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Otterman, Patton, T., Perry, Sayre, Schaffer, Schlichter, Schneider,
Willamowski, Yuko
Senators Cates, Harris, Mumper, Kearney, Spada, Zurz, Schuler**

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To amend sections 1111.13, 1111.14, 1111.15,	1
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5119.17, 5121.04, 5121.10, 5121.30, 5121.52, 22
5123.04, 5123.28, and 5123.40; to amend, for the 23
purpose of adopting new section numbers as 24
indicated in parentheses, sections 1339.01 25
(5815.02), 1339.02 (5815.03), 1339.03 (5815.04), 26
1339.031 (5815.01), 1339.04 (5815.05), 1339.08 27
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(5812.45), 1340.85 (5812.46), 1340.86 (5812.47), 62
1340.90 (5812.51), 1340.91 (5812.52), and 2305.121 63
(5806.04); to enact sections 2109.69, 5801.01, 64
5801.011, 5801.02 to 5801.10, 5802.01 to 5802.03, 65
5803.01 to 5803.05, 5804.01 to 5804.18, 5805.01 to 66
5805.07, 5806.01 to 5806.03, 5807.01 to 5807.09, 67
5808.01, 5808.02, 5808.04, 5808.06, 5808.08 to 68
5808.17, 5809.06, 5810.01 to 5810.13, and 5811.01 69
to 5811.03; and to repeal sections 1335.01, 70
1339.14, 1339.66, 1339.67, 1339.69, 1340.21, 71
1340.22, and 1340.23 of the Revised Code to adopt 72
an Ohio trust code to modify trust company 73
collective investment fund requirements, and to 74
remove an investment limitation in the Trust 75
Company Fiduciary Law. 76

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

Section 1. That sections 1111.13, 1111.14, 1111.15, 1151.191, 77
1161.24, 1319.12, 1339.01, 1339.02, 1339.03, 1339.04, 1339.08, 78
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5119.01, 5119.17, 5121.04, 5121.10, 5121.30, 5121.52, 5123.04,	92
5123.28, and 5123.40 be amended; that sections 1339.01 (5815.02),	93
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(5812.46), 1340.86 (5812.47), 1340.90 (5812.51), 1340.91 124
(5812.52), and 2305.121 (5806.04) be amended for the purpose of 125
adopting new section numbers as indicated in parentheses; and that 126
sections 2109.69, 5801.01, 5801.011, 5801.02, 5801.03, 5801.04, 127
5801.05, 5801.06, 5801.07, 5801.08, 5801.09, 5801.10, 5802.01, 128
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5810.12, 5810.13, 5811.01, 5811.02, and 5811.03 of the Revised 139
Code be enacted to read as follows: 140

Sec. 1111.13. (A)(1) Except as provided in divisions (A)(2) 141
and (G) of this section or as otherwise provided by the instrument 142
creating the trust, a trust company acting as fiduciary under any 143
instrument and having funds of the trust which are to be invested 144
may, in addition to any other investments authorized to a trust 145

company by law, invest them in any of the following: 146

(a) Forms of investments enumerated or described in, or made 147
eligible for investment by, the Ohio Uniform Prudent Investor Act 148
and sections ~~1339.44, 1339.52 to 1339.61~~, 2109.37, 2109.371, and 149
2109.372, and 5815.26 of the Revised Code, including, but not 150
limited to, securities, stocks, bonds, or certificates of deposit 151
issued by the trust company or any bank owned or controlled by the 152
bank holding company that owns or controls the trust company. 153
~~Investment authority granted under division (A)(1)(a) of this~~ 154
~~section is subject to the limitations on investments specified in~~ 155
~~division (B) of section 2109.371 of the Revised Code.~~ 156

(b) Any collective investment fund established and maintained 157
by the trust company or by an affiliate of the trust company; 158

(c) The securities of any investment company, including any 159
affiliated investment company, whether or not the trust company 160
has invested other funds held by it in an agency or other 161
nonfiduciary capacity in the securities of the same investment 162
company or affiliated investment company. 163

(2) A trust company acting as fiduciary may not invest its 164
trust funds in stock issued by the fiduciary itself except under 165
one of the following circumstances: 166

(a) In the case of a testamentary instrument, when expressly 167
permitted by the instrument creating the relationship and 168
authorized by court order; 169

(b) In the case of an inter vivos instrument, when expressly 170
permitted by the instrument or authorized by court order and in 171
either case, only when directed to purchase or invest in the stock 172
by a cofiduciary or other person other than the trust company who 173
has the right under the terms of the instrument to direct the 174
investment; 175

(c) When exercising rights to purchase its own stock or to 176

purchase or convert securities convertible into its own stock if 177
the rights were offered pro rata to the shareholders; 178

(d) To complement fractional shares acquired when the 179
exercise of rights or receipt of a stock dividend results in 180
fractional shareholdings. 181

(3) If the law or the instrument creating a trust expressly 182
permits investment in direct obligations of the United States or 183
an agency or instrumentality of the United States, unless 184
expressly prohibited by the instrument, a trust company also may 185
invest in no front end load money market mutual funds consisting 186
exclusively of obligations of the United States or an agency or 187
instrumentality of the United States and in repurchase agreements, 188
including those issued by the trust company itself, secured by 189
obligations of the United States or an agency or instrumentality 190
of the United States, or in securities of other no load money 191
market mutual funds whose portfolios are similarly restricted; and 192
in collective investment funds established in accordance with 193
section 1111.14 of the Revised Code or by an affiliate of the 194
trust company and consisting exclusively of any direct obligations 195
of the United States or an agency or instrumentality of the United 196
States, notwithstanding division (A)(1)(c) of that section. 197

(B) A trust company acting in any fiduciary capacity or under 198
any instrument has the right to retain any part of the trust or 199
estate it receives, whether from the creator of the trust or the 200
estate, at its inception or by later addition, or by addition by 201
any other person who is authorized to make additions to the trust 202
or estate, and any investments the trust company makes. 203

(C) Except as otherwise expressly provided by the instrument 204
creating the fiduciary relationship, any trust company may 205
exercise all voting, consenting, and dissenting rights, including 206
the right to vote for the election of directors, pertaining to 207

stocks, bonds, or other securities held by it in any fiduciary capacity, including rights pertaining to stocks, bonds, or other securities issued by the trust company in its individual corporate capacity and held by it in any fiduciary capacity, provided:

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

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

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

(b) Any person acting as cofiduciary under the instrument

under which such shares are held, or if there is no such person;	239
(c) Any person, having the right of revocation or amendment of the instrument under which the shares are held.	240 241
(D) If there is more than one person having power to direct voting under division (C)(2)(a), (b), or (c) of this section and they fail to agree, each person shall have the right to direct voting with respect to the election of directors as to an equal number of shares.	242 243 244 245 246
(E) As used in this section:	247
(1) "Affiliated investment company" means any investment company that is any of the following:	248 249
(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;	250 251 252 253 254
(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;	255 256 257 258
(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;	259 260 261 262 263
(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	264 265 266 267 268

holding company that owns or controls the trust company that is 269
acting as fiduciary. 270

(2) "Cofiduciary" includes, but is not limited to, a 271
cotrustee, coexecutor, coadministrator, coguardian, co-agent, and 272
any person who, under the terms of the instrument creating the 273
fiduciary relationship, has the right or power to direct, approve 274
or consent to, or be consulted with respect to, the making, 275
retention, or sale of investments under the instrument. 276

(3) "Instrument" includes, but is not limited to, any will, 277
declaration of trust, agreement of trust, agency, or 278
custodianship, or court order creating a fiduciary relationship. 279

(4) "Reasonable fee" means compensation or payment, the 280
receipt of which would not constitute a breach of fiduciary duty 281
under section 36 of the "Investment Company Act of 1940," 54 Stat. 282
789, 15 U.S.C.A. 80a-35. 283

(F) Shares as to which the voting rights with respect to the 284
election of directors may not be exercised under this section 285
shall not be considered as outstanding for the purpose of 286
computing the voting power of the corporation or of its shares of 287
any class with respect to the election of directors. 288

(G) This section does not authorize a trust company acting as 289
a probate fiduciary to perform any act prohibited by section 290
2109.44 of the Revised Code, unless the act is authorized by the 291
instrument creating the trust. 292

(H) A trust company making an investment of trust funds in an 293
affiliated investment company, or a bank or other corporation 294
owned or controlled by the bank holding company that owns or 295
controls the trust company, may charge a reasonable fee for 296
investment advisory, brokerage, transfer agency, registrar, 297
management, shareholder servicing, custodian, or any related 298
services provided to an affiliated investment company. The fee may 299

be in addition to the compensation that the trust company is 300
otherwise entitled to receive from the trust, provided that the 301
fee is charged as a percentage of either asset value or income 302
earned or actual amount charged and is disclosed at least annually 303
by prospectus, account statement, or any other written means to 304
all persons entitled to receive statements of account activity. 305

(I) A trust company making an investment of trust funds in 306
the securities of an affiliated investment company pursuant to 307
division (A)(1)(c) of this section shall, when providing any 308
periodic account statements to the trust fund, report the net 309
asset value of the shares comprising the investment of the trust 310
fund in the affiliated investment company. 311

(J) If a trust company making an investment of trust funds in 312
the securities of an affiliated investment company pursuant to 313
division (A)(1)(c) of this section invests the funds in any mutual 314
fund, the trust company shall disclose, in at least ten-point 315
boldface type, by prospectus, account statement, or any other 316
written means to all persons entitled to receive statements of 317
account activity, that the mutual fund is not insured or 318
guaranteed by the federal deposit insurance corporation or by any 319
other government agency or government-sponsored agency of the 320
federal government or of this state. 321

Sec. 1111.14. A trust company may do any of the following: 322

(A) Collectively invest assets it holds in any fiduciary 323
capacity in any investment authorized by the superintendent of 324
financial institutions, subject to all of the following conditions 325
that apply: 326

(1) The collective investment is not prohibited by the 327
instrument, judgment, decree, or order creating the fiduciary 328
relationship for any of the following reasons: 329

(a) The investment is being made collectively;	330
(b) The character of some or all of the other fiduciary relationships for which assets are also invested;	331 332
(c) Any relationship, other than as an investing fiduciary, the trust company or any affiliate of the trust company has to the investment;	333 334 335
(d) Any relationship any other person has to the collective investment.	336 337
(2) The collective investment is a proper investment for the assets. In determining whether the collective investment is a proper investment for the assets, the collective investment shall be considered as a whole, with consideration being given to all assets held in the collective investment, and the inclusion of any asset that would not independently be a proper investment shall not be determinative.	338 339 340 341 342 343 344
(3) If the trust company is not the sole fiduciary of the assets, the trust company has procured the written consent of the cofiduciaries to the investment. Any person serving with a trust company as a cofiduciary of property in this state has the authority to consent to the investment of the property in a collective investment vehicle that either is established or managed by the cofiduciary trust company or an affiliate of the cofiduciary trust company or in which the cofiduciary participates in the formation, ownership, or operation.	345 346 347 348 349 350 351 352 353
(B) Establish and maintain one or more collective investment funds, consistent with regulations adopted by the comptroller of the currency and rules adopted by the superintendent, for the collective investment of assets held by the trust company or any of its affiliates in any fiduciary capacity, to which funds both of the following apply:	354 355 356 357 358 359

