813  
because the trustee exercises a right of withdrawal. 4814

(D) If, to obtain an estate tax marital deduction for a 4815  
trust, a trustee must allocate more of a payment to income than is 4816  
provided for by this section, the trustee shall allocate to income 4817  
the additional amount necessary to obtain the marital deduction. 4818

(E) This section does not apply to payments to which section 4819  
~~1340.72~~ 5812.33 of the Revised Code applies. 4820

**Sec. ~~1340.72~~ 5812.33.** (A) As used in this section, 4821  
"liquidating asset" means an asset whose value will diminish or 4822  
terminate because the asset is expected to produce receipts for a 4823

period of limited duration. "Liquidating asset" includes a 4824  
leasehold, patent, copyright, royalty right, and right to receive 4825  
payments during a period of more than one year under an 4826  
arrangement that does not provide for the payment of interest on 4827  
the unpaid balance. "Liquidating asset" excludes a payment subject 4828  
to section ~~1340.71~~ 5812.32 of the Revised Code, resources subject 4829  
to section ~~1340.73~~ 5812.34 of the Revised Code, timber subject to 4830  
section ~~1340.74~~ 5812.35 of the Revised Code, an activity subject 4831  
to section ~~1340.76~~ 5812.37 of the Revised Code, an asset subject 4832  
to section ~~1340.77~~ 5812.38 of the Revised Code, or any asset for 4833  
which the trustee establishes a reserve for depreciation under 4834  
section ~~1340.83~~ 5812.44 of the Revised Code. 4835

(B) A trustee shall allocate to income ten per cent of the 4836  
receipts from a liquidating asset and the balance to principal. 4837

**Sec. ~~1340.73~~ 5812.34.** (A) To the extent that a trustee 4838  
accounts for receipts from an interest in minerals or other 4839  
natural resources pursuant to this section, the trustee shall 4840  
allocate the receipts in accordance with all of the following: 4841

(1) If received as nominal delay rental or nominal annual 4842  
rent on a lease, a receipt shall be allocated to income. 4843

(2) If received from a production payment, a receipt shall be 4844  
allocated to income if and to the extent that the agreement 4845  
creating the production payment provides a factor for interest or 4846  
its equivalent. The balance shall be allocated to principal. 4847

(3) If an amount received as a royalty, shut-in-well payment, 4848  
take-or-pay payment, bonus, or delay rental is more than nominal, 4849  
ninety per cent shall be allocated to principal and the balance to 4850  
income. 4851

(4) If an amount is received from a working interest or any 4852  
other interest not provided for in division (A)(1), (2), or (3) of 4853

this section, ninety per cent of the net amount received shall be 4854  
allocated to principal and the balance to income. 4855

(B) An amount received on account of an interest in water 4856  
that is renewable shall be allocated to income. If the water is 4857  
not renewable, ninety per cent of the amount shall be allocated to 4858  
principal and the balance to income. 4859

(C) This section applies whether or not a decedent or donor 4860  
was extracting minerals, water, or other natural resources before 4861  
the interest became subject to the trust. 4862

(D) If a trust owns an interest in minerals, water, or other 4863  
natural resources on ~~the effective date of this section~~ January 1, 4864  
2003, the trustee may allocate receipts from the interest as 4865  
provided in this section or in the manner used by the trustee 4866  
before that date. If the trust acquires an interest in minerals, 4867  
water, or other natural resources after ~~the effective date of this~~ 4868  
~~section~~ January 1, 2003, the trustee shall allocate receipts from 4869  
the interest as provided in this section. 4870

**Sec. ~~1340.74~~ 5812.35.** (A) To the extent that a trustee 4871  
accounts for receipts from the sale of timber and related products 4872  
pursuant to this section, the trustee shall allocate the net 4873  
receipts in accordance with all of the following: 4874

(1) To income, to the extent that the amount of timber 4875  
removed from the land does not exceed the rate of growth of the 4876  
timber during the accounting periods in which a beneficiary has a 4877  
mandatory income interest; 4878

(2) To principal, to the extent that the amount of timber 4879  
removed from the land exceeds the rate of growth of the timber or 4880  
the net receipts are from the sale of standing timber; 4881

(3) To or between income and principal, if the net receipts 4882  
are from the lease of timberland or from a contract to cut timber 4883

from land owned by a trust, by determining the amount of timber 4884  
removed from the land under the lease or contract and applying 4885  
divisions (A)(1) and (2) of this section; 4886

(4) To principal, to the extent that advance payments, 4887  
bonuses, and other payments are not allocated pursuant to division 4888  
(A)(1), (2), or (3) of this section. 4889

(B) In determining net receipts to be allocated pursuant to 4890  
division (A) of this section, a trustee shall deduct and transfer 4891  
to principal a reasonable amount for depletion. 4892

(C) This section applies whether or not a decedent or 4893  
transferor was harvesting timber from the property before it 4894  
became subject to the trust. 4895

(D) If a trust owns an interest in timberland on ~~the~~ 4896  
~~effective date of this section~~ January 1, 2003, the trustee may 4897  
allocate net receipts from the sale of timber and related products 4898  
as provided in this section or in the manner used by the trustee 4899  
before that date. If the trust acquires an interest in timberland 4900  
after ~~the effective date of this section~~ January 1, 2003, the 4901  
trustee shall allocate net receipts from the sale of timber and 4902  
related products as provided in this section. 4903

**Sec. ~~1340.75~~ 5812.36.** (A) If a marital deduction is allowed 4904  
for all or part of a trust whose assets consist substantially of 4905  
property that does not provide the spouse with sufficient income 4906  
from or use of the trust assets, and if the amounts that the 4907  
trustee transfers from principal to income under section ~~1340.42~~ 4908  
5812.03 of the Revised Code and distributes to the spouse from 4909  
principal pursuant to the terms of the trust are insufficient to 4910  
provide the spouse with the beneficial enjoyment required to 4911  
obtain the marital deduction, the spouse may require the trustee 4912  
to make property productive of income, convert property within a 4913

reasonable time, or exercise the power conferred by division (A) 4914  
of that section. The trustee may decide which action or 4915  
combination of actions to take. 4916

(B) In cases not governed by division (A) of this section, 4917  
proceeds from the sale or other disposition of an asset shall be 4918  
principal without regard to the amount of income the asset 4919  
produces during any accounting period. 4920

**Sec. ~~1340.76~~ 5812.37.** (A) As used in this section, 4921  
"derivative" means a contract or financial instrument or a 4922  
combination of contracts and financial instruments that gives a 4923  
trust the right or obligation to participate in some or all 4924  
changes in the price of a tangible or intangible asset or group of 4925  
assets, or changes in a rate, an index of prices or rates, or 4926  
other market indicator for an asset or a group of assets. 4927

(B) To the extent that a trustee does not account under 4928  
section ~~1340.59~~ 5812.20 of the Revised Code for transactions in 4929  
derivatives, the trustee shall allocate to principal receipts from 4930  
and disbursements made in connection with those transactions. 4931

(C) If a trustee grants an option to buy property from the 4932  
trust, whether or not the trust owns the property when the option 4933  
is granted, grants an option that permits another person to sell 4934  
property to the trust, or acquires an option to buy property for 4935  
the trust or an option to sell an asset owned by the trust, and 4936  
the trustee or other owner of the asset is required to deliver the 4937  
asset if the option is exercised, an amount received for granting 4938  
the option shall be allocated to principal. An amount paid to 4939  
acquire the option shall be paid from principal. A gain or loss 4940  
realized upon the exercise of an option, including an option 4941  
granted to a settlor of the trust for services rendered, shall be 4942  
allocated to principal. 4943

**Sec. ~~1340.77~~ 5812.38.** (A) As used in this section, 4944  
"asset-backed security" means an asset whose value is based upon 4945  
the right it gives the owner to receive distributions from the 4946  
proceeds of financial assets that provide collateral for the 4947  
security. "Asset-backed security" includes an asset that gives the 4948  
owner the right to receive from the collateral financial assets 4949  
only the interest or other current return or only the proceeds 4950  
other than interest or current return. "Asset-backed security" 4951  
excludes an asset to which section ~~1340.57~~ 5812.18 or ~~1340.71~~ 4952  
5812.32 of the Revised Code applies. 4953

(B) If a trust receives a payment from interest or other 4954  
current return and from other proceeds of the collateral financial 4955  
assets, the trustee shall allocate to income the portion of the 4956  
payment that the payer identifies as being from interest or other 4957  
current return and shall allocate the balance of the payment to 4958  
principal. 4959

(C) If a trust receives one or more payments in exchange for 4960  
the trust's entire interest in an asset-backed security in one 4961  
accounting period, the trustee shall allocate the payments to 4962  
principal. If a payment is one of a series of payments that will 4963  
result in the liquidation of the trust's interest in the security 4964  
over more than one accounting period, the trustee shall allocate 4965  
ten per cent of the payment to income and the balance to 4966  
principal. 4967

**Sec. ~~1340.81~~ 5812.42.** A trustee shall make all of the 4968  
following disbursements from income to the extent that they are 4969  
not disbursements to which division (B)(2) or (3) of section 4970  
~~1340.46~~ 5812.07 of the Revised Code applies: 4971

(A) One-half of the regular compensation of the trustee and 4972  
of any person providing investment advisory or custodial services 4973

to the trustee;	4974
(B) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;	4975 4976 4977
(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;	4978 4979 4980 4981 4982 4983
(D) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.	4984 4985
<b>Sec. <del>1340.82</del> <u>5812.43</u>.</b> (A) A trustee shall make all of the following disbursements from principal:	4986 4987
(1) The remaining one-half of the disbursements described in divisions (A) and (B) of section <del>1340.81</del> <u>5812.42</u> of the Revised Code;	4988 4989 4990
(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;	4991 4992 4993
(3) Payments on the principal of a trust debt;	4994
(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;	4995 4996 4997
(5) Premiums paid on a policy of insurance not described in division (D) of section <del>1340.81</del> <u>5812.42</u> of the Revised Code of which the trust is the owner and beneficiary;	4998 4999 5000
(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust;	5001 5002

(7) Disbursements related to environmental matters, including 5003  
reclamation, assessing environmental conditions, remedying and 5004  
removing environmental contamination, monitoring remedial 5005  
activities and the release of substances, preventing future 5006  
releases of substances, collecting amounts from persons liable or 5007  
potentially liable for the costs of those activities, penalties 5008  
imposed under environmental laws or regulations and other payments 5009  
made to comply with those laws or regulations, statutory or common 5010  
law claims by third parties, and defending claims based on 5011  
environmental matters. 5012

(B) If a principal asset is encumbered with an obligation 5013  
that requires income from that asset to be paid directly to the 5014  
creditor, the trustee shall transfer from principal to income an 5015  
amount equal to the income paid to the creditor in reduction of 5016  
the principal balance of the obligation. 5017

**Sec. ~~1340.83~~ 5812.44.** (A) As used in this section, 5018  
"depreciation" means a reduction in value due to wear, tear, 5019  
decay, corrosion, or gradual obsolescence of a fixed asset having 5020  
a useful life of more than one year. 5021

(B) A trustee may transfer to principal a reasonable amount 5022  
of the net cash receipts from a principal asset that is subject to 5023  
depreciation, but shall not transfer any amount for depreciation 5024  
under any of the following circumstances: 5025

(1) Any amount for depreciation of that portion of real 5026  
property used or available for use by a beneficiary as a residence 5027  
or of tangible personal property held or made available for the 5028  
personal use or enjoyment of a beneficiary; 5029

(2) Any amount for depreciation during the administration of 5030  
a decedent's estate; 5031

(3) Any amount for depreciation under this section if the 5032



trustee is accounting under section ~~1340.59~~ 5812.20 of the Revised Code for the business or activity in which the asset is used. 5033  
5034

(C) An amount transferred to principal need not be held as a separate fund. 5035  
5036

**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. 5037  
5038  
5039  
5040  
5041

(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: 5042  
5043  
5044  
5045

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs; 5046  
5047

(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; 5048  
5049  
5050

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions; 5051  
5052  
5053

(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; 5054  
5055  
5056

(5) Disbursements described in division (A)(7) of section ~~1340.82~~ 5812.43 of the Revised Code. 5057  
5058

(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 5059  
5060  
5061

amounts from income to principal as provided in division (A) of 5062  
this section. 5063

**Sec. ~~1340.85~~ 5812.46.** (A) A tax required to be paid by a 5064  
trustee based on receipts allocated to income shall be paid from 5065  
income. 5066

(B) A tax required to be paid by a trustee based on receipts 5067  
allocated to principal shall be paid from principal, even if the 5068  
tax is called an income tax by the taxing authority. 5069