(1) The trust company may charge a reasonable fee for the 360
management of a collective investment fund, provided that the 361
~~fractional part~~ amount of the fee ~~proportionate to the interest of~~ 362
~~each participant~~ shall not, ~~when added to any other compensation~~ 363
~~charged to the participant by the managing trust company or~~ 364
~~another trust company under common control of a bank holding~~ 365
~~company,~~ exceed the total amount of compensation that would have 366
been charged to the participant an amount commensurate with the 367
value of legitimate services of tangible benefit to the 368
participant that the participant would not have received if no 369
assets of the participant had been invested in participations in 370
the fund. However, in the case of investments by a collective 371
investment fund in an affiliated investment company, the trust 372
company may charge a fee as provided in division (B)(2) of this 373
section. Any fee received by the trust company may be charged 374
either to the income or principal of the fund or apportioned 375
between them. The trust company may ~~reimburse itself out of a~~ 376
~~collective investment fund~~ charge a fee for reasonable expenses 377
incurred in the administration of the fund ~~that would have been~~ 378
~~charged to the respective participating accounts if incurred in~~ 379
~~the separate administration of the participating accounts.~~ A trust 380
company shall not charge a fee for expenses incurred in 381
establishing or reorganizing the fund. 382

(2) A collective investment fund may invest in any affiliated 383
investment company, provided that any fee that is paid to the 384
trust company or person owned or controlled by the bank holding 385
company that owns or controls the trust company is a reasonable 386
fee for the services provided. Any such fee may be in addition to 387
compensation ~~to which~~ that the trust company ~~or person~~ is 388
otherwise entitled to receive ~~from the trust.~~ 389

A collective investment fund that invests in an affiliated 390
investment company shall, when providing any periodic account 391

statements to the trust fund, report the net asset value of the 392
shares comprising the investment of the trust fund in the 393
affiliated investment company. 394

If a collective investment fund ~~that~~ invests in an affiliated 395
investment company ~~invests in any mutual fund~~, the collective 396
investment fund shall disclose, in at least ten-point boldface 397
type, by prospectus, by annual account statement, or by any other 398
written means to all persons entitled to receive statements of 399
account activity, that the ~~mutual fund~~ affiliated investment
company is not insured or guaranteed by the federal deposit 400
insurance corporation or by any other government agency or 401
government-sponsored agency of the federal government or of this 402
state. 403
404

(C) Participate in the formation, ownership, or operation of 405
one or more fiduciary investment companies established and 406
operated in accordance with rules adopted by the superintendent. 407

Sec. 1111.15. (A) A trust company acting in any fiduciary 408
capacity, including, but not limited to, the capacities described 409
in section 1111.11 of the Revised Code, may purchase any service 410
or product, including, but not limited to, insurance or securities 411
underwritten or otherwise distributed by the trust company or by 412
an affiliate, through or directly from the trust company or an 413
affiliate or from a syndicate or selling group that includes the 414
trust company or an affiliate, provided that the purchase is 415
otherwise prudent under ~~sections 1339.52 to 1339.61 of the Revised~~
~~Code~~ Ohio Uniform Prudent Investor Act and the compensation for 416
the service or product is reasonable and is not prohibited by the 417
instrument governing the fiduciary relationship. The compensation 418
for the service or product may be in addition to the compensation 419
that the trust company is otherwise entitled to receive from the 420
fiduciary account. 421
422

(B) A trust company shall disclose at least annually any 423
purchase authorized by this section that was made by the trust 424
company during that reporting period. The disclosure shall be 425
given, in writing or electronically, to all persons entitled to 426
receive statements of account activity, and shall include any 427
capacities in which the trust company or an affiliate acts for the 428
issuer of the securities or the provider of the products or 429
services and the fact that the trust company or an affiliate may 430
have an interest in the products or services. 431

(C) This section shall apply to the purchase of securities 432
made at the time of the initial offering of the securities or at 433
any time thereafter. 434

Sec. 1151.191. (A) A building and loan association may serve 435
as trustee of any trust which qualifies, at the time the 436
association becomes trustee, for tax treatment under section 401 437
or 408 of the Internal Revenue Code. The association may invest 438
the funds of any such trust in savings accounts or deposits of a 439
domestic building and loan association or in equity or debt 440
securities issued by a domestic building and loan association. 441

(B) Whenever any deposit or stock deposit is made in a 442
building and loan association by any person in trust for another 443
and no further notice of the existence and terms of a legal and 444
valid trust is given in writing to such association, such deposit 445
or stock deposit or any part thereof together with the dividends 446
or interest thereon may in the event of the death of the trustee 447
be paid to the person for whom the deposit or stock deposit was 448
made. 449

~~Whenever any deposit or stock deposit is made in the name of 450
another as trustee for the depositor accompanied by a declaration 451
of trust, any trust created thereby shall not be invalid by reason 452
of section 1335.01 of the Revised Code. 453~~

(C) Any funds held in trust as authorized by division (A) or 454
(B) of this section may be commingled by the trustee association 455
in one or more accounts. Whenever individual trust funds are 456
commingled, separate records shall be maintained by the trustee 457
association for each trust account comprising the commingled fund. 458

(D) Exercise of the limited trust power granted associations 459
by this section shall not be subject to regulation other than by 460
the superintendent of building and loan associations pursuant to 461
Chapters 1151., 1153., 1155., and 1157. of the Revised Code. 462

Sec. 1161.24. (A) A savings bank may serve as trustee of any 463
trust that qualifies, at the time the savings bank becomes 464
trustee, for tax treatment under section 401 or 408 of the 465
"Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as 466
amended. The savings bank may invest the funds of any such trust 467
in savings accounts or deposits of a domestic savings bank or in 468
equity or debt securities issued by a domestic savings bank. 469

(B)~~(1)~~ Whenever any deposit or stock deposit is made in a 470
savings bank by any person in trust for another and no further 471
notice of the existence and terms of a legal and valid trust is 472
given in writing to the savings bank, the deposit or stock deposit 473
or any part thereof together with the dividends or interest 474
thereon, in the event of the death of the trustee, may be paid to 475
the person for whom the deposit or stock deposit was made. 476

~~(2) Whenever any deposit or stock deposit is made in the name 477
of another as trustee for the depositor accompanied by a 478
declaration of trust, any trust created thereby shall not be 479
invalid by reason of section 1335.01 of the Revised Code. 480~~

(C) Any funds held in trust as authorized by division (A) or 481
(B) of this section may be commingled by the trustee savings bank 482
in one or more accounts. Whenever individual trust funds are 483

commingled, separate records shall be maintained by the trustee 484
savings bank for each trust account comprising the commingled 485
fund. 486

(D) Exercise of the limited trust power granted savings banks 487
by this section is not subject to regulation other than by the 488
superintendent of savings banks pursuant to this chapter and 489
Chapters 1163. and 1165. of the Revised Code. 490

Sec. 1319.12. (A)(1) As used in this section, "collection 491
agency" means any person who, for compensation, contingent or 492
otherwise, or for other valuable consideration, offers services to 493
collect an alleged debt asserted to be owed to another. 494

(2) "Collection agency" does not mean a person whose 495
collection activities are confined to and directly related to the 496
operation of another business, including, but not limited to, the 497
following: 498

(a) Any bank, including the trust department of a bank, trust 499
company, savings and loan association, savings bank, credit union, 500
or fiduciary as defined in section ~~1339.03~~ 5815.04 of the Revised 501
Code, except those that own or operate a collection agency; 502

(b) Any real estate broker or real estate salesperson, as 503
defined in section 4735.01 of the Revised Code; 504

(c) Any retail seller collecting its own accounts; 505

(d) Any insurance company authorized to do business in this 506
state under Title XXXIX of the Revised Code or a health insuring 507
corporation authorized to operate in this state under Chapter 508
1751. of the Revised Code; 509

(e) Any public officer or judicial officer acting under order 510
of a court; 511

(f) Any licensee as defined either in section 1321.01 or 512

1321.71 of the Revised Code, or any registrant as defined in 513
section 1321.51 of the Revised Code; 514

(g) Any public utility; 515

(h) Any person registered to sell interment rights under 516
section 4767.031 of the Revised Code. 517

(B) A collection agency with a place of business in this 518
state may take assignment of another person's accounts, bills, or 519
other evidences of indebtedness in its own name for the purpose of 520
billing, collecting, or filing suit in its own name as the real 521
party in interest. 522

(C) No collection agency shall commence litigation for the 523
collection of an assigned account, bill, or other evidence of 524
indebtedness unless it has taken the assignment in accordance with 525
all of the following requirements: 526

(1) The assignment was voluntary, properly executed, and 527
acknowledged by the person transferring title to the collection 528
agency. 529

(2) The collection agency did not require the assignment as a 530
condition to listing the account, bill, or other evidence of 531
indebtedness with the collection agency for collection. 532

(3) The assignment was manifested by a written agreement 533
separate from and in addition to any document intended for the 534
purpose of listing the account, bill, or other evidence of 535
indebtedness with the collection agency. The written agreement 536
shall state the effective date of the assignment and the 537
consideration paid or given, if any, for the assignment and shall 538
expressly authorize the collection agency to refer the assigned 539
account, bill, or other evidence of indebtedness to an attorney 540
admitted to the practice of law in this state for the commencement 541
of litigation. The written agreement also shall disclose that the 542

collection agency may consolidate, for purposes of filing an 543
action, the assigned account, bill, or other evidence of 544
indebtedness with those of other creditors against an individual 545
debtor or co-debtors. 546

(4) Upon the effective date of the assignment to the 547
collection agency, the creditor's account maintained by the 548
collection agency in connection with the assigned account, bill, 549
or other evidence of indebtedness was canceled. 550

(D) A collection agency shall commence litigation for the 551
collection of an assigned account, bill, or other evidence of 552
indebtedness in a court of competent jurisdiction located in the 553
county in which the debtor resides, or in the case of co-debtors, 554
a county in which at least one of the co-debtors resides. 555

(E) No collection agency shall commence any litigation 556
authorized by this section unless the agency appears by an 557
attorney admitted to the practice of law in this state. 558

(F) This section does not affect the powers and duties of any 559
person described in division (A)(2) of this section. 560

(G) Nothing in this section relieves a collection agency from 561
complying with the "Fair Debt Collection Practices Act," 91 Stat. 562
874 (1977), 15 U.S.C. 1692, as amended, or deprives any debtor of 563
the right to assert defenses as provided in section 1317.031 of 564
the Revised Code and 16 C.F.R. 433, as amended. 565

(H) For purposes of filing an action, a collection agency 566
that has taken an assignment or assignments pursuant to this 567
section may consolidate the assigned accounts, bills, or other 568
evidences of indebtedness of one or more creditors against an 569
individual debtor or co-debtors. Each separate assigned account, 570
bill, or evidence of indebtedness must be separately identified 571
and pled in any consolidated action authorized by this section. If 572
a debtor or co-debtor raises a good faith dispute concerning any 573

account, bill, or other evidence of indebtedness, the court shall
separate each disputed account, bill, or other evidence of
indebtedness from the action and hear the disputed account, bill,
or other evidence of indebtedness on its own merits in a separate
action. The court shall charge the filing fee of the separate
action to the losing party.