(C) A tax required to be paid by a trustee on the trust's 5070  
share of an entity's taxable income shall be paid proportionately 5071  
as follows: 5072

(1) From income, to the extent that receipts from the entity 5073  
are allocated to income; 5074

(2) From principal, as follows: 5075

(a) To the extent that receipts from the entity are allocated 5076  
to principal; and 5077

(b) To the extent that the trust's share of the entity's 5078  
taxable income exceeds the total receipts described in divisions 5079  
(C)(1) and (2)(a) of this section. 5080

(D) For purposes of this section, receipts allocated to 5081  
principal or income shall be reduced by the amount distributed to 5082  
a beneficiary from principal or income for which the trust 5083  
receives a deduction in calculating the tax. 5084

**Sec. ~~1340.86~~ 5812.47.** (A) A fiduciary may make adjustments 5085  
between principal and income to offset the shifting of economic 5086  
interests or tax benefits between income beneficiaries and 5087  
remainder beneficiaries that arise from any of the following: 5088

(1) Elections and decisions, other than those described in 5089

division (B) of this section, that the fiduciary makes from time 5090  
to time regarding tax matters; 5091

(2) An income tax or any other tax that is imposed upon the 5092  
fiduciary or a beneficiary as a result of a transaction involving 5093  
or a distribution from the estate or trust; 5094

(3) The ownership by an estate or trust of an interest in an 5095  
entity whose taxable income, whether or not distributed, is 5096  
includable in the taxable income of the estate, trust, or 5097  
beneficiary. 5098

(B) If the amount of an estate tax marital deduction or 5099  
charitable contribution deduction is reduced because a fiduciary 5100  
deducts an amount paid from principal for income tax purposes 5101  
instead of deducting it for estate tax purposes, and as a result 5102  
estate taxes paid from principal are increased and income taxes 5103  
paid by an estate, trust, or beneficiary are decreased, each 5104  
estate, trust, or beneficiary that benefits from the decrease in 5105  
income tax shall reimburse the principal from which the increase 5106  
in estate tax is paid. The total reimbursement shall equal the 5107  
increase in the estate tax to the extent that the principal used 5108  
to pay the increase would have qualified for a marital deduction 5109  
or charitable contribution deduction but for the payment. The 5110  
proportionate share of the reimbursement for each estate, trust, 5111  
or beneficiary whose income taxes are reduced shall be the same as 5112  
its proportionate share of the total decrease in income tax. An 5113  
estate or trust shall reimburse principal from income. 5114

**Sec. ~~1340.90~~ 5812.51.** (A) Sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5115  
5812.52 of the Revised Code may be cited as the "uniform principal 5116  
and income act (1997)." 5117

(B) In applying and construing the "uniform principal and 5118  
income act (1997)", consideration shall be given to the need to 5119

promote uniformity of the law with respect to its subject matter 5120  
among states that enact the "uniform principal and income act 5121  
(1997)". 5122

**Sec. ~~1340.91~~ 5812.52.** Sections ~~1340.40~~ 5812.01 to ~~1340.90~~ 5123  
5812.51 of the Revised Code apply to every trust or decedent's 5124  
estate existing on ~~the effective date of this section~~ January 1, 5125  
2003, except as otherwise expressly provided in the will or terms 5126  
of the trust or in sections ~~1340.40~~ 5812.01 to ~~1340.90~~ 5812.51 of 5127  
the Revised Code. 5128

**Sec. ~~1340.31~~ 5813.01.** As used in sections ~~1340.31~~ 5813.01 to 5129  
~~1340.37~~ 5813.07 of the Revised Code: 5130

(A) "Institution" means an incorporated or unincorporated 5131  
organization that is organized and operated exclusively for 5132  
educational, religious, charitable, or other eleemosynary purposes 5133  
or a governmental organization to the extent that it holds funds 5134  
exclusively for any of those purposes. 5135

(B) "Governing board" means the body responsible for the 5136  
management of an institution. 5137

(C) "Institutional trust fund" means a trust fund, or a part 5138  
of a trust fund, that is held by a trustee for the exclusive use, 5139  
benefit, or purposes of one or more institutions and that is not 5140  
wholly distributable to the institution or institutions on a 5141  
current basis under the terms of the applicable trust instrument. 5142  
"Institutional trust fund" does not include a fund in which a 5143  
beneficiary that is not an institution has an interest other than 5144  
a right that may arise upon a violation of a covenant under the 5145  
terms of the applicable trust instrument or upon a violation of or 5146  
the failure of the purposes of the fund. 5147

(D) "Applicable fund value" means for any particular fiscal 5148  
year the sum of the month-end values of the net assets of an 5149

institutional trust fund for the prior fiscal year for those 5150  
months in which the institutional trust fund has been in existence 5151  
during such prior fiscal year divided by the number of those 5152  
months. The month-end values shall be determined by the trustee in 5153  
accordance with the trustee's records, and any such determination 5154  
made by a trustee in good faith is conclusive. 5155

(E) "Trust instrument" means a testamentary or inter vivos 5156  
trust under which the trustee of the trust holds an institutional 5157  
trust fund. 5158

(F) "Trustee" means an individual, corporation, institution, 5159  
or organization, including, but not limited to, a bank, trust 5160  
company, or other financial institution, serving as a trustee or 5161  
as sole trustee under a trust instrument. "Trustee" includes an 5162  
original trustee and any successor or added trustee. 5163

**Sec. ~~1340.32~~ 5813.02.** (A) Subject to division (D) of this 5164  
section and section ~~1340.33~~ 5813.03 of the Revised Code, during 5165  
any fiscal year in which income may be or is required to be 5166  
distributed to an institution from an institutional trust fund, 5167  
income means the greater of the following: 5168

(1) The income from the assets of the institutional trust 5169  
fund for the fiscal year as determined in accordance with the 5170  
applicable trust instrument and applicable law without regard to 5171  
sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the Revised Code; 5172

(2) The amount requested by the institution's governing board 5173  
for the fiscal year pursuant to division (B) of this section. 5174

(B) An institution's governing board may request that an 5175  
amount be distributed to the institution for the fiscal year, and 5176  
that amount shall not exceed the sum of both of the following: 5177

(1) Five per cent of the applicable fund value for the 5178  
institutional trust fund for the fiscal year; 5179

(2) If, in any prior fiscal year that is after ~~the effective~~ 5180  
~~date of this section~~ September 15, 1999, the governing board 5181  
requested less than five per cent of the applicable fund value for 5182  
~~such~~ that prior fiscal year and if the amount the institution 5183  
actually received from the institutional trust fund pursuant to 5184  
division (A) of this section was less than five per cent for ~~such~~ 5185  
that prior fiscal year, the aggregate difference between five per 5186  
cent of the applicable fund value with respect to each such prior 5187  
fiscal year and the amount the institution actually received 5188  
pursuant to division (A) of this section for ~~such~~ each prior 5189  
fiscal year. 5190

(C) If, under a trust instrument, more than one institution 5191  
is a beneficiary of an institutional trust fund, the trustee shall 5192  
take such actions that the trustee determines appropriate or 5193  
necessary to allow for the distributions of income as contemplated 5194  
by division (A) of this section, which actions may include 5195  
dividing the institutional trust fund into separate shares 5196  
according to the interest that each institution has in the total 5197  
institutional trust fund held under the trust instrument. 5198

(D) This section does not limit the authority or obligation 5199  
of a trustee to distribute, or the authority of a governing board 5200  
to request, funds as permitted or required under the terms of the 5201  
applicable trust instrument. 5202

**Sec. ~~1340.33~~ 5813.03.** (A) Division (A) of section ~~1340.32~~ 5203  
5813.02 of the Revised Code does not apply if the applicable trust 5204  
instrument expressly indicates the settlor's intention that income 5205  
is to be otherwise than as defined in division (A) of section 5206  
~~1340.32~~ 5813.02 of the Revised Code. 5207

(B) A restriction upon the definition of income in division 5208  
(A) of section ~~1340.32~~ 5813.02 of the Revised Code may not be 5209  
inferred from a designation of an institutional trust fund as an 5210

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~~  
5813.37 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 5301  
other types of property under the supervision of the same 5302  
custodian for the same minor as a consequence of a transfer or 5303  
transfers made to the minor, a gift or gifts made to the minor, or 5304  
a purchase made by the custodian for the minor, in a manner 5305  
prescribed in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 5306  
Revised Code; 5307

(2) The income from the custodial property; 5308

(3) The proceeds, immediate and remote, from the sale, 5309  
exchange, conversion, investment, reinvestment, or other 5310  
disposition of the securities, money, life or endowment insurance 5311  
policies, annuity contracts, benefit plans, real estate, tangible 5312  
and intangible personal property, proceeds of a life or endowment 5313  
insurance policy, an annuity contract, or a benefit plan, other 5314  
types of property, and income. 5315

(E) "Custodian" or "successor custodian" means a person so 5316  
designated in a manner prescribed in sections ~~1339.31~~ 5814.01 to 5317  
~~1339.39~~ 5814.09 of the Revised Code. 5318

(F) "Financial institution" means any bank, as defined in 5319  
section 1101.01, any building and loan association, as defined in 5320  
section 1151.01, any credit union as defined in section 1733.01 of 5321  
the Revised Code, and any federal credit union, as defined in the 5322  
"Federal Credit Union Act," 73 Stat. 628 (1959), 12 U.S.C.A. 1752, 5323  
as amended. 5324

(G) "Guardian of the minor" includes the general guardian, 5325  
guardian, tutor, or curator of the property, estate, or person of 5326  
a minor. 5327

(H) "Issuer" means a person who places or authorizes the 5328  
placing of ~~his~~ the person's name on a security, other than as a 5329  
transfer agent, to evidence that it represents a share, 5330  
participation, or other interest in ~~his~~ the person's property or 5331

in an enterprise, or to evidence ~~his~~ the person's duty or 5332  
undertaking to perform an obligation that is evidenced by the 5333  
security, or who becomes responsible for or in place of any such 5334  
person. 5335

(I) "Legal representative" of a person means the executor, 5336  
administrator, general guardian, guardian, committee, conservator, 5337  
tutor, or curator of ~~his~~ the person's property or estate. 5338

(J) "Member of the minor's family" means a parent, 5339  
stepparent, spouse, grandparent, brother, sister, uncle, or aunt 5340  
of the minor, whether of the whole or half blood, or by adoption. 5341

(K) "Minor" means a person who has not attained the age of 5342  
twenty-one years. 5343

(L) "Security" includes any note, stock, treasury stock, 5344  
common trust fund, bond, debenture, evidence of indebtedness, 5345  
certificate of interest or participation in an oil, gas, or mining 5346  
title or lease or in payments out of production under an oil, gas, 5347  
or mining title or lease, collateral trust certificate, 5348  
transferable share, voting trust certificate, or, in general, any 5349  
interest or instrument commonly known as a security, or any 5350  
certificate of interest or participation in, any temporary or 5351  
interim certificate, receipt or certificate of deposit for, or any 5352  
warrant or right to subscribe to or purchase, any of the 5353  
foregoing. A "security" does not include a security of which the 5354  
donor or transferor is the issuer. A security is in "registered 5355  
form" when it specifies a person who is entitled to it or to the 5356  
rights that it evidences and its transfer may be registered upon 5357  
books maintained for that purpose by or on behalf of the issuer. 5358

(M) "Transfer" means a disposition, other than a gift, by a 5359  
person who is eighteen years of age or older that creates 5360  
custodial property under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5361  
5814.09 of the Revised Code. 5362

(N) "Transfer agent" means a person who acts as 5363  
authenticating trustee, transfer agent, registrar, or other agent 5364  
for an issuer in the registration of transfers of its securities, 5365  
in the issue of new securities, or in the cancellation of 5366  
surrendered securities. 5367

(O) "Transferor" means a person who is eighteen years of age 5368  
or older, who makes a transfer. 5369

(P) "Trust company" means a financial institution that is 5370  
authorized to exercise trust powers. 5371

(Q) "Administrator" includes an "administrator with the will 5372  
annexed." 5373

**Sec. ~~1339.32~~ 5814.02.** (A) A person who is eighteen years of 5374  
age or older may, during ~~his~~ the person's lifetime, make a gift or 5375  
transfer of a security, money, a life or endowment insurance 5376  
policy, an annuity contract, a benefit plan, real estate, tangible 5377  
or intangible personal property, or any other property to, may 5378  
designate as beneficiary of a life or endowment insurance policy, 5379  
an annuity contract, or a benefit plan, or make a transfer by the 5380  
irrevocable exercise of a power of appointment in favor of, a 5381  
person who is a minor on the date of the gift or transfer: 5382

(1) If the subject of the gift or transfer is a security in 5383  
registered form, by registering it in the name of the donor or 5384  
transferor, another person who is eighteen years of age or older, 5385  
or a trust company, followed, in substance, by the words: "as 5386  
custodian for ..... (name of minor) under the Ohio 5387  
Transfers to Minors Act"; 5388

(2) If the subject of the gift or transfer is a security not 5389  
in registered form, by delivering it to the donor or transferor, 5390  
another person who is eighteen years of age or older, or a trust 5391  
company, accompanied by a statement of a gift or transfer in the 5392

following form, in substance, signed by the donor or transferor 5393  
and the person or trust company designated as custodian: 5394

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT 5395

I, ..... (name of donor or transferor), hereby 5396  
deliver to (name of custodian) as custodian for 5397  
..... (name of minor) under the Ohio Transfers to 5398  
Minors Act, the following security (ies): (insert an appropriate 5399  
description of the security or securities delivered, sufficient to 5400  
identify it or them). 5401

..... 5402  
(signature of donor or transferor) 5403

..... (name of custodian) hereby acknowledges 5404  
receipt of the above described security (ies) as custodian for the 5405  
above minor under the Ohio Transfers to Minors Act. 5406

Dated: ..... 5407  
(signature of custodian)" 5408

(3) If the subject of the gift or transfer is money, by 5409  
paying or delivering it to a broker, or a financial institution 5410  
for credit to an account in the name of the donor or transferor, 5411  
another person who is eighteen years of age or older, or a trust 5412  
company, followed, in substance, by the words: "as custodian for 5413  
..... (name of minor) under the Ohio Transfers to 5414  
Minors Act." 5415

(4) If the subject of the gift or transfer is a life or 5416  
endowment insurance policy, an annuity contract, or a benefit 5417  
plan, by assigning the policy, contract, or plan to the donor or 5418  
transferor, another person who is eighteen years of age or older, 5419  
or a trust company, followed, in substance by the words: "as 5420  
custodian for ..... (name of minor) under the Ohio 5421  
Transfers to Minors Act." 5422

(5) If the subject of the gift or transfer is an interest in 5423

real estate, by executing and delivering in the appropriate manner 5424  
a deed, assignment, or similar instrument in the name of the donor 5425  
or transferor, another person who is eighteen years of age or 5426  
older, or a trust company, followed, in substance, by the words: 5427  
"as custodian for ..... (name of minor) under the Ohio 5428  
Transfers to Minors Act." 5429

(6) If the subject of the gift or transfer is tangible 5430  
personal property, by delivering it to the donor or transferor, 5431  
another person who is eighteen years of age or older, or a trust 5432  
company, accompanied by a statement of a gift or transfer in the 5433  
following form, in substance, signed by the donor or transferor 5434  
and the person or trust company designated as custodian: 5435

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT 5436

I, ..... (name of donor or transferor), hereby 5437  
deliver to ..... (name of custodian) as custodian for 5438  
..... (name of minor) under the Ohio Transfers to 5439  
Minors Act, the following property: (insert an appropriate 5440  
description of the property delivered, sufficient to identify it). 5441

..... 5442

(signature of donor or transferor) 5443

..... (name of custodian) hereby acknowledges 5444  
receipt of the above described property as custodian for the above 5445  
minor under the Ohio Transfers to Minors Act. 5446

Dated: ..... 5447

(signature of custodian)" 5448

(7) If the subject of the gift or transfer is tangible 5449  
personal property, title to which is evidenced by a certificate of 5450  
title issued by a department or agency of a state or of the United 5451  
States, by issuing title to the donor or transferor, another 5452  
person who is eighteen years of age or older, or a trust company, 5453  
accompanied by a statement of a gift or transfer in the following 5454

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, 5549  
the donor or transferor incorporates in ~~his~~ the gift or transfer 5550  
all the provisions of these sections and grants to the custodian, 5551  
and to any issuer, transfer agent, financial institution, broker, 5552  
or third person dealing with a person or trust company designated 5553  
as custodian, the respective powers, rights, and immunities 5554  
provided in these sections. 5555

**Sec. ~~1339.34~~ 5814.04.** (A) The custodian shall collect, hold, 5556  
manage, invest, and reinvest the custodial property. 5557

(B) The custodian shall pay over to the minor for expenditure 5558  
by the minor, or expend for the use or benefit of the minor, as 5559  
much of or all the custodial property as the custodian considers 5560  
advisable for the use and benefit of the minor in the manner, at 5561  
the time or times, and to the extent that the custodian in ~~his~~ the 5562  
custodian's discretion considers suitable and proper, with or 5563  
without court order, with or without regard to the duty or ability 5564  
of the custodian or of any other person to support the minor or 5565  
~~his~~ the minor's ability to do so, and with or without regard to 5566  
any other income or property of the minor that may be applicable 5567  
or available for any purpose. Any payment or expenditure that is 5568  
made under this division is in addition to, is not a substitute 5569  
for, and does not affect the obligation of any person to support 5570  
the minor for whom the payment or expenditure is made. 5571

(C) The court, on the petition of a parent or guardian of the 5572  
minor or of the minor, if ~~he~~ the minor has attained the age of 5573  
fourteen years, may order the custodian to pay over to the minor 5574  
for expenditure by ~~him~~ the minor or to expend as much of or all 5575  
the custodial property as is necessary for the use and benefit of 5576  
the minor. 5577

(D)(1) Except as provided in division (D)(2) of this section, 5578  
to the extent that the custodial property is not so expended, the 5579

custodian shall deliver or pay the custodial property over to the 5580  
minor on ~~his~~ the minor's attaining the age of twenty-one years or, 5581  
if the minor dies before attaining the age of twenty-one years, 5582  
shall, upon the minor's death, deliver or pay the custodial 5583  
property over to the estate of the minor. 5584

(2) If the donor or transferor, in the written instrument 5585  
that makes or provides for the gift or transfer, directs the 5586  
custodian to deliver or pay over the custodial property to the 5587  
minor on ~~his~~ the minor's attaining any age between eighteen and 5588  
twenty-one, the custodian shall deliver or pay over the custodial 5589  
property to the minor on ~~his~~ the minor's attaining that age, or, 5590  
if the minor dies before attaining that age, the custodian shall, 5591  
upon the minor's death, deliver or pay the custodial property over 5592  
to the estate of the minor. 5593

(E) The custodian, notwithstanding statutes restricting 5594  
investments by fiduciaries, shall invest and reinvest the 5595  
custodial property as would a prudent person of discretion and 5596  
intelligence dealing with the property of another, except that the 5597  
custodian may, in the discretion of the custodian and without 5598  
liability to the minor or the estate of the minor, retain any 5599  
custodial property received in a manner prescribed in sections 5600  
~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code. If a 5601  
custodian has special skills or is named custodian on the basis of 5602  
representations of special skills or expertise, the custodian is 5603  
under a duty to use those skills or that expertise. 5604

(F) The custodian may sell, exchange, convert, or otherwise 5605  
dispose of custodial property in the manner, at the time or times, 5606  
for the price or prices, and upon the terms ~~he~~ the custodian 5607  
considers advisable. ~~He~~ The custodian may vote in person or by 5608  
general or limited proxy a security that is custodial property. ~~He~~ 5609  
The custodian may consent, directly or through a committee or 5610  
other agent, to the reorganization, consolidation, merger, 5611

dissolution, or liquidation of an issuer of a security that is 5612  
custodial property, and to the sale, lease, pledge, or mortgage of 5613  
any property by or to such an issuer, and to any other action by 5614  
such an issuer. ~~He~~ The custodian may purchase any life or 5615  
endowment insurance policy or annuity contract on the life of the 5616  
minor or any member of the family of the minor and pay, from funds 5617  
in ~~his~~ the custodian's custody, any premiums on any life or 5618  
endowment insurance policy or annuity contract held by ~~him~~ the 5619  
custodian as custodial property. ~~He~~ The custodian may execute and 5620  
deliver any and all instruments in writing that ~~he~~ the custodian 5621  
considers advisable to carry out any of ~~his~~ the custodian's powers 5622  
as custodian. 5623

(G) The custodian shall register each security that is 5624  
custodial property and in registered form in the name of the 5625  
custodian, followed, in substance, by the words: "as custodian for 5626  
..... (name of minor) under the Ohio Transfers to Minors 5627  
Act," or shall maintain each security that is custodial property 5628  
and in registered form in an account with a broker or in a 5629  
financial institution in the name of the custodian, followed, in 5630  
substance, by the words: "as custodian for ..... (name of 5631  
minor) under the Ohio Transfers to Minors Act." A security held in 5632  
account with a broker or in a financial institution in the name of 5633  
the custodian may be held in the name of the broker or financial 5634  
institution. A security that is custodial property and in 5635  
registered form and that is held by a broker or in a financial 5636  
institution in which the broker or financial institution does not 5637  
have a lien for indebtedness due to it from a custodial account 5638  
may not be pledged, lent, hypothecated, or disposed of except upon 5639  
the specific instructions of the custodian. The custodian shall 5640  
hold all money that is custodial property in an account with a 5641  
broker or in a financial institution in the name of the custodian, 5642  
followed, in substance, by the words: "as custodian for 5643  
..... (name of minor) under the Ohio Transfers to Minors 5644

Act." The custodian shall hold all life or endowment insurance 5645  
policies, annuity contracts, or benefit plans that are custodial 5646  
property in the name of the custodian, followed, in substance, by 5647  
the words "as custodian for ..... (name of minor) under 5648  
the Ohio Transfers to Minors Act." The custodian shall take title 5649  
to all real estate that is custodial property in the name of the 5650  
custodian, followed, in substance, by the words: "as custodian for 5651  
..... (name of minor) under the Ohio Transfers to Minors 5652  
Act." The custodian shall keep all other custodial property 5653  
separate and distinct from ~~his~~ the custodian's own property in a 5654  
manner to identify it clearly as custodial property. 5655

(H) The custodian shall keep records of all transactions with 5656  
respect to the custodial property and make the records available 5657  
for inspection at reasonable intervals by a parent or legal 5658  
representative of the minor or by the minor, if ~~he~~ the minor has 5659  
attained the age of fourteen years. 5660

(I) A custodian has, with respect to the custodial property, 5661  
in addition to the rights and powers provided in sections ~~1339.31~~ 5662  
5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, all the rights and 5663  
powers that a guardian has with respect to property not held as 5664  
custodial property. 5665

(J) The custodian may invest in or pay premiums on any life 5666  
or endowment insurance policy or annuity contract on either of the 5667  
following: 5668

(1) The life of the minor, if the minor or the estate of the 5669  
minor is the sole beneficiary under the policy or contract; 5670

(2) The life of any person in whom the minor has an insurable 5671  
interest, if the minor, ~~his~~ the minor's estate, or the custodian 5672  
in ~~his~~ the custodian's capacity as custodian is the sole 5673  
beneficiary. 5674

(K) All of the rights, powers, and authority of the custodian 5675

over custodial property, including all of the incidents of 5676  
ownership in any life or endowment insurance policy, annuity 5677  
contract, or benefit plan, are held only in the capacity of the 5678  
custodian as custodian. 5679

**Sec. ~~1339.35~~ 5814.05.** (A) A custodian is entitled to 5680  
reimbursement from the custodial property for ~~his~~ reasonable 5681  
expenses incurred in the performance of ~~his~~ the custodian's 5682  
duties. 5683

(B) A custodian may act without compensation for ~~his~~ the 5684  
custodian's services. 5685

(C) Unless ~~he~~ the custodian is a donor or transferor, a the 5686  
custodian may receive from custodial property reasonable 5687  
compensation for ~~his~~ the custodian's services determined by one of 5688  
the following standards in the order stated: 5689

(1) A direction by the donor or transferor when the gift or 5690  
transfer is made; 5691

(2) A statute of this state applicable to custodians; 5692

(3) The statute of this state applicable to guardians; 5693

(4) An order of the court. 5694

(D) Except as otherwise provided in sections ~~1339.31~~ 5814.01 5695  
to ~~1339.39~~ 5814.09 of the Revised Code, a custodian shall not be 5696  
required to give a bond for the performance of ~~his~~ the custodian's 5697  
duties. 5698

(E) A custodian not compensated for ~~his~~ the custodian's 5699  
services is not liable for losses to the custodial property unless 5700  
they result from ~~his~~ the custodian's bad faith, intentional 5701  
wrongdoing, or gross negligence or from ~~his~~ the custodian's 5702  
failure to maintain the standard of prudence in investing the 5703  
custodial property provided in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5704