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

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

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

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

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

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

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

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

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

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

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

(D) A partner in a registered limited liability partnership is not a proper party to an action or proceeding by or against a registered limited liability partnership with respect to any debt, obligation, or other liability of any kind described in division

(B) of this section, unless the partner is liable under divisions 634
(C)(1) and (2) of this section. 635

Sec. 1775.15. (A) Subject to section ~~1339.65~~ 5815.35 of the 636
Revised Code, when a person, by words spoken or written or by 637
conduct, represents ~~himself~~ self, or consents to another 638
representing ~~him~~ the person to anyone, as a partner in an existing 639
partnership or with one or more persons not actual partners, ~~he~~ 640
that person is liable to any such person to whom such 641
representation has been made, who has, on the faith of such 642
representation, given credit to the actual or apparent 643
partnership, and if ~~he~~ the person has made such representation or 644
consented to its being made in a public manner ~~he~~ the person is 645
liable to ~~such~~ the person to whom such representation has been 646
made, whether the representation has or has not been made or 647
communicated to such person so giving credit by or with the 648
knowledge of the apparent partner making the representation or 649
consenting to its being made. 650

(1) When a partnership liability results, ~~he~~ the person who 651
represented self as a partner or consented to another's making 652
such representation is liable as though ~~he~~ the person were an 653
actual member of the partnership. 654

(2) When no partnership liability results, ~~he~~ the person who 655
represented self as a partner or consented to another's making 656
such representation is liable jointly with the other persons, if 657
any, so consenting to the contract or representation as to incur 658
liability, otherwise separately. 659

(B) When a person has been thus represented to be a partner 660
in an existing partnership, or with one or more persons not actual 661
partners, ~~he~~ the person so represented is an agent of the persons 662
consenting to such representation to bind them to the same extent 663
and in the same manner as though ~~he~~ the person so represented were 664

a partner in fact, with respect to persons who rely upon the 665
representation. Where all the members of the existing partnership 666
consent to the representation, a partnership act or obligation 667
results; but in all other cases it is the joint act or obligation 668
of the person acting and the persons consenting to the 669
representation. 670

Sec. 1775.17. The rights and duties of the partners in 671
relation to the partnership shall be determined, subject to any 672
agreement between them, by the following rules: 673

(A) Each partner shall be repaid the partner's contribution, 674
whether by way of capital or advances, to the partnership property 675
and share equally in the profits and surplus remaining after all 676
liabilities, including those to partners, are satisfied; and each 677
partner, subject to section ~~1339.65~~ 5815.35 of the Revised Code 678
and to division (B) of section 1775.14 of the Revised Code, must 679
contribute toward the losses, whether of capital or otherwise, 680
sustained by the partnership according to the partner's share in 681
the profits. 682

(B) The partnership must indemnify every partner in respect 683
of payments made and personal liabilities reasonably incurred by 684
the partner in the ordinary and proper conduct of its business, or 685
for the preservation of its business or property. 686

(C) A partner, who in aid of the partnership makes any 687
payment or advance beyond the amount of capital which the partner 688
agreed to contribute, shall be paid interest from the date of the 689
payment or advance. 690

(D) A partner shall receive interest on the capital 691
contributed by the partner only from the date when repayment 692
should be made. 693

(E) All partners have equal rights in the management and 694

conduct of the partnership business. 695

(F) No partner is entitled to remuneration for acting in the 696
partnership business, except that a surviving partner is entitled 697
to reasonable compensation for the partner's services in winding 698
up the partnership affairs. 699

(G) No person can become a member of a partnership without 700
the consent of all the partners. 701

(H) Any difference arising as to ordinary matters connected 702
with the partnership business may be decided by a majority of the 703
partners; but no act in contravention of any agreement between the 704
partners may be done rightfully without the consent of all the 705
partners. 706

Sec. 1775.33. Where the dissolution is caused by the act, 707
death, or bankruptcy of a partner, but subject to section ~~1339.65~~ 708
5815.35 of the Revised Code and to division (B) of section 1775.14 709
of the Revised Code, each partner is liable to the other partners 710
for the partner's share of any liability created by any partner 711
acting for the partnership as if the partnership had not been 712
dissolved unless: 713

(A) The dissolution being by act of any partner, the partner 714
acting for the partnership had knowledge of the dissolution; 715

(B) The dissolution being by the death or bankruptcy of a 716
partner, the partner acting for the partnership had knowledge or 717
notice of the death or bankruptcy. 718

Sec. 1782.24. (A) Except as otherwise provided in this 719
chapter, the partnership agreement, or section ~~1339.65~~ 5815.35 of 720
the Revised Code, a general partner of a limited partnership shall 721
have all the rights and powers and be subject to all the 722
restrictions and liabilities of a partner in a partnership without 723

limited partners. 724

(B) Except as otherwise provided in this chapter, a general 725
partner of a limited partnership has the liabilities of a partner 726
in a partnership without limited partners to persons other than 727
the partnership and the other partners. Except as otherwise 728
provided in this chapter or the partnership agreement, a general 729
partner of a limited partnership has the liabilities of a partner 730
in a partnership without limited partners to the partnership and 731
to the other partners. 732

Sec. 2101.24. (A)(1) Except as otherwise provided by law, the 733
probate court has exclusive jurisdiction: 734

(a) To take the proof of wills and to admit to record 735
authenticated copies of wills executed, proved, and allowed in the 736
courts of any other state, territory, or country. If the probate 737
judge is unavoidably absent, any judge of the court of common 738
pleas may take proof of wills and approve bonds to be given, but 739
the record of these acts shall be preserved in the usual records 740
of the probate court. 741

(b) To grant and revoke letters testamentary and of 742
administration; 743

(c) To direct and control the conduct and settle the accounts 744
of executors and administrators and order the distribution of 745
estates; 746

(d) To appoint the attorney general to serve as the 747
administrator of an estate pursuant to section 2113.06 of the 748
Revised Code; 749

(e) To appoint and remove guardians, conservators, and 750
testamentary trustees, direct and control their conduct, and 751
settle their accounts; 752

(f) To grant marriage licenses; 753

(g) To make inquests respecting persons who are so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that they are unable to manage their property and affairs effectively, subject to guardianship;	754 755 756 757 758
(h) To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts;	759 760 761
(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;	762 763 764 765
(j) To authorize the completion of real estate contracts on petition of executors and administrators;	766 767
(k) To construe wills;	768
(l) To render declaratory judgments, including, but not limited to, those rendered pursuant to section 2107.084 of the Revised Code;	769 770 771
(m) To direct and control the conduct of fiduciaries and settle their accounts;	772 773
(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;	774 775
(o) To terminate a testamentary trust in any case in which a court of equity may do so;	776 777
(p) To hear and determine actions to contest the validity of wills;	778 779
(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;	780 781 782

(r) To hear and determine an action commenced pursuant to	783
section 3107.41 of the Revised Code to obtain the release of	784
information pertaining to the birth name of the adopted person and	785
the identity of the adopted person's biological parents and	786
biological siblings;	787
(s) To act for and issue orders regarding wards pursuant to	788
section 2111.50 of the Revised Code;	789
(t) To hear and determine actions against sureties on the	790
bonds of fiduciaries appointed by the probate court;	791
(u) To hear and determine actions involving informed consent	792
for medication of persons hospitalized pursuant to section	793
5122.141 or 5122.15 of the Revised Code;	794
(v) To hear and determine actions relating to durable powers	795
of attorney for health care as described in division (D) of	796
section 1337.16 of the Revised Code;	797
(w) To hear and determine actions commenced by objecting	798
individuals, in accordance with section 2133.05 of the Revised	799
Code;	800
(x) To hear and determine complaints that pertain to the use	801
or continuation, or the withholding or withdrawal, of	802
life-sustaining treatment in connection with certain patients	803
allegedly in a terminal condition or in a permanently unconscious	804
state pursuant to division (E) of section 2133.08 of the Revised	805
Code, in accordance with that division;	806
(y) To hear and determine applications that pertain to the	807
withholding or withdrawal of nutrition and hydration from certain	808
patients allegedly in a permanently unconscious state pursuant to	809
section 2133.09 of the Revised Code, in accordance with that	810
section;	811
(z) To hear and determine applications of attending	812

physicians in accordance with division (B) of section 2133.15 of 813
the Revised Code; 814

(aa) To hear and determine actions relative to the use or 815
continuation of comfort care in connection with certain principals 816
under durable powers of attorney for health care, declarants under 817
declarations, or patients in accordance with division (E) of 818
either section 1337.16 or 2133.12 of the Revised Code; 819

(bb) To hear and determine applications for an order 820
relieving an estate from administration under section 2113.03 of 821
the Revised Code; 822

(cc) To hear and determine applications for an order granting 823
a summary release from administration under section 2113.031 of 824
the Revised Code. 825

(2) In addition to the exclusive jurisdiction conferred upon 826
the probate court by division (A)(1) of this section, the probate 827
court shall have exclusive jurisdiction over a particular subject 828
matter if both of the following apply: 829

(a) Another section of the Revised Code expressly confers 830
jurisdiction over that subject matter upon the probate court. 831

(b) No section of the Revised Code expressly confers 832
jurisdiction over that subject matter upon any other court or 833
agency. 834

(B)(1) The probate court has concurrent jurisdiction with, 835
and the same powers at law and in equity as, the general division 836
of the court of common pleas to issue writs and orders, and to 837
hear and determine actions as follows: 838

(a) If jurisdiction relative to a particular subject matter 839
is stated to be concurrent in a section of the Revised Code or has 840
been construed by judicial decision to be concurrent, any action 841
that involves that subject matter; 842

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

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

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

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

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

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

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

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

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

(5) By some other writing that is signed, attested, and 872
subscribed in the manner provided by this chapter. 873

(B) A will that has been declared valid and is in the 874
possession of a probate judge also may be revoked according to 875
division (C) of section 2107.084 of the Revised Code. 876

(C) If a testator removes a will that has been declared valid 877
and is in the possession of a probate judge pursuant to section 878
2107.084 of the Revised Code from the possession of the judge, the 879
declaration of validity that was rendered no longer has any 880
effect. 881

(D) If after executing a will, a testator is divorced, 882
obtains a dissolution of marriage, has the testator's marriage 883
annulled, or, upon actual separation from the testator's spouse, 884
enters into a separation agreement pursuant to which the parties 885
intend to fully and finally settle their prospective property 886
rights in the property of the other, whether by expected 887
inheritance or otherwise, any disposition or appointment of 888
property made by the will to the former spouse or to a trust with 889
powers created by or available to the former spouse, any provision 890
in the will conferring a general or special power of appointment 891
on the former spouse, and any nomination in the will of the former 892
spouse as executor, trustee, or guardian shall be revoked unless 893
the will expressly provides otherwise. 894

(E) Property prevented from passing to a former spouse or to 895
a trust with powers created by or available to the former spouse 896
because of revocation by this section shall pass as if the former 897
spouse failed to survive the decedent, and other provisions 898
conferring some power or office on the former spouse shall be 899
interpreted as if the spouse failed to survive the decedent. If 900
provisions are revoked solely by this section, they shall be 901
deemed to be revived by the testator's remarriage with the former 902

spouse or upon the termination of a separation agreement executed 903
by them. 904

(F) A bond, agreement, or covenant made by a testator, for a 905
valuable consideration, to convey property previously devised or 906
bequeathed in a will does not revoke the devise or bequest. The 907
property passes by the devise or bequest, subject to the remedies 908
on the bond, agreement, or covenant, for a specific performance or 909
otherwise, against the devisees or legatees, that might be had by 910
law against the heirs of the testator, or the testator's next of 911
kin, if the property had descended to them. 912

(G) A testator's revocation of a will shall be valid only if 913
the testator, at the time of the revocation, has the same capacity 914
as the law requires for the execution of a will. 915

(H) As used in this section: 916

(1) "Trust with powers created by or available to the former 917
spouse" means a trust that is revocable by the former spouse, with 918
respect to which the former spouse has a power of withdrawal, or 919
with respect to which the former spouse may take a distribution 920
that is not subject to an ascertainable standard but does not mean 921
a trust in which those powers of the former spouse are revoked by 922
section ~~1339.62~~ 5815.31 of the Revised Code or similar provisions 923
in the law of another state. 924

(2) "Ascertainable standard" means a standard that is related 925
to a trust beneficiary's health, maintenance, support, or 926
education. 927

Sec. 2109.24. The probate court at any time may accept the 928
resignation of any fiduciary upon the fiduciary's proper 929
accounting, if the fiduciary was appointed by, is under the 930
control of, or is accountable to the court. 931

If a fiduciary fails to make and file an inventory as 932

required by sections 2109.58, 2111.14, and 2115.02 of the Revised Code or to render a just and true account of the fiduciary's administration at the times required by section 2109.301, 2109.302, or 2109.303 of the Revised Code, and if the failure continues for thirty days after the fiduciary has been notified by the court of the expiration of the relevant time, the fiduciary forthwith may be removed by the court and shall receive no allowance for the fiduciary's services unless the court enters upon its journal its findings that the delay was necessary and reasonable.