<u>5814.09</u> of the Revised Code.	5705
<b>Sec. <del>1339.36</del> <u>5814.06</u>.</b> 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:	5706
(A) Determine either of the following:	5707
(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;	5708
(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 <del>1339.31</del> <u>5814.01</u> to <del>1339.39</del> <u>5814.09</u> of the Revised Code.	5709
(B) Inquire into the validity or propriety under sections <del>1339.31</del> <u>5814.01</u> to <del>1339.39</del> <u>5814.09</u> 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;	5710
(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.	5711
<b>Sec. <del>1339.37</del> <u>5814.07</u>.</b> (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 <del>1339.31</del> <u>5814.01</u> to <del>1339.39</del> <u>5814.09</u> of the Revised Code.	5712
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(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 5794  
to be transferred or registered in the name of the successor 5795  
custodian as provided in divisions (D)(1) to (3) of this section. 5796

(F) If a person or entity designated as successor custodian 5797  
is not eligible, or renounces or dies before the minor attains the 5798  
age of twenty-one years, or if the custodian dies without 5799  
designating a successor custodian and division (E) of this section 5800  
does not apply because the custodian does not have a legal 5801  
representative, the guardian of the minor shall be the successor 5802  
custodian. If the minor does not have a guardian, a donor or 5803  
transferor, the legal representative of the donor or transferor, 5804  
the legal representative of the custodian, a member of the minor's 5805  
family who is eighteen years of age or older, or the minor, if ~~he~~ 5806  
the minor has attained the age of fourteen years, may petition the 5807  
court for the designation of a successor custodian. 5808

(G) A donor or transferor, the legal representative of a 5809  
donor or transferor, a member of the minor's family who is 5810  
eighteen years of age or older, a guardian of the minor, or the 5811  
minor, if ~~he~~ the minor has attained the age of fourteen years, may 5812  
petition the court that, for cause shown in the petition, the 5813  
custodian be removed and a successor custodian be designated or, 5814  
in the alternative, that the custodian be required to give bond 5815  
for the performance of ~~his~~ the custodian's duties. 5816

(H) Upon the filing of a petition as provided in this 5817  
section, the court shall grant an order, directed to the persons 5818  
and returnable on any notice that the court may require, to show 5819  
cause why the relief prayed for in the petition should not be 5820  
granted and, in due course, grant any relief that the court finds 5821  
to be in the best interests of the minor. 5822

**Sec. ~~1339.38~~ 5814.08.** (A) The minor, if ~~he~~ the minor has 5823  
attained the age of fourteen years, or the legal representative of 5824

the minor, a member of the minor's family who is eighteen years of 5825  
age or older, or a donor or transferor or ~~his~~ the donor's or 5826  
transferor's legal representative may petition the court for an 5827  
accounting by the custodian or ~~his~~ the custodian's legal 5828  
representative. A successor custodian may petition the court for 5829  
an accounting by the custodian that ~~he~~ the successor custodian 5830  
succeeded. 5831

(B) The court, in a proceeding under sections ~~1339.31~~ 5814.01 5832  
to ~~1339.39~~ 5814.09 of the Revised Code, or otherwise, may require 5833  
or permit the custodian or ~~his~~ the custodian's legal 5834  
representative to account and, if the custodian is removed, shall 5835  
so require and order delivery of all custodial property to the 5836  
successor custodian and the execution of all instruments required 5837  
for the transfer of the custodial property. 5838

**Sec. ~~1339.39~~ 5814.09.** (A) Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5839  
5814.09 of the Revised Code shall be ~~so~~ construed ~~as~~ to effectuate 5840  
their general purpose to make uniform the law of those states 5841  
~~which~~ that enact similar provisions. 5842

(B) Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 5843  
Revised Code shall not be construed as providing an exclusive 5844  
method for making gifts or transfers to minors. 5845

(C) Nothing in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of 5846  
the Revised Code, shall affect gifts made under former sections 5847  
1339.19 to 1339.28 of the Revised Code, nor the powers, duties, 5848  
and immunities conferred by gifts in such manner upon custodians 5849  
and persons dealing with custodians. Sections ~~1339.31~~ 5814.01 to 5850  
~~1339.39~~ 5814.09 of the Revised Code henceforth apply, however, to 5851  
all gifts made in a manner and form prescribed in former sections 5852  
1339.19 to 1339.28 of the Revised Code, except insofar as ~~such~~ the 5853  
application impairs constitutionally vested rights. Sections 5854  
~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code shall be 5855

construed as a continuation of the provisions of former sections 5856  
1339.19 to 1339.28 of the Revised Code, according to the language 5857  
employed, and not as a new enactment. 5858

(D) Nothing in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of 5859  
the Revised Code, as of ~~the effective date of this amendment~~ May 5860  
7, 1986, shall affect gifts made under those sections as they 5861  
existed prior to ~~the effective date of this amendment~~ May 7, 1986, 5862  
or the powers, duties, and immunities conferred by the gifts in 5863  
any manner upon custodians and persons dealing with custodians. 5864  
Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, 5865  
as of ~~the effective date of this amendment~~ May 7, 1986, hereafter 5866  
apply to all gifts made in a manner and form prescribed in those 5867  
sections as they existed prior to ~~the effective date of this~~ 5868  
~~amendment~~ May 7, 1986, except to the extent that the application 5869  
of those sections, as of ~~the effective date of this amendment~~ May 5870  
7, 1986, would impair constitutionally vested rights. 5871

**Sec. ~~1339.031~~ 5815.01.** Except when the intent of the settlor 5872  
clearly is to the contrary, the following rules of construction 5873  
shall apply in interpreting the terms "inheritance" and "bequest": 5874

(A) The term "inheritance," in addition to its meaning at 5875  
common law or under any other section or sections of the Revised 5876  
Code, includes any change of title to real property by reason of 5877  
the death of the owner of that real property, regardless of 5878  
whether the owner died testate or intestate. 5879

(B) The term "bequest," in addition to its meaning at common 5880  
law or under any other section or sections of the Revised Code, 5881  
includes any disposition of real property that occurs as a result 5882  
of the death of the settlor. 5883

**Sec. ~~1339.01~~ 5815.02.** As used in sections ~~1339.01~~ 5815.02 and 5884  
~~1339.02~~ 5815.03 of the Revised Code: 5885

(A) "Fiduciary" includes a trustee under any trust, 5886  
expressed, implied, resulting, or constructive; an executor, 5887  
administrator, public administrator, guardian, committee, 5888  
conservator, curator, receiver, trustee in bankruptcy, assignee 5889  
for the benefit of creditors, partner, agent, officer of a public 5890  
or private corporation, or public officer; or any other person 5891  
acting in a fiduciary capacity for any person, trust, or estate. 5892

(B) "Good faith" includes an act done honestly, whether it is 5893  
done negligently or not. 5894

(C) "Issuer" includes domestic corporations, companies, 5895  
associations, and trusts; foreign corporations, companies, 5896  
associations, and trusts, to the extent that securities issued by 5897  
them are held of record by persons in this state or are held on 5898  
deposit in this state, and to the extent that such foreign 5899  
corporation, company, association, or trust is a holder of record 5900  
of, or otherwise interested in, securities of domestic 5901  
corporations, companies, associations, or trusts; and also the 5902  
transfer agents and registrars of the issuer and the depositories 5903  
for its securities. 5904

(D) "Person" includes a corporation, partnership, 5905  
association, or two or more persons having a joint or common 5906  
interest. 5907

(E) "Securities" includes the items in the following 5908  
enumeration, which, however, is not exclusive: 5909

(1) Shares, share certificates, and other certificates and 5910  
evidences of ownership or participation in property, assets, or 5911  
trust estate; bonds, notes, debentures, certificates, or evidences 5912  
of indebtedness, certificates of interest or participation, 5913  
collateral trust certificates, equipment-trust certificates, 5914  
preorganization or subscription certificates or receipts, and 5915  
voting-trust certificates; passbooks or certificates of deposit of 5916

money, securities, or other property; scrip certificates, 5917  
fractional interests certificates, and, in general, interests or 5918  
instruments commonly known as securities, and certificates of 5919  
interest or participation in, temporary or interim certificates or 5920  
receipts for, or warrants or rights to subscribe to, purchase, or 5921  
receive, any of the foregoing, whether such securities were issued 5922  
by the issuer in its corporate capacity, in its individual 5923  
capacity, or in a fiduciary capacity; 5924

(2) Securities ~~which~~ that were issued originally by other 5925  
corporations, companies, associations, or trusts, but have become 5926  
the securities of the present issuer, individually or as a 5927  
fiduciary. 5928

**Sec. ~~1339.02~~ 5815.03.** Unless there has been delivered to an 5929  
issuer a certified copy of an order, judgment, or decree of a 5930  
court, judge, or administrative body or official, the legal effect 5931  
of which is to restrict, suspend, or remove such capacity or 5932  
authority, ~~such~~ the issuer may treat all persons in whose names 5933  
its securities are of record on its records as being of full age 5934  
and competent and as having capacity and authority to exercise all 5935  
rights of ownership in respect of ~~such~~ the securities, including 5936  
the right to receive and to give receipts for payments and 5937  
distributions, the right to transfer ~~said~~ the securities, and the 5938  
right to vote or to give consent in person or by proxy, 5939  
notwithstanding any description, limitation, or qualification 5940  
appearing on ~~such~~ the securities or on ~~such~~ the records, any 5941  
reference thereon to another instrument or to any fiduciary or 5942  
pledgee or other relationship, or any knowledge or notice, actual 5943  
or constructive, of the right, interest, or claim of any other 5944  
person or of the infancy or lack of capacity or authority of the 5945  
persons in whose names ~~such~~ the securities are of record. 5946

~~Such~~ The issuer may treat a fiduciary as having capacity and 5947

authority to exercise all ~~said~~ rights of ownership in respect of 5948  
~~such the~~ securities that are of record in the name of a decedent 5949  
holder, of a person in conservation, receivership, or bankruptcy, 5950  
or of a minor, incompetent person, or person under disability, and 5951  
~~such the~~ issuer shall be protected in any action taken or suffered 5952  
by it in reliance upon any instrument showing the appointment of 5953  
~~such the~~ fiduciary. 5954

~~Such The~~ issuer is not liable for loss caused by any act done 5955  
or omitted by it under this section. ~~Such The~~ issuer need not see 5956  
to the execution of any trust, or to the observance or performance 5957  
of any obligation of a holder of record, a fiduciary, or a pledgee 5958  
of ~~such the~~ securities, and it need not inquire or inform itself 5959  
concerning ~~the same~~ those matters. 5960

This section does not enlarge the capacity, right, or 5961  
authority of any holder of record of ~~such the~~ securities as 5962  
against any person other than ~~such the~~ issuer, nor prevent any 5963  
court of competent jurisdiction from enforcing or protecting any 5964  
right, title, or interest in ~~such the~~ securities in any person who 5965  
is not a holder of record ~~thereof~~ the securities. 5966

This section does not protect any ~~such~~ issuer who 5967  
participates with a fiduciary in a breach of ~~his~~ the fiduciary's 5968  
trust with knowledge of such facts that the action of ~~such the~~ 5969  
issuer amounts to bad faith. 5970

**Sec. ~~1339.03~~ 5815.04.** As used in sections ~~1339.03~~ 5815.04 to 5971  
~~1339.13, inclusive,~~ 5815.11 of the Revised Code: 5972

(A) "Bank" includes any person, carrying on the business of 5973  
banking and any financial institution defined in section 5725.01 5974  
of the Revised Code. 5975

(B) "Fiduciary" includes a trustee under any trust, 5976  
expressed, implied, resulting, or constructive, an executor, 5977

~~adminstrator~~ administrator, guardian, conservator, curator, 5978  
receiver, trustee in bankruptcy, assignee for the benefit of 5979  
creditors, partner, agent, officer of a corporation, public or 5980  
private, public officer, or any other person acting in a fiduciary 5981  
capacity for any person, trust, or estate. 5982

(C) "Person" includes a corporation, partnership, 5983  
association, or two or more persons having a joint or common 5984  
interest. 5985

(D) "Principal" includes any person to whom a fiduciary as 5986  
such owes an obligation. 5987

(E) "Good faith" includes an act when it is in fact done 5988  
honestly. 5989

**Sec. ~~1339.04~~ 5815.05.** A person who in good faith pays or 5990  
transfers to a fiduciary any money or other property ~~which~~ that 5991  
the fiduciary as such is authorized to receive is not responsible 5992  
for the proper application ~~thereof~~ of the money or other property 5993  
by the fiduciary. Any right or title acquired from the fiduciary 5994  
in consideration of ~~such~~ the payment or transfer is not invalid 5995  
because of a misapplication by the fiduciary. 5996