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

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

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

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

(2) Bonds or other interest-bearing obligations of any

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

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

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

(5) Notes which are: (a) secured by a first mortgage on real
estate held in fee and located in the state, improved by a unit
designed principally for residential use for not more than four
families or by a combination of such dwelling unit and business
property, the area designed or used for nonresidential purposes
not to exceed fifty per cent of the total floor area; (b) secured
by a first mortgage on real estate held in fee and located in the
state, improved with a building designed for residential use for
more than four families or with a building used primarily for
business purposes, if the unpaid principal of the notes secured by

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

(6) Life, endowment, or annuity contracts of legal reserve
life insurance companies regulated by sections 3907.01 to 3907.21,
3909.01 to 3909.17, 3911.01 to 3911.24, 3913.01 to 3913.10,
3915.01 to 3915.15, and 3917.01 to 3917.05 of the Revised Code,
and licensed by the superintendent of insurance to transact
business within the state, provided that the purchase of contracts
authorized by this division shall be limited to executors or the
successors to their powers when specifically authorized by will

and to guardians and trustees, which contracts may be issued on 1027
the life of a ward, a beneficiary of a trust fund, or according to 1028
a will, or upon the life of a person in whom such ward or 1029
beneficiary has an insurable interest and the contracts shall be 1030
drawn by the insuring company so that the proceeds shall be the 1031
sole property of the person whose funds are so invested; 1032

(7) Notes or bonds secured by mortgages and insured by the 1033
federal housing administrator or debentures issued by such 1034
administrator; 1035

(8) Obligations issued by a federal home loan bank created 1036
under the "Federal Home Loan Bank Act of 1932," 47 Stat. 725, 12 1037
U.S.C.A. 1421, as amended; 1038

(9) Shares and certificates or other evidences of deposits 1039
issued by a federal savings and loan association organized and 1040
incorporated under the "Home Owners' Loan Act of 1933," 48 Stat. 1041
128, 12 U.S.C.A. 1461, as amended, to the extent and only to the 1042
extent that those shares or certificates or other evidences of 1043
deposits are insured pursuant to the "Financial Institutions 1044
Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12 1045
U.S.C.A. 1811, as amended; 1046

(10) Bonds issued by the home owners' loan corporation 1047
created under the "Home Owners' Act of 1933," 48 Stat. 128, 12 1048
U.S.C.A. 1461, as amended; 1049

(11) Obligations issued by the national mortgage association 1050
created under the "National Housing Act," 48 Stat. 1246 (1934), 12 1051
U.S.C.A. 1701, as amended; 1052

(12) Shares and certificates or other evidences of deposits 1053
issued by a domestic savings and loan association organized under 1054
the laws of the state, which association has obtained insurance of 1055
accounts pursuant to the "Financial Institutions Reform, Recovery, 1056
and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as 1057

amended, or as may be otherwise provided by law, only to the 1058
extent that such evidences of deposits are insured under that act, 1059
as amended; 1060

(13) Shares and certificates or other evidences of deposits 1061
issued by a domestic savings and loan association organized under 1062
the laws of the state, provided that no fiduciary may invest such 1063
deposits except with the approval of the probate court, and then 1064
in an amount not to exceed the amount which the fiduciary is 1065
permitted to invest under division (A)(12) of this section; 1066

(14) In savings accounts in, or certificates or other 1067
evidences of deposits issued by, a national bank located in the 1068
state or a state bank located in and organized under the laws of 1069
the state by depositing the funds in the bank, and such national 1070
or state bank when itself acting in a fiduciary capacity may 1071
deposit the funds in savings accounts in, or certificates or other 1072
evidences of deposits issued by, its own savings department or any 1073
bank subsidiary corporation owned or controlled by the bank 1074
holding company that owns or controls such national or state bank; 1075
provided that no deposit shall be made by any fiduciary, 1076
individual, or corporate, unless the deposits of the depository 1077
bank are insured by the federal deposit insurance corporation 1078
created under the "Federal Deposit Insurance Corporation Act of 1079
1933," 48 Stat. 162, 12 U.S.C. 264, as amended, and provided that 1080
the deposit of the funds of any one trust in any such savings 1081
accounts in, or certificates or other evidences of deposits issued 1082
by, any one bank shall not exceed the sum insured under that act, 1083
as amended; 1084

(15) Obligations consisting of notes, bonds, debentures, or 1085
equipment trust certificates issued under an indenture, which are 1086
the direct obligations, or in the case of equipment trust 1087
certificates are secured by direct obligations, of a railroad or 1088
industrial corporation, or a corporation engaged directly and 1089

primarily in the production, transportation, distribution, or sale
of electricity or gas, or the operation of telephone or telegraph
systems or waterworks, or in some combination of them; provided
that the obligor corporation is one which is incorporated under
the laws of the United States, any state, or the District of
Columbia, and the obligations are rated at the time of purchase in
the highest or next highest classification established by at least
two standard rating services selected from a list of the standard
rating services which shall be prescribed by the superintendent of
financial institutions; provided that every such list shall be
certified by the superintendent to the clerk of each probate court
in the state, and shall continue in effect until a different list
is prescribed and certified as provided in this division;

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

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

reducing risk of loss or of stabilizing investment returns, engage 1122
in hedging transactions. 1123

(B) No administrator or executor may invest funds belonging 1124
to an estate in any asset other than a direct obligation of the 1125
United States that has a maturity date not exceeding one year from 1126
the date of investment, or other than in a short-term investment 1127
fund that is invested exclusively in obligations of the United 1128
States or of its agencies, or primarily in such obligations and 1129
otherwise only in variable demand notes, corporate money market 1130
instruments including, but not limited to, commercial paper, or 1131
fully collateralized repurchase agreements or other evidences of 1132
indebtedness that are payable on demand or generally have a 1133
maturity date not exceeding ninety-one days from the date of 1134
investment, except with the approval of the probate court or with 1135
the permission of the instruments creating the trust. 1136

(C)(1) In addition to the investments allowed by this 1137
section, a guardian or trustee, with the approval of the court, 1138
may invest funds belonging to the trust in productive real estate 1139
located within the state, provided that neither the guardian nor 1140
the trustee nor any member of the family of either has any 1141
interest in such real estate or in the proceeds of the purchase 1142
price. The title to any real estate so purchased by a guardian 1143
must be taken in the name of the ward. 1144

(2) Notwithstanding the provisions of division (C)(1) of this 1145
section, the court may permit the funds to be used to purchase or 1146
acquire a home for the ward or an interest in a home for the ward 1147
in which a member of the ward's family may have an interest. 1148

(D) If the fiduciary is a trustee appointed by and 1149
accountable to the probate court, the fiduciary shall invest the 1150
trust's assets pursuant to the requirements and standards set 1151
forth in ~~sections 1339.52 to 1339.61~~ of the Revised Code Ohio 1152

<u>Uniform Prudent Investor Act.</u>	1153
Sec. 2109.62. (A)(1) Upon the filing of a motion by a trustee	1154
with the court that has jurisdiction over the trust, upon the	1155
provision of reasonable notice to all beneficiaries who are known	1156
and in being and who have vested or contingent interests in the	1157
trust, and after holding a hearing, the court may terminate the	1158
trust, in whole or in part, if it determines that all of the	1159
following apply:	1160
(a) It is no longer economically feasible to continue the	1161
trust.	1162
(b) The termination of the trust is for the benefit of the	1163
beneficiaries.	1164
(c) The termination of the trust is equitable and practical.	1165
(d) The current value of the trust is less than one hundred	1166
thousand dollars.	1167
(2) The existence of a spendthrift or similar provision in a	1168
trust instrument or will does not preclude the termination of a	1169
trust pursuant to this section.	1170
(B) If property is to be distributed from an estate being	1171
probated to a trust and the termination of the trust pursuant to	1172
this section does not clearly defeat the intent of the testator,	1173
the probate court has jurisdiction to order the outright	1174
distribution of the property or to make the property custodial	1175
property under sections 1339.31 <u>5814.01</u> to 1339.39 <u>5814.09</u> of the	1176
Revised Code. A probate court may so order whether the application	1177
for the order is made by an inter vivos trustee named in the will	1178
of the decedent or by a testamentary trustee.	1179
(C) Upon the termination of a trust pursuant to this section,	1180
the probate court shall order the distribution of the trust estate	1181
in accordance with any provision specified in the trust instrument	1182

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

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

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

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

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

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

Sec. 2109.69. (A) Subject to division (B) of this section,

the provisions of Chapters 5801. to 5811. of the Revised Code 1213
apply to testamentary trusts except to the extent that any 1214
provision of those chapters conflicts with any provision of 1215
Chapter 2109. of the Revised Code, or with any other provision of 1216
the Revised Code, that applies specifically to testamentary trusts 1217
and except to the extent that any provision of Chapters 5801. to 1218
5811. of the Revised Code is clearly inapplicable to testamentary 1219
trusts. 1220

(B) Section 5808.13 of the Revised Code applies to 1221
testamentary trusts whether or not that section conflicts with any 1222
provision of Chapter 2109. of the Revised Code or any other 1223
provision of the Revised Code that applies specifically to 1224
testamentary trusts. 1225

Sec. 2111.131. (A) The probate court may enter an order that 1226
authorizes a person under a duty to pay or deliver money or 1227
personal property to a minor who does not have a guardian of the 1228
person and estate or a guardian of the estate, to perform that 1229
duty in amounts not exceeding five thousand dollars annually, by 1230
paying or delivering the money or property to any of the 1231
following: 1232

(1) The guardian of the person only of the minor; 1233

(2) The minor's natural guardians, if any, as determined 1234
pursuant to section 2111.08 of the Revised Code; 1235

(3) The ~~minor himself~~ minor's own self; 1236

(4) Any person who has the care and custody of the minor and 1237
with whom the minor resides, other than a guardian of the person 1238
only or a natural guardian; 1239

(5) A financial institution incident to a deposit in a 1240
federally insured savings account in the sole name of the minor; 1241

(6) A custodian designated by the court in its order, for the 1242
minor under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 1243
Revised Code. 1244

(B) An order entered pursuant to division (A) of this section 1245
authorizes the person or entity specified in it, to receive the 1246
money or personal property on behalf of the minor from the person 1247
under the duty to pay or deliver it, in amounts not exceeding five 1248
thousand dollars annually. Money or personal property so received 1249
by guardians of the person only, natural guardians, and custodians 1250
as described in division (A)(4) of this section may be used by 1251
them only for the support, maintenance, or education of the minor 1252
involved. The order of the court is prima-facie evidence that a 1253
guardian of the person only, a natural guardian, or a custodian as 1254
described in division (A)(4) of this section has the authority to 1255
use the money or personal property received. 1256

(C) A person who pays or delivers moneys or personal property 1257
in accordance with a court order entered pursuant to division (A) 1258
of this section is not responsible for the proper application of 1259
the moneys or property by the recipient. 1260

Sec. 2113.861. Except as provided in section ~~1339.45~~ 5815.27 1261
of the Revised Code, the generation-skipping transfer tax imposed 1262
by Chapter 13 of subtitle B of the Internal Revenue Code of 1986, 1263
100 Stat. 2718, 26 U.S.C. 2601-2624, as amended, and the 1264
generation-skipping tax levied by division (B) of section 5731.181 1265
of the Revised Code shall be apportioned in the manner described 1266
in section 2113.86 of the Revised Code. 1267

Sec. 2305.22. Sections 2305.03 to 2305.21, 1302.98, and 1268
1304.35 of the Revised Code, respecting lapse of time as a bar to 1269
suit, do not apply in the case of ~~a continuing and subsisting~~ 1270
~~trust, nor to~~ an action by a vendee of real property, in 1271

possession thereof, to obtain a conveyance of ~~it~~ the real 1272
property. 1273

Sec. 5111.15. If a recipient of medical assistance is the 1274
beneficiary of a trust created pursuant to section ~~1339.51~~ 5815.28 1275
of the Revised Code, then, notwithstanding any contrary provision 1276
of this chapter or of a rule adopted pursuant to this chapter, 1277
divisions (C) and (D) of that section shall apply in determining 1278
the assets or resources of the recipient, the recipient's estate, 1279
the settlor, or the settlor's estate and to claims arising under 1280
this chapter against the recipient, the recipient's estate, the 1281
settlor, or the settlor's estate. 1282

Sec. 5111.151. (A) This section applies to eligibility 1283
determinations for all cases involving medicaid provided pursuant 1284
to this chapter, qualified medicare beneficiaries, specified 1285
low-income medicare beneficiaries, qualifying individuals-1, 1286
qualifying individuals-2, and medical assistance for covered 1287
families and children. 1288

(B) As used in this section: 1289

(1) "Trust" means any arrangement in which a grantor 1290
transfers real or personal property to a trust with the intention 1291
that it be held, managed, or administered by at least one trustee 1292
for the benefit of the grantor or beneficiaries. "Trust" includes 1293
any legal instrument or device similar to a trust. 1294

(2) "Legal instrument or device similar to a trust" includes, 1295
but is not limited to, escrow accounts, investment accounts, 1296
partnerships, contracts, and other similar arrangements that are 1297
not called trusts under state law but are similar to a trust and 1298
to which all of the following apply: 1299

(a) The property in the trust is held, managed, retained, or 1300
administered by a trustee. 1301

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

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

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

(a) An individual;

(b) An individual's spouse;

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

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

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

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

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

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

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

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

(a) A trust that provides that the trust can be terminated only by a court;	1331 1332
(b) A trust that terminates on the happening of an event, but only if the event occurs at the direction or control of the grantor, beneficiary, or trustee.	1333 1334 1335
(10) "Irrevocable trust" is a trust that cannot be revoked by the grantor or terminated by a court and that terminates only on the occurrence of an event outside of the control or direction of the beneficiary or grantor.	1336 1337 1338 1339
(11) "Payment" is any disbursement from the principal or income of the trust, including actual cash, noncash or property disbursements, or the right to use and occupy real property.	1340 1341 1342
(12) "Payments to or for the benefit of the applicant or recipient" is a payment to any person resulting in a direct or indirect benefit to the applicant or recipient.	1343 1344 1345
(13) "Testamentary trust" is a trust that is established by a will and does not take effect until after the death of the person who created the trust.	1346 1347 1348
(C) If an applicant or recipient is a beneficiary of a trust, the county department of job and family services shall determine what type of trust it is and shall treat the trust in accordance with the appropriate provisions of this section and rules adopted by the department of job and family services governing trusts. The county department of job and family services may determine that the trust or portion of the trust is one of the following:	1349 1350 1351 1352 1353 1354 1355
(1) A countable resource;	1356
(2) Countable income;	1357
(3) A countable resource and countable income;	1358
(4) Not a countable resource or countable income.	1359

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

(a) The trust was established on or prior to August 10, 1993.

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

(c) The trust was established by an applicant or recipient.

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

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

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

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

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

(a) Whether or not the trust is irrevocable or was established for purposes other than to enable a grantor to qualify for medicaid, medical assistance for covered families and

children, or as a qualified medicare beneficiary, specified	1390
low-income medicare beneficiary, qualifying individual-1, or	1391
qualifying individual-2;	1392
(b) Whether or not the trustee actually exercises discretion.	1393
(5) If any real or personal property is transferred to a	1394
medicaid qualifying trust that is not distributable to the	1395
applicant or recipient, the transfer shall be considered an	1396
improper disposition of assets and shall be subject to section	1397
5111.0116 of the Revised Code and rules to implement that section	1398
adopted under section 5111.011 of the Revised Code.	1399
(6) The baseline date for the look-back period for	1400
disposition of assets involving a medicaid qualifying trust shall	1401
be the date on which the applicant or recipient is both	1402
institutionalized and first applies for medicaid.	1403
(E)(1) A trust or legal instrument or device similar to a	1404
trust shall be considered a self-settled trust if all of the	1405
following apply:	1406
(a) The trust was established on or after August 11, 1993.	1407
(b) The trust was not established by a will.	1408
(c) The trust was established by an applicant or recipient,	1409
spouse of an applicant or recipient, or a person, including a	1410
court or administrative body, with legal authority to act in place	1411
of or on behalf of an applicant, recipient, or spouse, or acting	1412
at the direction or on request of an applicant, recipient, or	1413
spouse.	1414
(2) A trust that meets the requirements of division (E)(1) of	1415
this section and is a revocable trust shall be treated by the	1416
county department of job and family services as follows:	1417
(a) The corpus of the trust shall be considered a resource	1418
available to the applicant or recipient.	1419

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

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

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

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

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

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

(d) The date of the disposition shall be the later of the date of establishment of the trust or the date of the occurrence of the event.

(e) When determining the value of the disposed asset under

this provision, the value of the trust shall be its value on the 1450
date payment to the applicant or recipient was foreclosed. 1451

(f) Any income earned or other resources added subsequent to 1452
the foreclosure date shall be added to the total value of the 1453
trust. 1454

(g) Any payments to or for the benefit of the applicant or 1455
recipient after the foreclosure date but prior to the application 1456
date shall be subtracted from the total value. Any other payments 1457
shall not be subtracted from the value. 1458

(h) Any addition of assets after the foreclosure date shall 1459
be considered a separate disposition. 1460

(4) If a trust is funded with assets of another person or 1461
persons in addition to assets of the applicant or recipient, the 1462
applicable provisions of this section and rules adopted by the 1463
department of job and family services governing trusts shall apply 1464
only to the portion of the trust attributable to the applicant or 1465
recipient. 1466

(5) The availability of a self-settled trust shall be 1467
considered without regard to any of the following: 1468

(a) The purpose for which the trust is established; 1469

(b) Whether the trustees have exercised or may exercise 1470
discretion under the trust; 1471

(c) Any restrictions on when or whether distributions may be 1472
made from the trust; 1473

(d) Any restrictions on the use of distributions from the 1474
trust. 1475

(6) The baseline date for the look-back period for 1476
dispositions of assets involving a self-settled trust shall be the 1477
date on which the applicant or recipient is both institutionalized 1478
and first applies for medicaid. 1479

(F) The principal or income from any of the following shall 1480
be exempt from being counted as a resource by a county department 1481
of job and family services: 1482

(1)(a) A special needs trust that meets all of the following 1483
requirements: 1484

(i) The trust contains assets of an applicant or recipient 1485
under sixty-five years of age and may contain the assets of other 1486
individuals. 1487

(ii) The applicant or recipient is disabled as defined in 1488
rules adopted by the department of job and family services. 1489

(iii) The trust is established for the benefit of the 1490
applicant or recipient by a parent, grandparent, legal guardian, 1491
or a court. 1492

(iv) The trust requires that on the death of the applicant or 1493
recipient the state will receive all amounts remaining in the 1494
trust up to an amount equal to the total amount of medicaid paid 1495
on behalf of the applicant or recipient. 1496

(b) If a special needs trust meets the requirements of 1497
division (F)(1)(a) of this section and has been established for a 1498
disabled applicant or recipient under sixty-five years of age, the 1499
exemption for the trust granted pursuant to division (F) of this 1500
section shall continue after the disabled applicant or recipient 1501
becomes sixty-five years of age if the applicant or recipient 1502
continues to be disabled as defined in rules adopted by the 1503
department of job and family services. Except for income earned by 1504
the trust, the grantor shall not add to or otherwise augment the 1505
trust after the applicant or recipient attains sixty-five years of 1506
age. An addition or augmentation of the trust by the applicant or 1507
recipient with the applicant's own assets after the applicant or 1508
recipient attains sixty-five years of age shall be treated as an 1509
improper disposition of assets. 1510

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

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

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

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

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

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

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

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

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

medicaid. Income generated by the trust that remains in the trust 1541
shall not be considered as income to the applicant or recipient. 1542

(e) All income placed in a qualifying income trust shall be 1543
combined with any countable income not placed in the trust to 1544
arrive at a base income figure to be used for spend down 1545
calculations. 1546

(f) The base income figure shall be used for post-eligibility 1547
deductions, including personal needs allowance, monthly income 1548
allowance, family allowance, and medical expenses not subject to 1549
third party payment. Any income remaining shall be used toward 1550
payment of patient liability. Payments made from a qualifying 1551
income trust shall not be combined with the base income figure for 1552
post-eligibility calculations. 1553

(g) The base income figure shall be used when determining the 1554
spend down budget for the applicant or recipient. Any income 1555
remaining after allowable deductions are permitted as provided 1556
under rules adopted by the department of job and family services 1557
shall be considered the applicant's or recipient's spend down 1558
liability. 1559

(3)(a) A pooled trust that meets all of the following 1560
requirements: 1561

(i) The trust contains the assets of the applicant or 1562
recipient of any age who is disabled as defined in rules adopted 1563
by the department of job and family services. 1564

(ii) The trust is established and managed by a nonprofit 1565
association. 1566

(iii) A separate account is maintained for each beneficiary 1567
of the trust but, for purposes of investment and management of 1568
funds, the trust pools the funds in these accounts. 1569

(iv) Accounts in the trust are established by the applicant 1570

or recipient, the applicant's or recipient's parent, grandparent,
or legal guardian, or a court solely for the benefit of
individuals who are disabled.

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

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

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

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

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

(i) The department of mental retardation and developmental
disabilities;

(ii) A county board of mental retardation and developmental
disabilities;

(iii) The department of mental health;

(iv) A board of alcohol, drug addiction, and mental health
services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) A trust that meets the requirements of division (G)(1) of

this section shall not be counted as an available resource if at
least one of the following circumstances applies:

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

(b) If a trust contains a clear statement requiring the trustee to use a portion of the trust for a purpose other than medical care, care, comfort, maintenance, welfare, or general well being of the applicant or recipient, that portion of the trust shall not be counted as an available resource. Terms of a trust that grant discretion to limit the use of a portion of the trust shall not qualify as a clear statement requiring the trustee to use a portion of the trust for a particular purpose.

(c) If a trust contains a clear statement limiting the trustee to making fixed periodic payments, the trust shall not be counted as an available resource and payments shall be treated in accordance with rules adopted by the department of job and family services governing income. Terms of a trust that grant discretion to limit payments shall not qualify as a clear statement requiring the trustee to make fixed periodic payments.