**Sec. ~~1339.08~~ 5815.06.** If a deposit is made in a bank to the 5997  
credit of a fiduciary as such, the bank may pay the amount of the 5998  
deposit or any part thereof upon the check of the fiduciary, 5999  
signed with the name in which ~~such~~ the deposit is entered, without 6000  
being liable to the principal, unless the bank pays the check with 6001  
actual knowledge that the fiduciary is committing a breach of ~~his~~ 6002  
the obligation as fiduciary in drawing the check or with knowledge 6003  
of such facts that its action in paying the check amounts to bad 6004  
faith. 6005

If such a check is payable to the drawee bank and is 6006  
delivered to it in payment of or as security for a personal debt 6007



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. ~~1339-09~~ 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 6038  
committing a breach of ~~his~~ the obligation as fiduciary in making 6039  
~~such~~ the deposit or in drawing ~~such~~ the check, or with knowledge 6040  
of such facts that the action of ~~such~~ the bank in receiving the 6041  
deposit or paying the check amounts to bad faith. 6042

**Sec. ~~1339.11~~ 5815.09.** When a deposit is made in a bank in the 6043  
name of two or more persons as trustees and a check is drawn upon 6044  
the trust account by any trustee authorized to do so by the other, 6045  
neither the payee or other holder nor the bank is bound to inquire 6046  
whether it is a breach of trust to authorize ~~such~~ the trustee to 6047  
draw checks upon the trust account and neither is liable unless 6048  
the circumstances are such that the action of the payee or other 6049  
holder or the bank amounts to bad faith. 6050

**Sec. ~~1339.12~~ 5815.10.** Sections ~~1339.03~~ 5815.04 to ~~1339.13,~~ 6051  
~~inclusive,~~ 5815.11 of the Revised Code shall be ~~so~~ construed ~~so as~~ 6052  
to effectuate their general purpose ~~which is to make~~ of making the 6053  
law of this state uniform with the law of those states ~~which that~~ 6054  
enact similar legislation. 6055

**Sec. ~~1339.13~~ 5815.11.** In any case not provided for in 6056  
sections ~~1339.03~~ 5815.04 to ~~1339.13,~~ ~~inclusive,~~ 5815.11 of the 6057  
Revised Code, the rules of law and equity, including the law 6058  
merchant and those rules of law and equity relating to trusts, 6059  
agency, negotiable instruments, and banking apply. 6060

**Sec. ~~1339.15~~ 5815.12.** As used in sections ~~1339.15~~ 5815.13, 6061  
~~1339.16~~ 5815.14, and ~~1339.17~~ 5815.15 of the Revised Code, "power 6062  
of appointment" means any power ~~which that~~ is in effect a power to 6063  
appoint, however created, regardless of the nomenclature used in 6064  
creating the power and regardless of connotations under the law of 6065  
property, trusts, or wills. ~~Such~~ The power includes but is not 6066

limited to powers which are special, general, limited, absolute, 6067  
in gross, appendant, appurtenant, or collateral. 6068

**Sec. ~~1339.151~~ 5815.13.** Any power of appointment ~~which~~ that is 6069  
not subject to an express condition that it may be exercised only 6070  
by a donee or holder of a greater age may be exercised by any 6071  
donee or holder of the age of eighteen years~~7~~ or over. 6072

**Sec. ~~1339.16~~ 5815.14.** Any power of appointment may be 6073  
released in whole or in part by the donee or holder of the power 6074  
by an instrument in writing, signed and acknowledged in the manner 6075  
prescribed for the execution of deeds. No such release is 6076  
ineffective because it was given either for or without 6077  
consideration, because it was signed and acknowledged before June 6078  
3, 1943, or because no delivery is made of a copy of the release 6079  
as provided for in section ~~1339.17~~ 5815.15 of the Revised Code. 6080

Sections ~~1339.16~~ 5815.14 and ~~1339.17~~ 5815.15 of the Revised 6081  
Code do not affect the validity of a release of a power of 6082  
appointment effected in any other form or manner. 6083

A donee or holder of a power of appointment may disclaim the 6084  
same at any time, wholly or in part, in the same manner and to the 6085  
same extent as ~~he~~ the donee or holder of the power might release 6086  
it. 6087

**Sec. ~~1339.17~~ 5815.15.** No fiduciary or other person having the 6088  
possession or control of any property subject to a power of 6089  
appointment, other than the donee or holder of such power, has 6090  
notice of a release of the power until a copy of the release is 6091  
delivered to ~~him~~ the fiduciary or other person having possession 6092  
or control. 6093

No purchaser or mortgagee of real property subject to a power 6094  
of appointment has notice of a release of the power until a copy 6095

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. ~~1339.18~~ 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. ~~1339.41~~ 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 6126  
trust instrument expressly requires that distribution be made in a 6127  
manner so as not to be fairly representative of such appreciation 6128  
or depreciation. 6129

**Sec. ~~1339-411~~ 5815.22.** (A)(1) Except as provided in divisions 6130  
(A)(2), (3), and (4) of this section, a spendthrift provision in 6131  
an instrument that creates an inter vivos or testamentary trust 6132  
shall not cause any forfeiture or postponement of any interest in 6133  
property that satisfies both of the following: 6134

(a) It is granted to a surviving spouse of the testator or 6135  
other settlor. 6136

(b) It qualifies for the federal estate tax marital deduction 6137  
allowed by Subtitle B, Chapter 11, of the "Internal Revenue Code 6138  
of 1986," 26 U.S.C.A. 2056, as amended, the estate tax marital 6139  
deduction allowed by division (A) of section 5731.15 of the 6140  
Revised Code, or the qualified terminable interest property 6141  
deduction allowed by division (B) of section 5731.15 of the 6142  
Revised Code. 6143

(2) Division (A)(1) of this section does not apply if an 6144  
instrument that creates an inter vivos or testamentary trust 6145  
expressly states the intention of the testator or other settlor 6146  
that obtaining a marital deduction or a qualified terminable 6147  
interest property deduction as described in division (A)(1)(b) of 6148  
this section is less important than enforcing the forfeiture or 6149  
postponement of the interest in property in accordance with the 6150  
spendthrift provision in the instrument. 6151

(3) Division (A)(1) of this section applies only to the 6152  
forfeiture or postponement portions of a spendthrift provision and 6153  
does not apply to any portion of a spendthrift provision that 6154  
prohibits a beneficiary from assigning, alienating, or otherwise 6155  
disposing of any beneficial interest in a trust or prohibits a 6156

creditor of a beneficiary from attaching or otherwise encumbering 6157  
the trust estate. 6158

(4) Division (A)(1) of this section does not apply to any 6159  
beneficiary of an inter vivos or testamentary trust other than the 6160  
surviving spouse of the testator or other settlor or to any inter 6161  
vivos or testamentary trust of which the surviving spouse of the 6162  
testator or other settlor is a beneficiary if an interest in 6163  
property does not qualify for a marital deduction or a qualified 6164  
terminable interest property deduction as described in division 6165  
(A)(1)(b) of this section. 6166

(B)(1) Except as provided in divisions (B)(2) and (3) of this 6167  
section, if an instrument creating an inter vivos or testamentary 6168  
trust includes a spendthrift provision and the trust holds shares 6169  
in an S corporation, the spendthrift provision shall not cause any 6170  
forfeiture or postponement of any beneficial interest, income, 6171  
principal, or other interest in the shares of the S corporation 6172  
held by the trust. For purposes of division (B)(1) of this 6173  
section, "S corporation" has the same meaning as in section 1361 6174  
of the "Internal Revenue Code of 1986," 26 U.S.C. 1361. 6175

(2) Division (B)(1) of this section does not apply if an 6176  
instrument that creates an inter vivos or testamentary trust 6177  
expressly states the intention of the testator or other settlor 6178  
that maintenance of the corporation's status as an S corporation 6179  
is less important than enforcing the forfeiture or postponement of 6180  
any beneficial interest, income, principal, or other interest in 6181  
the S corporation shares in accordance with the spendthrift 6182  
provision in the instrument. 6183

(3) Division (B)(1) of this section applies only to the 6184  
forfeiture or postponement portions of a spendthrift provision and 6185  
does not apply to any portion of a spendthrift provision that 6186  
prohibits a beneficiary from assigning, alienating, or otherwise 6187

disposing of any beneficial interest in a trust or prohibits a 6188  
creditor of a beneficiary from attaching or otherwise encumbering 6189  
the trust estate. 6190

(C)(1) Except as provided in divisions (C)(2) and (3) of this 6191  
section, a spendthrift provision in an instrument that creates an 6192  
inter vivos or testamentary trust shall not cause any forfeiture 6193  
or postponement of any interest in property that satisfies both of 6194  
the following: 6195

(a) It is granted to a person who is a skip person under the 6196  
federal generation-skipping transfer tax imposed by Subtitle B, 6197  
Chapter 13, of the "Internal Revenue Code of 1986," 26 U.S.C.A. 6198  
2601-2663, as amended. 6199

(b) It qualifies as a nontaxable gift under section 2642(c) 6200  
of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2642(c). 6201

(2) Division (C)(1) of this section does not apply if an 6202  
instrument that creates an inter vivos or testamentary trust 6203  
expressly states the intention of the testator or other settlor 6204  
that qualifying as a nontaxable trust gift as described in 6205  
division (C)(1)(b) of this section is less important than 6206  
enforcing the forfeiture or postponement of the interest in 6207  
property in accordance with the spendthrift provision in the 6208  
instrument. 6209

(3) Division (C)(1) of this section applies only to the 6210  
forfeiture or postponement portions of a spendthrift provision and 6211  
does not apply to any portion of a spendthrift provision that 6212  
prohibits a beneficiary from assigning, alienating, or otherwise 6213  
disposing of any beneficial interest in a trust or prohibits a 6214  
creditor of a beneficiary from attaching or otherwise encumbering 6215  
the trust estate. 6216

(D) Divisions (A), (B), and (C) of this section are intended 6217  
to codify certain fiduciary and trust law principles relating to 6218

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. ~~1339.412~~ 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. ~~1339.42~~ 5815.24.** (A) As used in this section, "fiduciary" means a trustee under any expressed, implied,

resulting, or constructive trust; an executor, administrator, 6280  
public administrator, committee, guardian, conservator, curator, 6281  
receiver, trustee in bankruptcy, or assignee for the benefit of 6282  
creditors; a partner, agent, officer of a public or private 6283  
corporation, or public officer; or any other person acting in a 6284  
fiduciary capacity for any person, trust, or estate. 6285

(B) A fiduciary, or a custodian, who is a transferee of real 6286  
or personal property that is held by a fiduciary other than the 6287  
person or entity serving as the transferee, is not required to 6288  
inquire into any act, or audit any account, of the transferor 6289  
fiduciary, unless the transferee is specifically directed to do so 6290  
in the instrument governing ~~him~~ the transferee or unless the 6291  
transferee has actual knowledge of conduct of the transferor that 6292  
would constitute a breach of the transferor's fiduciary 6293  
responsibilities. 6294

(C) If a trustee is authorized or directed in a trust 6295  
instrument to pay or advance all or any part of the trust property 6296  
to the personal representative of a decedent's estate for the 6297  
payment of the decedent's legal obligations, death taxes, 6298  
bequests, or expenses of administration, the trustee is not liable 6299  
for the application of the trust property paid or advanced to the 6300  
personal representative and is not liable for any act or omission 6301  
of the personal representative with respect to the trust property, 6302  
unless the trustee has actual knowledge, prior to the payment or 6303  
advancement of the trust property, that the personal 6304  
representative does not intend to use the trust property for such 6305  
purposes. 6306

**Sec. ~~1339-43~~ 5815.25.** (A) As used in this section, 6307  
"fiduciary" means a trustee under any testamentary, inter vivos, 6308  
or other trust, an executor or administrator, or any other person 6309  
who is acting in a fiduciary capacity for any person, trust, or 6310

estate. 6311

(B) When an instrument under which a fiduciary acts reserves 6312  
to the grantor, or vests in an advisory or investment committee or 6313  
in one or more other persons, including one or more fiduciaries, 6314  
to the exclusion of the fiduciary or of one or more of several 6315  
fiduciaries, any power, including, but not limited to, the 6316  
authority to direct the acquisition, disposition, or retention of 6317  
any investment or the power to authorize any act that an excluded 6318  
fiduciary may propose, any excluded fiduciary is not liable, 6319  
either individually or as a fiduciary, for either of the 6320  
following: 6321

(1) Any loss that results from compliance with an authorized 6322  
direction of the grantor, committee, person, or persons; 6323

(2) Any loss that results from a failure to take any action 6324  
proposed by an excluded fiduciary that requires a prior 6325  
authorization of the grantor, committee, person, or persons if 6326  
that excluded fiduciary timely sought but failed to obtain that 6327  
authorization. 6328

(C) Any excluded fiduciary as described in division (B) of 6329  
this section is relieved from any obligation to perform investment 6330  
reviews and make recommendations with respect to any investments 6331  
to the extent the grantor, an advisory or investment committee, or 6332  
one or more other persons have authority to direct the 6333  
acquisition, disposition, or retention of any investment. 6334

(D) This section does not apply to the extent that the 6335  
instrument under which an excluded fiduciary as described in 6336  
division (B) of this section acts contains provisions that are 6337  
inconsistent with this section. 6338

**Sec. ~~1339.44~~ 5815.26.** (A) As used in this section: 6339

(1) "Fiduciary" means a trustee under any testamentary, inter 6340

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 6371  
purpose of the fund and the duty of fiduciary prudence. 6372

(3) "Registered investment company" means any investment 6373  
company that is defined in and registered under sections 3 and 8 6374  
of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 6375  
80a-3 and 80a-8. 6376

(4) "Affiliated investment company" has the same meaning as 6377  
in division (E)(1) of section 1111.10 of the Revised Code. 6378

(B) A fiduciary is not required to invest cash that belongs 6379  
to the trust and may hold that cash for the period prior to 6380  
distribution if either of the following applies: 6381

(1) The fiduciary reasonably expects to do either of the 6382  
following: 6383

(a) Distribute the cash to beneficiaries of the trust on a 6384  
quarterly or more frequent basis; 6385

(b) Use the cash for the payment of debts, taxes, or expenses 6386  
of administration within the ninety-day period following the 6387  
receipt of the cash by the fiduciary. 6388

(2) Determined on the basis of the facilities available to 6389  
the fiduciary and the amount of the income that reasonably could 6390  
be earned by the investment of the cash, the amount of the cash 6391  
does not justify the administrative burden or expense associated 6392  
with its investment. 6393

(C) If a fiduciary wishes to hold funds that belong to the 6394  
trust in liquid form and division (B) of this section does not 6395  
apply, the fiduciary may so hold the funds as long as they are 6396  
temporarily invested as described in division (D) of this section. 6397

(D)(1) A fiduciary may make a temporary investment of cash 6398  
that ~~he may hold~~ be held uninvested in accordance with division 6399  
(B) of this section, and shall make a temporary investment of 6400

funds held in liquid form pursuant to division (C) of this 6401  
section, in any of the following investments, unless the governing 6402  
instrument provides for other investments in which the temporary 6403  
investment of cash or funds is permitted: 6404

(a) A short term trust-quality investment fund; 6405

(b) Direct obligations of the United States or of its 6406  
agencies; 6407

(c) A deposit with a bank or savings and loan association, 6408  
including a deposit with the fiduciary itself or any bank 6409  
subsidiary corporation owned or controlled by the bank holding 6410  
company that owns or controls the fiduciary, whose deposits are 6411  
insured by the federal deposit insurance corporation, if the rate 6412  
of interest paid on that deposit is at least equal to the rate of 6413  
interest generally paid by that bank or savings and loan 6414  
association on deposits of similar terms or amounts. 6415

(2) A fiduciary that makes a temporary investment of cash or 6416  
funds pursuant to division (D)(1) of this section may charge a 6417  
reasonable fee for the services associated with that investment. 6418  
The fee shall be in addition to the compensation to which the 6419  
fiduciary is entitled for his ordinary fiduciary services. 6420

(3) Fiduciaries that make one or more temporary investments 6421  
of cash or funds pursuant to division (D)(1) of this section shall 6422  
provide to the beneficiaries of the trusts involved, that are 6423  
currently receiving income or have a right to receive income, a 6424  
written disclosure of their temporary investment practices and, if 6425  
applicable, the method of computing reasonable fees for their 6426  
temporary investment services pursuant to division (D)(2) of this 6427  
section. Fiduciaries may comply with this requirement in any 6428  
appropriate written document, including, but not limited to, any 6429  
periodic statement or account. 6430

(4) A fiduciary that makes a temporary investment of cash or 6431

funds in an affiliated investment company pursuant to division 6432  
(D)(1)(a) of this section shall, when providing any periodic 6433  
account statements of its temporary investment practices, report 6434  
the net asset value of the shares comprising the investment in the 6435  
affiliated investment company. 6436

(5) If a fiduciary that makes a temporary investment of cash 6437  
or funds in an affiliated investment company pursuant to division 6438  
(D)(1)(a) of this section invests in any mutual fund, the 6439  
fiduciary shall provide to the beneficiaries of the trust 6440  
involved, that are currently receiving income or have a right to 6441  
receive income, a written disclosure, in at least ten-point 6442  
boldface type, that the mutual fund is not insured or guaranteed 6443  
by the federal deposit insurance corporation or by any other 6444  
government agency or government-sponsored agency of the federal 6445  
government or of this state. 6446

**Sec. ~~1339.45~~ 5815.27.** (A) A provision in a will or trust 6447  
agreement, which provision pertains to the payment of any taxes 6448  
that are imposed by reason of the testator's or trust creator's 6449  
death, does not include the payment of any portion of any tax that 6450  
is imposed on any transfer under any other will or trust agreement 6451  
by Chapter 13 of subtitle B of the "Internal Revenue Code of 6452  
1986," 100 Stat. 2718, 26 U.S.C. 2601-2624, as amended, unless the 6453  
provision of the will or trust agreement specifically states, 6454  
using the words "generation-skipping transfer tax," that the 6455  
payment of the tax imposed under that chapter is included within 6456  
the provision of the will or trust agreement. 6457

(B) This section applies to wills and trust agreements that 6458  
are executed before or after March 14, 1979. 6459

**Sec. ~~1339.51~~ 5815.28.** (A) As used in this section: 6460

(1) "Ascertainable standard" includes a standard in a trust 6461

instrument requiring the trustee to provide for the care, comfort, 6462  
maintenance, welfare, education, or general well-being of the 6463  
beneficiary. 6464

(2) "Disability" means any substantial, medically 6465  
determinable impairment that can be expected to result in death or 6466  
that has lasted or can be expected to last for a continuous period 6467  
of at least twelve months, except that "disability" does not 6468  
include an impairment that is the result of abuse of alcohol or 6469  
drugs. 6470

(3) "Political subdivision" and "state" have the same 6471  
meanings as in section 2744.01 of the Revised Code. 6472

(4) "Supplemental services" means services specified by rule 6473  
of the department of mental health under section 5119.01 of the 6474  
Revised Code or the department of mental retardation and 6475  
developmental disabilities under section 5123.04 of the Revised 6476  
Code that are provided to an individual with a disability in 6477  
addition to services the individual is eligible to receive under 6478  
programs authorized by federal or state law. 6479

(B) Any person may create a trust under this section to 6480  
provide funding for supplemental services for the benefit of 6481  
another individual who meets either of the following conditions: 6482

(1) The individual has a physical or mental disability and is 6483  
eligible to receive services through the department of mental 6484  
retardation and developmental disabilities or a county board of 6485  
mental retardation and developmental disabilities; 6486

(2) The individual has a mental disability and is eligible to 6487  
receive services through the department of mental health or a 6488  
board of alcohol, drug addiction, and mental health services. 6489

The trust may confer discretion upon the trustee and may 6490  
contain specific instructions or conditions governing the exercise 6491



of the discretion. 6492

(C) The general division of the court of common pleas and the 6493  
probate court of the county in which the beneficiary of a trust 6494  
authorized by division (B) of this section resides or is confined 6495  
have concurrent original jurisdiction to hear and determine 6496  
actions pertaining to the trust. In any action pertaining to the 6497  
trust in a court of common pleas or probate court and in any 6498  
appeal of the action, all of the following apply to the trial or 6499  
appellate court: 6500

(1) The court shall render determinations consistent with the 6501  
testator's or other settlor's intent in creating the trust, as 6502  
evidenced by the terms of the trust instrument. 6503

(2) The court may order the trustee to exercise discretion 6504  
that the trust instrument confers upon the trustee only if the 6505  
instrument contains specific instructions or conditions governing 6506  
the exercise of that discretion and the trustee has failed to 6507  
comply with the instructions or conditions. In issuing an order 6508  
pursuant to this division, the court shall require the trustee to 6509  
exercise the trustee's discretion only in accordance with the 6510  
instructions or conditions. 6511

(3) The court may order the trustee to maintain the trust and 6512  
distribute assets in accordance with rules adopted by the director 6513  
of mental health under section 5119.01 of the Revised Code or the 6514  
director of mental retardation and developmental disabilities 6515  
under section 5123.04 of the Revised Code if the trustee has 6516  
failed to comply with such rules. 6517

(D) To the extent permitted by federal law and subject to the 6518  
provisions of division (C)(2) of this section pertaining to the 6519  
enforcement of specific instructions or conditions governing a 6520  
trustee's discretion, a trust authorized by division (B) of this 6521  
section that confers discretion upon the trustee shall not be 6522

considered an asset or resource of the beneficiary, the 6523  
beneficiary's estate, the settlor, or the settlor's estate and 6524  
shall be exempt from the claims of creditors, political 6525  
subdivisions, the state, other governmental entities, and other 6526  
claimants against the beneficiary, the beneficiary's estate, the 6527  
settlor, or the settlor's estate, including claims based on 6528  
provisions of Chapters 5111., 5121., or 5123. of the Revised Code 6529  
and claims sought to be satisfied by way of a civil action, 6530  
subrogation, execution, garnishment, attachment, judicial sale, or 6531  
other legal process, if all of the following apply: 6532

(1) At the time the trust is created, the trust principal 6533  
does not exceed the maximum amount determined under division (E) 6534  
of this section; 6535

(2) The trust instrument contains a statement of the 6536  
settlor's intent, or otherwise clearly evidences the settlor's 6537  
intent, that the beneficiary does not have authority to compel the 6538  
trustee under any circumstances to furnish the beneficiary with 6539  
minimal or other maintenance or support, to make payments from the 6540  
principal of the trust or from the income derived from the 6541  
principal, or to convert any portion of the principal into cash, 6542  
whether pursuant to an ascertainable standard specified in the 6543  
instrument or otherwise; 6544

(3) The trust instrument provides that trust assets can be 6545  
used only to provide supplemental services, as defined by rule of 6546  
the director of mental health under section 5119.01 of the Revised 6547  
Code or the director of mental retardation and developmental 6548  
disabilities under section 5123.04 of the Revised Code, to the 6549  
beneficiary; 6550

(4) The trust is maintained and assets are distributed in 6551  
accordance with rules adopted by the director of mental health 6552  
under section 5119.01 of the Revised Code or the director of 6553

mental retardation and developmental disabilities under section 6554  
5123.04 of the Revised Code; 6555

(5) The trust instrument provides that on the death of the 6556  
beneficiary, a portion of the remaining assets of the trust, which 6557  
shall be not less than fifty per cent of such assets, will be 6558  
deposited to the credit of the services fund for individuals with 6559  
mental illness created by section 5119.17 of the Revised Code or 6560  
the services fund for individuals with mental retardation and 6561  
developmental disabilities created by section 5123.40 of the 6562  
Revised Code. 6563

(E) In 1994, the trust principal maximum amount for a trust 6564  
created under this section shall be two hundred thousand dollars. 6565  
The maximum amount for a trust created under this section prior to 6566  
November 11, 1994, may be increased to two hundred thousand 6567  
dollars. 6568

In 1995, the maximum amount for a trust created under this 6569  
section shall be two hundred two thousand dollars. Each year 6570  
thereafter, the maximum amount shall be the prior year's amount 6571  
plus two thousand dollars. 6572

(F) This section does not limit or otherwise affect the 6573  
creation, validity, interpretation, or effect of any trust that is 6574  
not created under this section. 6575

(G) Once a trustee takes action on a trust created by a 6576  
settlor under this section and disburses trust funds on behalf of 6577  
the beneficiary of the trust, then the trust may not be terminated 6578  
or otherwise revoked by a particular event or otherwise without 6579  
payment into the services fund created pursuant to section 5119.17 6580  
or 5123.40 of the Revised Code of an amount that is equal to the 6581  
disbursements made on behalf of the beneficiary for medical care 6582  
by the state from the date the trust vests but that is not more 6583  
than fifty per cent of the trust corpus. 6584

**Sec. ~~1339.62~~ 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. ~~1339.621~~ 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 6616  
agreement between the principal and the principal's spouse, does 6617  
not revive a power of attorney that is revoked under this section. 6618

**Sec. ~~1339.63~~ 5815.33.** (A) As used in this section: 6619

(1) "Beneficiary" means a beneficiary of a life insurance 6620  
policy, an annuity, a payable on death account, an individual 6621  
retirement plan, an employer death benefit plan, or another right 6622  
to death benefits arising under a contract. 6623

(2) "Employer death benefit plan" means any funded or 6624  
unfunded plan or program, or any fund, that is established to 6625  
provide the beneficiaries of an employee participating in the 6626  
plan, program, or fund with benefits that may be payable upon the 6627  
death of that employee. 6628