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

(e) If a person obtains a judgment from a court of competent

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

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

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

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

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

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

trust to a person other than the applicant or recipient shall not 1724
be considered an improper disposition of assets. 1725

Sec. 5119.01. The director of mental health is the chief 1726
executive and administrative officer of the department of mental 1727
health. The director may establish procedures for the governance 1728
of the department, conduct of its employees and officers, 1729
performance of its business, and custody, use, and preservation of 1730
departmental records, papers, books, documents, and property. 1731
Whenever the Revised Code imposes a duty upon or requires an 1732
action of the department or any of its institutions, the director 1733
shall perform the action or duty in the name of the department, 1734
except that the medical director appointed pursuant to section 1735
5119.07 of the Revised Code shall be responsible for decisions 1736
relating to medical diagnosis, treatment, rehabilitation, quality 1737
assurance, and the clinical aspects of the following: licensure of 1738
hospitals and residential facilities, research, community mental 1739
health plans, and delivery of mental health services. 1740

The director shall: 1741

(A) Adopt rules for the proper execution of the powers and 1742
duties of the department with respect to the institutions under 1743
its control, and require the performance of additional duties by 1744
the officers of the institutions as necessary to fully meet the 1745
requirements, intents, and purposes of this chapter. In case of an 1746
apparent conflict between the powers conferred upon any managing 1747
officer and those conferred by such sections upon the department, 1748
the presumption shall be conclusive in favor of the department. 1749

(B) Adopt rules for the nonpartisan management of the 1750
institutions under the department's control. An officer or 1751
employee of the department or any officer or employee of any 1752
institution under its control who, by solicitation or otherwise, 1753
exerts influence directly or indirectly to induce any other 1754

officer or employee of the department or any of its institutions 1755
to adopt the exerting officer's or employee's political views or 1756
to favor any particular person, issue, or candidate for office 1757
shall be removed from the exerting officer's or employee's office 1758
or position, by the department in case of an officer or employee, 1759
and by the governor in case of the director. 1760

(C) Appoint such employees, including the medical director, 1761
as are necessary for the efficient conduct of the department, and 1762
prescribe their titles and duties; 1763

(D) Prescribe the forms of affidavits, applications, medical 1764
certificates, orders of hospitalization and release, and all other 1765
forms, reports, and records that are required in the 1766
hospitalization or admission and release of all persons to the 1767
institutions under the control of the department, or are otherwise 1768
required under this chapter or Chapter 5122. of the Revised Code; 1769

(E) Contract with hospitals licensed by the department under 1770
section 5119.20 of the Revised Code for the care and treatment of 1771
mentally ill patients, or with persons, organizations, or agencies 1772
for the custody, supervision, care, or treatment of mentally ill 1773
persons receiving services elsewhere than within the enclosure of 1774
a hospital operated under section 5119.02 of the Revised Code; 1775

(F) Exercise the powers and perform the duties relating to 1776
community mental health facilities and services that are assigned 1777
to the director under this chapter and Chapter 340. of the Revised 1778
Code; 1779

(G) Develop and implement clinical evaluation and monitoring 1780
of services that are operated by the department; 1781

(H) At the director's discretion, adopt rules establishing 1782
standards for the adequacy of services provided by community 1783
mental health facilities, and certify the compliance of such 1784
facilities with the standards for the purpose of authorizing their 1785

participation in the health care plans of health insuring 1786
corporations under Chapter 1751. and sickness and accident 1787
insurance policies issued under Chapter 3923. of the Revised Code. 1788
The director shall cease to certify such compliance two years 1789
after ~~the effective date of this amendment~~ June 6, 2001. The 1790
director shall rescind the rules after the date the director 1791
ceases to certify such compliance. 1792

(I) Adopt rules establishing standards for the performance of 1793
evaluations by a forensic center or other psychiatric program or 1794
facility of the mental condition of defendants ordered by the 1795
court under section 2919.271, or 2945.371 of the Revised Code, and 1796
for the treatment of defendants who have been found incompetent to 1797
stand trial and ordered by the court under section 2945.38, 1798
2945.39, 2945.401, or 2945.402 of the Revised Code to receive 1799
treatment in facilities; 1800

(J) On behalf of the department, have the authority and 1801
responsibility for entering into contracts and other agreements; 1802

(K) Prepare and publish regularly a state mental health plan 1803
that describes the department's philosophy, current activities, 1804
and long-term and short-term goals and activities; 1805

(L) Adopt rules in accordance with Chapter 119. of the 1806
Revised Code specifying the supplemental services that may be 1807
provided through a trust authorized by section ~~1339.51~~ 5815.28 of 1808
the Revised Code; 1809

(M) Adopt rules in accordance with Chapter 119. of the 1810
Revised Code establishing standards for the maintenance and 1811
distribution to a beneficiary of assets of a trust authorized by 1812
section ~~1339.51~~ 5815.28 of the Revised Code. 1813

Sec. 5119.17. (A) As used in this section, "supplemental 1814
services" has the same meaning as in section ~~1339.51~~ 5815.28 of 1815

the Revised Code. 1816

(B) There is hereby created in the state treasury the 1817
services fund for individuals with mental illness. On the death of 1818
the beneficiary of a trust created pursuant to section ~~1339.51~~ 1819
5815.28 of the Revised Code, the portion of the remaining assets 1820
of the trust specified in the trust instrument shall be deposited 1821
to the credit of the fund. Money credited to the fund shall be 1822
used for individuals with mental illness. 1823

Supplemental services may be provided through the department 1824
or boards of alcohol, drug addiction, and mental health services. 1825
In accordance with Chapter 119. of the Revised Code, the 1826
department of mental health may adopt any rules necessary to 1827
implement this section. 1828

Sec. 5121.04. (A) The department of mental retardation and 1829
developmental disabilities shall investigate the financial 1830
condition of the residents in institutions, residents whose care 1831
or treatment is being paid for in a private facility or home under 1832
the control of the department, and of the relatives named in 1833
section 5121.06 of the Revised Code as liable for the support of 1834
such residents, in order to determine the ability of any resident 1835
or liable relatives to pay for the support of the resident and to 1836
provide suitable clothing as required by the superintendent of the 1837
institution. 1838

(B) The department shall follow the provisions of this 1839
division in determining the ability to pay of a resident or the 1840
resident's liable relatives and the amount to be charged such 1841
resident or liable relatives. 1842

(1) Subject to divisions (B)(10) and (11) of this section, a 1843
resident without dependents shall be liable for the full 1844
applicable cost. A resident without dependents who has a gross 1845
annual income equal to or exceeding the sum of the full applicable 1846

cost, plus fifty dollars per month, regardless of the source of 1847
such income, shall pay currently the full amount of the applicable 1848
cost; if the resident's gross annual income is less than such sum, 1849
not more than fifty dollars per month shall be kept for personal 1850
use by or on behalf of the resident, except as permitted in the 1851
state plan for providing medical assistance under Title XIX of the 1852
"Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as 1853
amended, and the balance shall be paid currently on the resident's 1854
support. Subject to divisions (B)(10) and (11) of this section, 1855
the estate of a resident without dependents shall pay currently 1856
any remaining difference between the applicable cost and the 1857
amounts prescribed in this section, or shall execute an agreement 1858
with the department for payment to be made at some future date 1859
under terms suitable to the department. However, no security 1860
interest, mortgage, or lien shall be taken, granted, or charged 1861
against any principal residence of a resident without dependents 1862
under an agreement or otherwise to secure support payments, and no 1863
foreclosure actions shall be taken on security interests, 1864
mortgages, or liens taken, granted, or charged against principal 1865
residences of residents prior to October 7, 1977. 1866

(2) The ability to pay of a resident with dependents, or of a 1867
liable relative of a resident either with or without dependents, 1868
shall be determined in accordance with the resident's or liable 1869
relative's income or other assets, the needs of others who are 1870
dependent on such income and other assets for support, and, if 1871
applicable, divisions (B)(10) and (11) of this section. 1872

For the first thirty days of care and treatment of each 1873
admission, but in no event for more than thirty days in any 1874
calendar year, the resident with dependents or the liable relative 1875
of a resident either with or without dependents shall be charged 1876
an amount equal to the percentage of the average applicable cost 1877
determined in accordance with the schedule of adjusted gross 1878

of gross annual income.	1911
Footnote b. The number of dependents includes the liable	1912
relative but excludes a resident in an institution. "Dependent"	1913
includes any person who receives more than half the person's	1914
support from the resident or the resident's liable relative.	1915
(3) A resident or liable relative having medical, funeral, or	1916
related expenses in excess of four per cent of the adjusted gross	1917
annual income, which expenses were not covered by insurance, may	1918
adjust such gross annual income by reducing the adjusted gross	1919
annual income by the full amount of such expenses. Proof of such	1920
expenses satisfactory to the department must be furnished.	1921
(4) Additional dependencies may be claimed if:	1922
(a) The liable relative is blind;	1923
(b) The liable relative is over sixty-five;	1924
(c) A child is a college student with expenses in excess of	1925
fifty dollars per month;	1926
(d) The services of a housekeeper, costing in excess of fifty	1927
dollars per month, are required if the person who normally keeps	1928
house for minor children is the resident.	1929
(5) If with respect to any resident with dependents there is	1930
chargeable under division (B)(2) of this section less than fifty	1931
per cent of the applicable cost or, if the base support rate was	1932
used, less than fifty per cent of the amount determined by use of	1933
the base support rate, and if with respect to such resident there	1934
is a liable relative who has an estate having a value in excess of	1935
fifteen thousand dollars or if such resident has a dependent and	1936
an estate having a value in excess of fifteen thousand dollars,	1937
there shall be paid with respect to such resident a total of fifty	1938
per cent of the applicable cost or the base support rate amount,	1939
as the case may be, on a current basis or there shall be executed	1940

with respect to such resident an agreement with the department for
payment to be made at some future date under terms suitable to the
department.

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

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

(8) If a resident is covered by an insurance policy, or other
contract that provides for payment of expenses for care and
treatment for mental retardation or other developmental disability
at or from an institution or facility (including a community
service unit under the jurisdiction of the department), the other
provisions of this section, except divisions (B)(8), (10), and
(11) of this section, and of section 5121.01 of the Revised Code
shall be suspended to the extent that such insurance policy or
other contract is in force, and such resident shall be charged the
full amount of the applicable cost. Any insurance carrier or other
third party payor providing coverage for such care and treatment
shall pay for this support obligation in an amount equal to the
lesser of either the applicable cost or the benefits provided
under the policy or other contract. Whether or not an insured,
owner of, or other person having an interest in such policy or
other contract is liable for support payments under other
provisions of this chapter, the insured, policy owner, or other
person shall assign payment directly to the department of all
assignable benefits under the policy or other contract and shall
pay over to the department, within ten days of receipt, all

insurance or other benefits received as reimbursement or payment 1973
for expenses incurred by the resident or for any other reason. If 1974
the insured, policy owner, or other person refuses to assign such 1975
payment to the department or refuses to pay such received 1976
reimbursements or payments over to the department within ten days 1977
of receipt, the insured's, policy owners', or other person's total 1978
liability for the services equals the applicable statutory 1979
liability for payment for the services as determined under other 1980
provisions of this chapter, plus the amounts payable under the 1981
terms of the policy or other contract. In no event shall this 1982
total liability exceed the full amount of the applicable cost. 1983
Upon its request, the department is entitled to a court order that 1984
compels the insured, owner of, or other person having an interest 1985
in the policy or other contract to comply with the assignment 1986
requirements of this division or that itself serves as a legally 1987
sufficient assignment in compliance with such requirements. 1988
Notwithstanding section 5123.89 of the Revised Code and any other 1989
law relating to confidentiality of records, the managing officer 1990
of the institution or facility where a person is or has been a 1991
resident shall disclose pertinent medical information concerning 1992
the resident to the insurance carrier or other third party payor 1993
in question, in order to effect collection from the carrier or 1994
payor of the state's claim for care and treatment under this 1995
division. For such disclosure, the managing officer is not subject 1996
to any civil or criminal liability. 1997

(9) The rate to be charged for pre-admission care, 1998
after-care, day-care, or routine consultation and treatment 1999
services shall be based upon the ability of the resident or the 2000
resident's liable relatives to pay. When it is determined by the 2001
department that a charge shall be made, such charge shall be 2002
computed as provided in divisions (B)(1) and (2) of this section. 2003

(10) If a resident with or without dependents is the 2004

beneficiary of a trust created pursuant to section ~~1339.51~~ 5815.28 2005
of the Revised Code, then, notwithstanding any contrary provision 2006
of this chapter or of a rule adopted pursuant to this chapter, 2007
divisions (C) and (D) of that section shall apply in determining 2008
the assets or resources of the resident, the resident's estate, 2009
the settlor, or the settlor's estate and to claims arising under 2010
this chapter against the resident, the resident's estate, the 2011
settlor, or the settlor's estate. 2012

(11) If the department waives the liability of an individual 2013
and the individual's liable relatives pursuant to section 5123.194 2014
of the Revised Code, the liability of the individual and relative 2015
ceases in accordance with the waiver's terms. 2016

(C) The department may enter into agreements with a resident 2017
or a liable relative for support payments to be made in the 2018
future. However, no security interest, mortgage, or lien shall be 2019
taken, granted, or charged against any principal family residence 2020
of a resident with dependents or a liable relative under an 2021
agreement or otherwise to secure support payments, and no 2022
foreclosure actions shall be taken on security interests, 2023
mortgages or liens taken, granted, or charged against principal 2024
residences of residents or liable relatives prior to October 7, 2025
1977. 2026

(D) The department shall make all investigations and 2027
determinations required by this section within ninety days after a 2028
resident is admitted to an institution under the department's 2029
control and immediately shall notify by mail the persons liable of 2030
the amount to be charged. 2031

(E) All actions to enforce the collection of payments agreed 2032
upon or charged by the department shall be commenced within six 2033
years after the date of default of an agreement to pay support 2034
charges or the date such payment becomes delinquent. If a payment 2035

is made pursuant to an agreement which is in default, a new
six-year period for actions to enforce the collection of payments
under such agreement shall be computed from the date of such
payment. For purposes of this division an agreement is in default
or a payment is delinquent if a payment is not made within thirty
days after it is incurred or a payment, pursuant to an agreement,
is not made within thirty days after the date specified for such
payment. In all actions to enforce the collection of payment for
the liability for support, every court of record shall receive
into evidence the proof of claim made by the state together with
all debts and credits, and it shall be prima-facie evidence of the
facts contained in it.

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

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

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the ward.	2067
Sec. 5121.30. As used in sections 5121.30 to 5121.56 of the Revised Code:	2068 2069
(A) "Community mental health services client" or "client" means a person receiving state-operated community mental health services.	2070 2071 2072
(B) "Countable assets" means all of the following:	2073
(1) Cash;	2074
(2) Bank deposits;	2075
(3) Securities;	2076
(4) Individual retirement accounts;	2077
(5) Qualified employer plans, including 401(k) and Keogh plans;	2078 2079
(6) Annuities;	2080
(7) Funds in a trust created under section 1339.51 <u>5815.28</u> of the Revised Code;	2081 2082
(8) Investment property and income;	2083
(9) The cash surrender values of life insurance policies;	2084
(10) Assets acquired by gift, bequest, devise, or inheritance;	2085 2086
(11) Any other asset determined by the department of mental health to be equivalent to the assets enumerated in this division.	2087 2088
(C) "Federal poverty level" or "FPL" means the income level represented by the poverty guidelines as revised annually by the United States department of health and human services in accordance with section 673(2) of the "Omnibus Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, for a family	2089 2090 2091 2092 2093

size equal to the size of the family of the person whose income is 2094
being determined. 2095

(D) "Federal poverty guidelines" means the poverty guidelines 2096
as revised annually by the United States department of health and 2097
human services in accordance with section 673(2) of the "Omnibus 2098
Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, 2099
as amended, for a family size equal to the size of the family of 2100
the person whose income is being determined. 2101

(E) "Hospital" means an institution, hospital, or other place 2102
established, controlled, or supervised by the department of mental 2103
health under Chapter 5119. of the Revised Code. 2104

(F) "Liable relative" means all of the following: 2105

(1) A patient's spouse; 2106

(2) A patient's mother or father, or both, if the patient is 2107
under eighteen years of age; 2108

(3) A patient's guardian. 2109

(G) "Patient" means a person admitted to a hospital for 2110
inpatient care or treatment, including a person transferred to a 2111
hospital from a state correctional institution or a person under 2112
indictment or conviction who has been transferred to a hospital. 2113

Sec. 5121.52. On the death of a person who is a patient, or 2114
has been a patient in a hospital, or on the death of a person 2115
responsible under section 5121.34 of the Revised Code for the 2116
support of a patient, the department of mental health may waive 2117
the presentation of any claim for support against the estate of 2118
such decedent, when in its judgment an otherwise dependent person 2119
will be directly benefited by the estate. Claims against an estate 2120
for support of a patient are subject to section ~~1339.51~~ 5815.28 2121
and Chapter 2117. of the Revised Code, and shall be treated, and 2122
may be barred, the same as the claims of other creditors of the 2123

estate, pursuant to that section or chapter. 2124

The department of mental health may accept from a guardian or 2125
trustee of a patient a contract agreeing to pay to the state from 2126
the property of the guardian's or trustee's ward before or at the 2127
death of the ward a fixed annual amount for the support of the 2128
ward while the ward is a patient, with interest at four per cent 2129
per annum. A copy of the contract shall be filed in the probate 2130
court of the proper county and duly entered as a part of the 2131
records concerning the ward. 2132

Sec. 5123.04. (A) The director of mental retardation and 2133
developmental disabilities is the executive head of the department 2134
of mental retardation and developmental disabilities. All duties 2135
conferred on the department and its institutions by law or by 2136
order of the director shall be performed under such rules as the 2137
director prescribes, and shall be under the director's control. 2138
The director shall establish bylaws for the government of all 2139
institutions under the jurisdiction of the department. Except as 2140
otherwise is provided as to appointments by chiefs of divisions, 2141
the director shall appoint such employees as are necessary for the 2142
efficient conduct of the department, and shall prescribe their 2143
titles and duties. If the director is not a licensed physician, 2144
decisions relating to medical diagnosis and treatment shall be the 2145
responsibility of a licensed physician appointed by the director. 2146

(B) The director shall adopt rules for the proper execution 2147
of the powers and duties of the department. 2148

(C) The director shall adopt rules establishing standards 2149
that mental retardation programs and facilities shall follow when 2150
performing evaluations of the mental condition of defendants 2151
ordered by the court under section 2919.271 or 2945.371 of the 2152
Revised Code, and for the treatment of defendants who have been 2153
found incompetent to stand trial under section 2945.38 of the 2154

Revised Code, and certify the compliance of such programs and facilities with the standards. 2155
2156

(D) On behalf of the department, the director has the authority to, and responsibility for, entering into contracts and other agreements. 2157
2158
2159

(E) The director shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following: 2160
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(1) Specify the supplemental services that may be provided through a trust authorized by section ~~1339.51~~ 5815.28 of the Revised Code; 2162
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(2) Establish standards for the maintenance and distribution to a beneficiary of assets of a trust authorized by section ~~1339.51~~ 5815.28 of the Revised Code. 2165
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(F) The director shall provide monitoring of county boards of mental retardation and developmental disabilities. 2168
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Sec. 5123.28. (A) Except as otherwise provided in this division, money or property deposited with managing officers of institutions under the jurisdiction of the department of mental retardation and developmental disabilities by any resident under the department's control or by relatives, guardians, conservators, and others for the special benefit of such resident, as well as all other funds and all other income paid to the resident, to ~~his~~ the resident's estate, or on ~~his~~ the resident's behalf, or paid to the managing officer or to the institution as representative payee or otherwise paid on the resident's behalf, shall remain in the hands of such managing officers in appropriate accounts for use accordingly. Each such managing officer shall keep itemized book accounts of the receipt and disposition of such money and property, which book shall be open at all times to the inspection of the department. The director of mental retardation and 2170
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developmental disabilities shall adopt rules governing the 2185
deposit, transfer, withdrawal, or investment of such funds and the 2186
income of the funds, as well as rules under which such funds and 2187
income shall be paid by managing officers, institutions, or 2188
district managers for the support of such residents pursuant to 2189
Chapter 5121. of the Revised Code, or for their other needs. 2190

This division does not require, and shall not be construed as 2191
requiring, the deposit of the principal or income of a trust 2192
created pursuant to section ~~1339.51~~ 5815.28 of the Revised Code 2193
with managing officers of institutions under the jurisdiction of 2194
the department. 2195

(B) Whenever any resident confined in a state institution 2196
under the jurisdiction of the department dies, escapes, or is 2197
discharged from the institution, any personal funds of the 2198
resident remain in the hands of the managing officer of the 2199
institution, and no demand is made upon the managing officer by 2200
the owner of the funds or ~~his~~ the owner's legally appointed 2201
representative, the managing officer shall hold the funds in the 2202
personal deposit fund for a period of at least one year during 2203
which time the managing officer shall make every effort possible 2204
to locate the owner or ~~his~~ the owner's legally appointed 2205
representative. If, at the end of this period, no demand has been 2206
made for the funds, the managing officer shall dispose of the 2207
funds as follows: 2208

(1) All money in a personal deposit fund in excess of ten 2209
dollars due for the support of a resident, shall be paid in 2210
accordance with Chapter 5121. of the Revised Code. 2211

(2) All money in a personal deposit fund in excess of ten 2212
dollars not due for the support of a resident, shall be placed to 2213
the credit of the institution's local account designated as the 2214
"industrial and entertainment" fund. 2215

(3) The first ten dollars to the credit of a resident shall 2216
be placed to the credit of the institution's local account 2217
designated as the "industrial and entertainment" fund. 2218

(C) Whenever any resident in any state institution subject to 2219
the jurisdiction of the department dies, escapes, or is discharged 2220
from the institution, any personal effects of the resident remain 2221
in the hands of the managing officer of the institution, and no 2222
demand is made upon the managing officer by the owner of the 2223
personal effects or ~~his~~ the owner's legally appointed 2224
representative, the managing officer shall hold and dispose of the 2225
personal effects in the following manner. All the miscellaneous 2226
personal effects shall be held for a period of at least one year, 2227
during which time the managing officer shall make every effort 2228
possible to locate the owner or ~~his~~ the owner's legal 2229
representative. If, at the end of this period, no demand has been 2230
made by the owner of the property or ~~his~~ the owner's legal 2231
representative, the managing officer shall file with the county 2232
recorder of the county of commitment of such owner, all deeds, 2233
wills, contract mortgages, or assignments. The balance of the 2234
personal effects shall be sold at public auction after being duly 2235
advertised, and the funds turned over to the treasurer of state 2236
for credit to the general revenue fund. If any of the property is 2237
not of a type to be filed with the county recorder and is not 2238
salable at public auction, the managing officer of the institution 2239
shall destroy that property. 2240

Sec. 5123.40. There is hereby created in the state treasury 2241
the services fund for individuals with mental retardation and 2242
developmental disabilities. On the death of the beneficiary of a 2243
trust created pursuant to section ~~1339.51~~ 5815.28 of the Revised 2244
Code, the portion of the remaining assets of the trust specified 2245
in the trust instrument shall be deposited to the credit of the 2246

fund. 2247

Money credited to the fund shall be used for individuals with 2248
mental retardation and developmental disabilities. In accordance 2249
with Chapter 119. of the Revised Code, the department of mental 2250
retardation and developmental disabilities may adopt any rules 2251
necessary to implement this section. 2252

Sec. 5801.01. As used in Chapters 5801. to 5811. of the 2253
Revised Code: 2254

(A) "Action," with respect to an act of a trustee, includes a 2255
failure to act. 2256

(B) "Ascertainable standard" means a standard relating to an 2257
individual's health, education, support, or maintenance within the 2258
meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal 2259
Revenue Code. 2260

(C) "Beneficiary" means a person that has a present or future 2261
beneficial interest in a trust, whether vested or contingent, or 2262
that, in a capacity other than that of trustee, holds a power of 2263
appointment over trust property, or a charitable organization that 2264
is expressly designated in the terms of the trust to receive 2265
distributions. "Beneficiary" does not include any charitable 2266
organization that is not expressly designated in the terms of the 2267
trust to receive distributions, but to whom the trustee may in its 2268
discretion make distributions. 2269

(D) "Beneficiary surrogate" means a person, other than a 2270
trustee, designated by the settlor in the trust instrument to 2271
receive notices, information, and reports otherwise required to be 2272
provided to a current beneficiary under divisions (B)(8) and (9) 2273
of section 5801.04 of the Revised Code. 2274

(E) "Charitable trust" means a trust, or portion of a trust, 2275
created for a charitable purpose described in division (A) of 2276