(3) "Individual retirement plan" means an individual 6629  
retirement account or individual retirement annuity as defined in 6630  
section 408 of the "Internal Revenue Code of 1986," 100 Stat. 6631  
2085, 26 U.S.C.A. 408, as amended. 6632

(B)(1) Unless the designation of beneficiary or the judgment 6633  
or decree granting the divorce, dissolution of marriage, or 6634  
annulment specifically provides otherwise, and subject to division 6635  
(B)(2) of this section, if a spouse designates the other spouse as 6636  
a beneficiary or if another person having the right to designate a 6637  
beneficiary on behalf of the spouse designates the other spouse as 6638  
a beneficiary, and if, after either type of designation, the 6639  
spouse who made the designation or on whose behalf the designation 6640  
was made, is divorced from the other spouse, obtains a dissolution 6641  
of marriage, or has the marriage to the other spouse annulled, 6642  
then the other spouse shall be deemed to have predeceased the 6643  
spouse who made the designation or on whose behalf the designation 6644  
was made, and the designation of the other spouse as a beneficiary 6645

is revoked as a result of the divorce, dissolution of marriage, or annulment. 6646  
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(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. 6648  
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(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: 6655  
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(1) The distribution or disposition otherwise is proper; 6662

(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. 6663  
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**Sec. ~~1339.64~~ 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 6669  
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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 6738  
for the provision of protective service under sections 5123.55 to 6739  
5123.59 of the Revised Code, when appointed by ~~an~~ and accountable 6740  
to the probate court as a guardian or trustee for a mentally 6741  
retarded or developmentally disabled person. 6742

~~(b) "Trustee" means a trustee of an inter vivos trust.~~ 6743

(2) A ~~trustee or~~ fiduciary who enters a contract as ~~trustee~~ 6744  
~~or~~ fiduciary on or after March 22, 1984, is not personally liable 6745  
on that contract, unless the contract otherwise specifies, if the 6746  
contract is within the ~~trustee's or~~ fiduciary's authority and the 6747  
~~trustee or~~ fiduciary discloses that the contract is being entered 6748  
into in ~~his trustee or~~ a fiduciary capacity. In a contract, the 6749  
words "~~trustee,~~" "~~as trustee,~~" "fiduciary," or "as fiduciary," or 6750  
other words that indicate one's ~~trustee or~~ fiduciary capacity, 6751  
following the name or signature of a trustee or fiduciary ~~shall be~~ 6752  
are sufficient disclosure for purposes of this division. 6753

(B)(1) As used in this division: 6754

~~(a) "Partnership," "partnership"~~ includes a partnership 6755  
composed of only general partners and a partnership composed of 6756  
general and limited partners. 6757

~~(b) "Revocable trust" means only a revocable trust that, by~~ 6758  
~~its terms, becomes irrevocable upon the death of the settlor of~~ 6759  
~~the trust.~~ 6760

(2) Subject to division (D) of this section, an executor, or 6761  
administrator, ~~or trustee~~ who acquires, in ~~his~~ a fiduciary 6762  
capacity, a general partnership interest upon the death of a 6763  
general partner of a partnership, ~~or a trustee of a revocable~~ 6764  
~~trust who, in his fiduciary capacity, is a general partner of a~~ 6765  
~~partnership,~~ is not personally liable for any debt, obligation, or 6766  
liability of the partnership that arises from ~~his~~ the executor's 6767  
or administrator's actions, except as provided in this division, 6768

as a general partner, or for any debt, obligation, or liability of 6769  
the partnership for which ~~he~~ the executor or administrator 6770  
otherwise would be personally liable because ~~he~~ the executor or 6771  
administrator holds the general partnership interest, if ~~he~~ the 6772  
executor or administrator discloses that the general partnership 6773  
interest is held by ~~him~~ the executor or administrator in a 6774  
fiduciary capacity. This immunity does not apply if an executor, 6775  
or administrator, ~~or trustee~~ causes loss or injury to a person who 6776  
is not a partner in the partnership, by a wrongful act or 6777  
omission. This immunity is not available to an executor, or 6778  
administrator, ~~or trustee~~ who holds a general partnership interest 6779  
in ~~his~~ a fiduciary capacity if ~~his~~ the spouse or any ~~of his~~ lineal 6780  
descendants of the executor or administrator, or the executor, or 6781  
administrator, ~~or trustee himself~~ other than in ~~his~~ a fiduciary 6782  
capacity, holds any interest in the partnership. 6783

A partnership certificate that is filed pursuant to Chapter 6784  
1777. or another chapter of the Revised Code and that indicates 6785  
that an executor, or administrator, ~~or trustee~~ holds a general 6786  
partnership interest in a fiduciary capacity by the use following 6787  
the name or signature of the executor, or administrator, ~~or~~ 6788  
~~trustee~~ of the words "executor under the will of (name of 6789  
decedent)," or "administrator of the estate of (name of 6790  
decedent)," ~~or "trustee under the (will or trust) of (name of~~ 6791  
~~decedent or settlor),"~~ or other words that indicate the 6792  
executor's, or administrator's, ~~or trustee's~~ fiduciary capacity, 6793  
constitutes a sufficient disclosure for purposes of this division. 6794

If a partnership certificate is not required to be filed 6795  
pursuant to Chapter 1777. or another chapter of the Revised Code, 6796  
a sufficient disclosure for purposes of this division can be made 6797  
by an executor, or administrator, ~~or trustee~~ if a certificate that 6798  
satisfies the following requirements is filed with the recorder of 6799  
the county in which the partnership's principal office or place of 6800

business is situated and with the recorder of each county in which 6801  
the partnership owns real estate: 6802

(a) The certificate shall state in full the names of all 6803  
persons holding interests in the partnership and their places of 6804  
residence; 6805

(b) The certificate shall be signed by all persons who are 6806  
general partners in the partnership, and shall be acknowledged by 6807  
a person authorized to take acknowledgements of deeds; 6808

(c) The certificate shall use the words "executor under the 6809  
will of (name of decedent)" or "administrator of the estate of 6810  
(name of decedent)" ~~or "trustee under the (will or trust) of~~ 6811  
~~(name of decedent or settlor),"~~ or other words that indicate the 6812  
executor's, or administrator's, ~~or trustee's~~ fiduciary capacity, 6813  
following ~~his~~ the name or signature of the executor or 6814  
administrator. 6815

A contract or other written instrument delivered to a party 6816  
that contracts with the partnership in which an executor, 6817  
administrator, or trustee holds a general partnership interest in 6818  
a fiduciary capacity, which indicates that the executor, or 6819  
administrator, ~~or trustee~~ so holds the interest, constitutes a 6820  
disclosure for purposes of this division with respect to 6821  
transactions between the party and the partnership. If a 6822  
disclosure has been made by a certificate in accordance with this 6823  
division, a disclosure for purposes of this division with respect 6824  
to such transactions exists regardless of whether a contract or 6825  
other instrument indicates the executor, or administrator, ~~or~~ 6826  
~~trustee~~ holds the general partnership interest in a fiduciary 6827  
capacity. 6828

~~If a trustee of a revocable trust, in his fiduciary capacity,~~ 6829  
~~is a general partner in a partnership, the settlor of the trust is~~ 6830  
~~personally liable for any debt, obligation, or liability of the~~ 6831

~~partnership as if he were the general partner. If an executor, or~~ 6832  
~~administrator, or trustee acquires, in his a~~ fiduciary capacity, a 6833  
general partnership interest, the decedent's estate ~~or the trust~~ 6834  
is liable for debts, obligations, or liabilities of the 6835  
partnership. 6836

(C) An estate ~~or trust~~ that includes a general partnership 6837  
interest is not liable for the debts, obligations, or liabilities 6838  
of a partnership in which another estate or trust has a general 6839  
partnership interest, merely because the executor, or 6840  
administrator, ~~or trustee~~ of the estates ~~or trusts~~ holds a general 6841  
partnership interest in both of the partnerships in ~~his~~ the 6842  
executor's or administrator's fiduciary capacities. 6843

(D) Divisions (B) and (C) of this section apply to general 6844  
partnership interests held by executors, or administrators, ~~or~~ 6845  
~~trustees~~ in their fiduciary capacities prior to and on or after 6846  
the effective date of this section. If an appropriate disclosure 6847  
is made pursuant to division (B) of this section, the immunity 6848  
acquired under that division extends only to debts, obligations, 6849  
and liabilities of the partnership arising on and after the date 6850  
of the disclosure and to debts, obligations, and liabilities of 6851  
the partnership that arose prior to the acquisition of the general 6852  
partnership interest by the executor, or administrator, ~~or trustee~~ 6853  
~~or prior to the trustee of a revocable trust~~ becoming a general 6854  
partner. 6855

**Sec. ~~1339.68~~ 5815.36.** (A) As used in this section: 6856

(1) "Disclaimant" means any person, any guardian or personal 6857  
representative of a person or estate of a person, or any 6858  
attorney-in-fact or agent of a person having a general or specific 6859  
authority to act granted in a written instrument, who is any of 6860  
the following: 6861

(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, 6923  
taking into consideration other available resources and the age, 6924  
probable life expectancy, physical and mental condition, and 6925  
present and reasonably anticipated future needs of the minor or 6926  
incompetent or the beneficiaries of the estate of the decedent. 6927

A written instrument of disclaimer ordered by the court under 6928  
this division shall be executed and be delivered, filed, or 6929  
recorded within the time and in the manner in which the person 6930  
could have disclaimed if the person were living, an adult, and 6931  
competent. 6932

(C) A partial disclaimer of property that is subject to a 6933  
burdensome interest created by the donative instrument is not 6934  
effective unless the disclaimed property constitutes a gift that 6935  
is separate and distinct from undisclaimed gifts. 6936

(D) The disclaimant shall deliver, file, or record the 6937  
disclaimer, or cause the same to be done, not later than nine 6938  
months after the latest of the following dates: 6939

(1) The effective date of the donative instrument if both the 6940  
taker and the taker's interest in the property are finally 6941  
ascertained on that date; 6942

(2) The date of the occurrence of the event upon which both 6943  
the taker and the taker's interest in the property become finally 6944  
ascertainable; 6945

(3) The date on which the disclaimant attains twenty-one 6946  
years of age or is no longer an incompetent, without tendering or 6947  
repaying any benefit received while the disclaimant was under 6948  
twenty-one years of age or an incompetent, and even if a guardian 6949  
of a minor or incompetent had filed an application pursuant to 6950  
division (B)(4) of this section and the probate division of the 6951  
court of common pleas involved did not consent to the guardian 6952  
executing a disclaimer. 6953

(E) No disclaimer instrument is effective under this section 6954  
if either of the following applies under the terms of the 6955  
disclaimer instrument: 6956

(1) The disclaimant has power to revoke the disclaimer. 6957

(2) The disclaimant may transfer, or direct to be 6958  
transferred, to self the entire legal and equitable ownership of 6959  
the property subject to the disclaimer instrument. 6960

(F)(1) Subject to division (F)(2) of this section, if the 6961  
interest disclaimed is created by a nontestamentary instrument, 6962  
the disclaimer instrument shall be delivered personally or by 6963  
certified mail to the trustee or other person who has legal title 6964  
to, or possession of, the property disclaimed. 6965

(2) If the interest disclaimed is created by a testamentary 6966  
instrument, by intestate succession, by a transfer on death deed 6967  
pursuant to section 5302.22 of the Revised Code, or by a 6968  
certificate of title to a motor vehicle, watercraft, or outboard 6969  
motor that evidences ownership of the motor vehicle, watercraft, 6970  
or outboard motor that is transferable on death pursuant to 6971  
section 2131.13 of the Revised Code, the disclaimer instrument 6972  
shall be filed in the probate division of the court of common 6973  
pleas in the county in which proceedings for the administration of 6974  
the decedent's estate have been commenced, and an executed copy of 6975  
the disclaimer instrument shall be delivered personally or by 6976  
certified mail to the personal representative of the decedent's 6977  
estate. 6978

(3) If no proceedings for the administration of the 6979  
decedent's estate have been commenced, the disclaimer instrument 6980  
shall be filed in the probate division of the court of common 6981  
pleas in the county in which proceedings for the administration of 6982  
the decedent's estate might be commenced according to law. The 6983  
disclaimer instrument shall be filed and indexed, and fees 6984



charged, in the same manner as provided by law for an application 6985  
to be appointed as personal representative to administer the 6986  
decedent's estate. The disclaimer is effective whether or not 6987  
proceedings thereafter are commenced to administer the decedent's 6988  
estate. If proceedings thereafter are commenced for the 6989  
administration of the decedent's estate, they shall be filed 6990  
under, or consolidated with, the case number assigned to the 6991  
disclaimer instrument. 6992

(4) If an interest in real estate is disclaimed, an executed 6993  
copy of the disclaimer instrument also shall be recorded in the 6994  
office of the recorder of the county in which the real estate is 6995  
located. The disclaimer instrument shall include a description of 6996  
the real estate with sufficient certainty to identify it, and 6997  
shall contain a reference to the record of the instrument that 6998  
created the interest disclaimed. If title to the real estate is 6999  
registered under Chapters 5309. and 5310. of the Revised Code, the 7000  
disclaimer interest shall be entered as a memorial on the last 7001  
certificate of title. A spouse of a disclaimant has no dower or 7002  
other interest in the real estate disclaimed. 7003

(G) Unless the donative instrument expressly provides that, 7004  
if there is a disclaimer, there shall not be any acceleration of 7005  
remainders or other interests, the property, part of property, or 7006  
interest in property disclaimed, and any future interest that is 7007  
to take effect in possession or enjoyment at or after the 7008  
termination of the interest disclaimed, shall descend, be 7009  
distributed, or otherwise be disposed of, and shall be 7010  
accelerated, in the following manner: 7011

(1) If intestate or testate succession is disclaimed, as if 7012  
the disclaimant had predeceased the decedent; 7013

(2) If the disclaimant is one designated to take pursuant to 7014  
a power of appointment exercised by a testamentary instrument, as 7015

if the disclaimant had predeceased the donee of the power; 7016

(3) If the donative instrument is a nontestamentary 7017  
instrument, as if the disclaimant had died before the effective 7018  
date of the nontestamentary instrument; 7019

(4) If the disclaimer is of a fiduciary right, power, 7020  
privilege, or immunity, as if the right, power, privilege, or 7021  
immunity was never in the donative instrument. 7022

(H) A disclaimer pursuant to this section is effective as of, 7023  
and relates back for all purposes to, the date upon which the 7024  
taker and the taker's interest have been finally ascertained. 7025

(I) A disclaimant who has a present and future interest in 7026  
property, and disclaims the disclaimant's present interest in 7027  
whole or in part, is considered to have disclaimed the 7028  
disclaimant's future interest to the same extent, unless a 7029  
contrary intention appears in the disclaimer instrument or the 7030  
donative instrument. A disclaimant is not precluded from 7031  
receiving, as an alternative taker, a beneficial interest in the 7032  
property disclaimed, unless a contrary intention appears in the 7033  
disclaimer instrument or in the donative instrument. 7034

(J) The disclaimant's right to disclaim under this section is 7035  
barred if, before the expiration of the period within which the 7036  
disclaimant may disclaim the interest, the disclaimant does any of 7037  
the following: 7038

(1) Assigns, conveys, encumbers, pledges, or transfers, or 7039  
contracts to assign, convey, encumber, pledge, or transfer, the 7040  
property or any interest in it; 7041

(2) Waives in writing the disclaimant's right to disclaim and 7042  
executes and delivers, files, or records the waiver in the manner 7043  
provided in this section for a disclaimer instrument; 7044

(3) Accepts the property or an interest in it; 7045

(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. 7076

(2) No disclaimer executed pursuant to this section destroys 7077  
or diminishes an interest in property that exists on September 27, 7078  
1976, in any person other than the disclaimant. 7079

**Sec. ~~1339.71~~ 5815.41.** As used in sections ~~1339.71~~ 5815.41 to 7080  
~~1339.78~~ 5815.48 of the Revised Code: 7081

(A) "Art dealer" means a person engaged in the business of 7082  
selling works of art, other than a person exclusively engaged in 7083  
the business of selling goods at public auction. 7084

(B) "Artist" means the creator of a work of art. 7085

(C) "On consignment" means delivered to an art dealer for the 7086  
purpose of sale or exhibition, or both, to the public by the art 7087  
dealer other than at a public auction. 7088

(D) "Work of art" means an original art work that is any of 7089  
the following: 7090

(1) A visual rendition including, but not limited to, a 7091  
painting, drawing, sculpture, mosaic, or photograph; 7092

(2) A work of calligraphy; 7093

(3) A work of graphic art, including, but not limited to, an 7094  
etching, lithograph, offset print, or silk screen; 7095

(4) A craft work in materials, including, but not limited to, 7096  
clay, textile, fiber, wood, metal, plastic, or glass; 7097

(5) A work in mixed media, including, but not limited to, a 7098  
collage or a work consisting of any combination of the items 7099  
listed in divisions (D)(1) to (4) of this section. 7100

**Sec. ~~1339.72~~ 5815.42.** If an art dealer accepts a work of art, 7101  
on a fee, commission, or other compensation basis, on consignment 7102  
from the artist who created the work of art, the following 7103

consequences attach: 7104

(A) The art dealer is, with respect to that work of art, the 7105  
agent of the artist. 7106

(B) The work of art is trust property and the art dealer is a 7107  
trustee for the benefit of the artist until the work of art is 7108  
sold to a bona fide third party or returned to the artist. 7109

(C) The proceeds of the sale of the work of art are trust 7110  
property and the art dealer is a trustee for the benefit of the 7111  
artist until the amount due the artist from the sale is paid. 7112

(D) The art dealer is strictly liable for the loss of, or 7113  
damage to, the work of art while it is in the art dealer's 7114  
possession or control. The value of the work of art is, for the 7115  
purpose of this division, the value established in the written 7116  
contract between the artist and art dealer entered into pursuant 7117  
to section ~~1339.75~~ 5815.45 of the Revised Code. 7118

**Sec. ~~1339.73~~ 5815.43.** (A) If a work of art is trust property 7119  
under section ~~1339.72~~ 5815.42 of the Revised Code when it is 7120  
initially received by the art dealer, it remains trust property, 7121  
notwithstanding the subsequent purchase of the work of art by the 7122  
art dealer directly or indirectly for the art dealer's own 7123  
account, until the purchase price specified pursuant to division 7124  
(A)(3) of section ~~1339.75~~ 5815.45 of the Revised Code is paid in 7125  
full to the artist. 7126

(B) If an art dealer resells a work of art that ~~he~~ the art 7127  
dealer purchased for ~~his~~ the art dealer's own account to a bona 7128  
fide third party before the artist has been paid in full, the work 7129  
of art ceases to be trust property and the proceeds of the resale 7130  
are trust funds in the possession or control of the art dealer for 7131  
the benefit of the artist to the extent necessary to pay any 7132  
balance still due to the artist. The trusteeship of the proceeds 7133

continues until the artist is paid in full under the contract 7134  
entered into pursuant to section ~~1339.75~~ 5815.45 of the Revised 7135  
Code. 7136

**Sec. ~~1339.74~~ 5815.44.** A work of art that is trust property 7137  
under section ~~1339.72~~ 5815.42 or ~~1339.73~~ 5815.43 of the Revised 7138  
Code is not subject to the claims, liens, or security interests of 7139  
the creditors of the art dealer, notwithstanding Chapters 1301. to 7140  
1310. of the Revised Code. 7141

**Sec. ~~1339.75~~ 5815.45.** (A) An art dealer shall not accept a 7142  
work of art, on a fee, commission, or other compensation basis, on 7143  
consignment from the artist who created the work of art unless, 7144  
prior to or at the time of acceptance, the art dealer enters into 7145  
a written contract with the artist that contains all of the 7146  
following: 7147

(1) The value of the work of art and whether it may be sold; 7148

(2) The time within which the proceeds of the sale are to be 7149  
paid to the artist, if the work of art is sold; 7150

(3) The minimum price for the sale of the work of art; 7151

(4) The fee or percentage of the sale price that is to be 7152  
paid to the art dealer for displaying or selling the work of art. 7153

(B) If an art dealer violates this section, a court, at the 7154  
request of the artist, may void the obligation of the artist to 7155  
that art dealer or to a person to whom the obligation is 7156  
transferred, other than a holder in due course. 7157

**Sec. ~~1339.76~~ 5815.46.** An art dealer who accepts a work of 7158  
art, on a fee, commission, or other compensation basis, on 7159  
consignment from the artist who created the work of art shall not 7160  
use or display the work of art or a photograph of the work of art, 7161  
or permit the use or display of the work of art or a photograph of 7162

the work of art, unless both of the following occur: 7163

~~(1)~~(A) Notice is given to users or viewers that the work of 7164  
art is the work of the artist; 7165

~~(2)~~(B) The artist gives prior written consent to the 7166  
particular use or display. 7167

**Sec. ~~1339.77~~ 5815.47.** Any portion of an agreement that waives 7168  
any provision of sections ~~1339.71~~ 5815.41 to ~~1339.78~~ 5815.48 of 7169  
the Revised Code is void. 7170

**Sec. ~~1339.78~~ 5815.48.** Any art dealer who violates section 7171  
~~1339.75~~ 5815.45 or ~~1339.76~~ 5815.46 of the Revised Code is liable 7172  
to the artist for ~~his~~ the artist's reasonable attorney's fees and 7173  
in an amount equal to the greater of either of the following: 7174

(A) Fifty dollars; 7175

(B) The actual damages, if any, including the incidental and 7176  
consequential damages, sustained by the artist by reason of the 7177  
violation. 7178

**Section 2.** That existing sections 1111.13, 1111.15, 1151.191, 7179  
1161.24, 1319.12, 1339.01, 1339.02, 1339.03, 1339.031, 1339.04, 7180  
1339.08, 1339.09, 1339.10, 1339.11, 1339.12, 1339.13, 1339.15, 7181  
1339.151, 1339.16, 1339.17, 1339.18, 1339.31, 1339.32, 1339.33, 7182  
1339.34, 1339.35, 1339.36, 1339.37, 1339.38, 1339.39, 1339.41, 7183  
1339.411, 1339.412, 1339.42, 1339.43, 1339.44, 1339.45, 1339.51, 7184  
1339.52, 1339.53, 1339.54, 1339.55, 1339.56, 1339.57, 1339.58, 7185  
1339.59, 1339.60, 1339.61, 1339.62, 1339.621, 1339.63, 1339.64, 7186  
1339.65, 1339.68, 1339.71, 1339.72, 1339.73, 1339.74, 1339.75, 7187  
1339.76, 1339.77, 1339.78, 1340.31, 1340.32, 1340.33, 1340.34, 7188  
1340.35, 1340.36, 1340.37, 1340.40, 1340.41, 1340.42, 1340.46, 7189  
1340.47, 1340.51, 1340.52, 1340.53, 1340.57, 1340.58, 1340.59, 7190  
1340.63, 1340.64, 1340.65, 1340.66, 1340.70, 1340.71, 1340.72, 7191

1340.73, 1340.74, 1340.75, 1340.76, 1340.77, 1340.81, 1340.82, 7192  
1340.83, 1340.84, 1340.85, 1340.86, 1340.90, 1340.91, 1775.03, 7193  
1775.14, 1775.15, 1775.17, 1775.33, 1782.24, 2101.24, 2107.33, 7194  
2109.37, 2109.62, 2109.68, 2111.131, 2113.861, 2305.121, 2305.22, 7195  
5111.15, 5111.151, 5119.17, 5121.04, 5121.10, 5121.30, 5121.52, 7196  
5123.04, 5123.28, and 5123.40 and sections 1335.01, 1339.14, 7197  
1339.66, 1339.67, 1339.69, 1340.21, 1340.22, and 1340.23 of the 7198  
Revised Code are hereby repealed. 7199

**Section 3.** Sections 1 and 2 of this act shall take effect on 7200  
January 1, 2007. 7201

**Section 4.** In enacting divisions (B) to (D) of section 7202  
5808.14 of the Revised Code in Section 1 of this act, the General 7203  
Assembly hereby declares its intent to codify certain fiduciary 7204  
and trust law principles, previously codified in sections 1340.21 7205  
to 1340.23 of the Revised Code, relating to a fiduciary's conflict 7206  
of interests and, in general, to provide for the exercise of 7207  
certain discretionary powers to distribute either principle or 7208  
income to a beneficiary by a beneficially interested fiduciary for 7209  
the beneficially interested fiduciary's own benefit to the extent 7210  
of an ascertainable standard. 7211

**Section 5.** Section 5123.04 of the Revised Code is presented 7212  
in this act as a composite of the section as amended by both Sub. 7213  
H.B. 670 and Am. Sub. S.B. 285 of the 121st General Assembly. The 7214  
General Assembly, applying the principle stated in division (B) of 7215  
section 1.52 of the Revised Code that amendments are to be 7216  
harmonized if reasonably capable of simultaneous operation, finds 7217  
that the composite is the resulting version of the section in 7218  
effect prior to the effective date of the section as presented in 7219  
this act. 7220