<u>section 5804.05 of the Revised Code.</u>	2277
<u>(F) "Current beneficiary" means a beneficiary that, on the</u>	2278
<u>date the beneficiary's qualification is determined, is a</u>	2279
<u>distributee or permissible distributee of trust income or</u>	2280
<u>principal.</u>	2281
<u>(G) "Environmental law" means a federal, state, or local law,</u>	2282
<u>rule, regulation, or ordinance relating to protection of the</u>	2283
<u>environment.</u>	2284
<u>(H) "Guardian of the estate" means a guardian appointed by a</u>	2285
<u>court to administer the estate of any individual or to serve as</u>	2286
<u>conservator of the property of an individual eighteen years of age</u>	2287
<u>or older under section 2111.021 of the Revised Code.</u>	2288
<u>(I) "Guardian of the person" means a guardian appointed by a</u>	2289
<u>court to make decisions regarding the support, care, education,</u>	2290
<u>health, and welfare of any individual or to serve as conservator</u>	2291
<u>of the person of an individual eighteen years of age or older</u>	2292
<u>under section 2111.021 of the Revised Code. "Guardian of the</u>	2293
<u>person" does not include a guardian ad litem.</u>	2294
<u>(J) "Internal Revenue Code" means the "Internal Revenue Code</u>	2295
<u>of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended.</u>	2296
<u>(K) "Interests of the beneficiaries" means the beneficial</u>	2297
<u>interests provided in the terms of the trust.</u>	2298
<u>(L) "Jurisdiction," with respect to a geographic area,</u>	2299
<u>includes a state or country.</u>	2300
<u>(M) "Mandatory distribution" means a distribution of income</u>	2301
<u>or principal, including a distribution upon termination of the</u>	2302
<u>trust, that the trustee is required to make to a beneficiary under</u>	2303
<u>the terms of the trust. Mandatory distributions do not include</u>	2304
<u>distributions that a trustee is directed or authorized to make</u>	2305
<u>pursuant to a support or other standard, regardless of whether the</u>	2306

terms of the trust provide that the trustee "may" or "shall" make 2307
the distributions pursuant to a support or other standard. 2308

(N) "Person" means an individual, corporation, business 2309
trust, estate, trust, partnership, limited liability company, 2310
association, joint venture, government, governmental agency or 2311
instrumentality, public corporation, or any other legal or 2312
commercial entity. 2313

(O) "Power of withdrawal" means a presently exercisable 2314
general power of appointment other than a power exercisable by a 2315
trustee that is limited by an ascertainable standard or that is 2316
exercisable by another person only upon consent of the trustee or 2317
a person holding an adverse interest. 2318

(P) "Property" means anything or any interest in anything 2319
that may be the subject of ownership. 2320

(Q) "Qualified beneficiary" means a beneficiary to whom, on 2321
the date the beneficiary's qualification is determined, any of the 2322
following applies: 2323

(1) The beneficiary is a distributee or permissible 2324
distributee of trust income or principal. 2325

(2) The beneficiary would be a distributee or permissible 2326
distributee of trust income or principal if the interests of the 2327
distributees described in division (Q)(1) of this section 2328
terminated on that date, but the termination of those interests 2329
would not cause the trust to terminate. 2330

(3) The beneficiary would be a distributee or permissible 2331
distributee of trust income or principal if the trust terminated 2332
on that date. 2333

(R) "Revocable," as applied to a trust, means revocable at 2334
the time of determination by the settlor alone or by the settlor 2335
with the consent of any person other than a person holding an 2336

adverse interest. A trust's characterization as revocable is not 2337
affected by the settlor's lack of capacity to exercise the power 2338
of revocation, regardless of whether an agent of the settlor under 2339
a power of attorney, or a guardian of the person or estate of the 2340
settlor, is serving. 2341

(S) "Settlor" means a person, including a testator, who 2342
creates, or contributes property to, a trust. If more than one 2343
person creates or contributes property to a trust, each person is 2344
a settlor of the portion of the trust property attributable to 2345
that person's contribution except to the extent another person has 2346
the power to revoke or withdraw that portion. 2347

(T) "Spendthrift provision" means a term of a trust that 2348
restrains both voluntary and involuntary transfer of a 2349
beneficiary's interest. 2350

(U) "State" means a state of the United States, the District 2351
of Columbia, the Commonwealth of Puerto Rico, a territory or 2352
possession of the United States, or an Indian tribe or band 2353
recognized by federal law or formally acknowledged by a state. 2354

(V) "Terms of a trust" means the manifestation of the 2355
settlor's intent regarding a trust's provisions as expressed in 2356
the trust instrument or as may be established by other evidence 2357
that would be admissible in a judicial proceeding. 2358

(W) "Trust instrument" means an instrument executed by the 2359
settlor that contains terms of the trust and any amendments to 2360
that instrument. 2361

(X) "Trustee" includes an original, additional, and successor 2362
trustee and a cotrustee. 2363

(Y)(1) "Wholly discretionary trust" means a trust to which 2364
all of the following apply: 2365

(a) The trust is irrevocable. 2366

(b) Distributions of income or principal from the trust may 2367
or shall be made to or for the benefit of the beneficiary only at 2368
the trustee's discretion. 2369

(c) The beneficiary does not have a power of withdrawal from 2370
the trust. 2371

(d) The terms of the trust use "sole," "absolute," 2372
"uncontrolled," or language of similar import to describe the 2373
trustee's discretion to make distributions to or for the benefit 2374
of the beneficiary. 2375

(e) The terms of the trust do not provide any standards to 2376
guide the trustee in exercising its discretion to make 2377
distributions to or for the benefit of the beneficiary. 2378

(f) The beneficiary is not the settlor, the trustee, or a 2379
cotrustee. 2380

(g) The beneficiary does not have the power to become the 2381
trustee or a cotrustee. 2382

(2) A trust may be a wholly discretionary trust with respect 2383
to one or more but less than all beneficiaries. 2384

(3) If a beneficiary has a power of withdrawal, the trust may 2385
be a wholly discretionary trust with respect to that beneficiary 2386
during any period in which the beneficiary may not exercise the 2387
power. During a period in which the beneficiary may exercise the 2388
power, both of the following apply: 2389

(a) The portion of the trust the beneficiary may withdraw may 2390
not be a wholly discretionary trust with respect to that 2391
beneficiary; 2392

(b) The portion of the trust the beneficiary may not withdraw 2393
may be a wholly discretionary trust with respect to that 2394
beneficiary. 2395

(4) If the beneficiary and one or more others have made 2396

contributions to the trust, the portion of the trust attributable 2397
to the beneficiary's contributions may not be a wholly 2398
discretionary trust with respect to that beneficiary, but the 2399
portion of the trust attributable to the contributions of others 2400
may be a wholly discretionary trust with respect to that 2401
beneficiary. If a beneficiary has a power of withdrawal, then upon 2402
the lapse, release, or waiver of the power, the beneficiary is 2403
treated as having made contributions to the trust only to the 2404
extent the value of the property affected by the lapse, release, 2405
or waiver exceeds the greatest of the following amounts: 2406

(a) The amount specified in section 2041(b)(2) or 2514(e) of 2407
the Internal Revenue Code; 2408

(b) If the donor of the property subject to the beneficiary's 2409
power of withdrawal is not married at the time of the transfer of 2410
the property to the trust, the amount specified in section 2503(b) 2411
of the Internal Revenue Code; 2412

(c) If the donor of the property subject to the beneficiary's 2413
power of withdrawal is married at the time of the transfer of the 2414
property to the trust, twice the amount specified in section 2415
2503(b) of the Internal Revenue Code. 2416

(5) Notwithstanding divisions (Y)(1)(f) and (g) of this 2417
section, a trust may be a wholly discretionary trust if the 2418
beneficiary is, or has the power to become, a trustee only with 2419
respect to the management or the investment of the trust assets, 2420
and not with respect to making discretionary distribution 2421
decisions. With respect to a trust established for the benefit of 2422
an individual who is blind or disabled as defined in 42 U.S.C. 2423
1382c(a)(2) or (3), as amended, a wholly discretionary trust may 2424
include either or both of the following: 2425

(a) Precatory language regarding its intended purpose of 2426
providing supplemental goods and services to or for the benefit of 2427

<u>the beneficiary, and not to supplant benefits from public</u>	2428
<u>assistance programs;</u>	2429
<u>(b) A prohibition against providing food, clothing, and</u>	2430
<u>shelter to the beneficiary.</u>	2431
<u>Sec. 5801.011. Chapters 5801. to 5811. of the Revised Code</u>	2432
<u>may be cited as the Ohio trust code.</u>	2433
<u>Sec. 5801.02. Except as otherwise provided in any provision</u>	2434
<u>of Chapters 5801. to 5811. of the Revised Code, those chapters</u>	2435
<u>apply to charitable and noncharitable inter vivos express trusts</u>	2436
<u>and to trusts created pursuant to a statute, judgment, or decree</u>	2437
<u>that requires the trust to be administered in the manner of an</u>	2438
<u>express trust. Chapters 5801. to 5811. of the Revised Code apply</u>	2439
<u>to testamentary trusts to the extent provided by section 2109.69</u>	2440
<u>of the Revised Code.</u>	2441
<u>Sec. 5801.03. (A) Subject to division (B) of this section, a</u>	2442
<u>person has knowledge of a fact if any of the following apply:</u>	2443
<u>(1) The person has actual knowledge of the fact.</u>	2444
<u>(2) The person has received notice or notification of the</u>	2445
<u>fact.</u>	2446
<u>(3) From all the facts and circumstances known to the person</u>	2447
<u>at the time in question, the person has reason to know the fact.</u>	2448
<u>(B) An organization that conducts activities through</u>	2449
<u>employees has notice or knowledge of a fact involving a trust only</u>	2450
<u>from the time an employee having responsibility to act for the</u>	2451
<u>trust received the information or the information would have been</u>	2452
<u>brought to the employee's attention if the organization had</u>	2453
<u>exercised reasonable diligence. An organization exercises</u>	2454
<u>reasonable diligence if it maintains reasonable routines for</u>	2455

communicating significant information to the employee having 2456
responsibility to act for the trust and there is reasonable 2457
compliance with the routines. Reasonable diligence does not 2458
require an employee of the organization to communicate information 2459
unless the communication is part of the individual's regular 2460
duties or the individual knows a matter involving the trust would 2461
be materially affected by the information. 2462

Sec. 5801.04. (A) Except as otherwise provided in the terms 2463
of the trust, Chapters 5801. to 5811. of the Revised Code govern 2464
the duties and powers of a trustee, relations among trustees, and 2465
the rights and interests of a beneficiary. 2466

(B) The terms of a trust prevail over any provision of 2467
Chapters 5801. to 5811. of the Revised Code except the following: 2468

(1) The requirements for creating a trust; 2469

(2) The duty of a trustee to act in good faith and in 2470
accordance with the purposes of the trust; 2471

(3) The requirement that the trust have a purpose that is 2472
lawful, not contrary to public policy, and possible to achieve; 2473

(4) The power of the court to modify or terminate a trust 2474
under sections 5804.10 to 5804.16 of the Revised Code; 2475

(5) The effect of a spendthrift provision and the rights of 2476
certain creditors and assignees to reach a trust as provided in 2477
Chapter 5805. of the Revised Code; 2478

(6) The power of the court under section 5807.02 of the 2479
Revised Code to require, dispense with, or modify or terminate a 2480
bond; 2481

(7) The power of the court under division (B) of section 2482
5807.08 of the Revised Code to adjust a trustee's compensation 2483
specified in the terms of the trust which is unreasonably low or 2484

<u>high;</u>	2485
<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>	2486 2487 2488 2489 2490 2491
<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>	2492 2493 2494 2495 2496
<u>(10) The effect of an exculpatory term under section 5810.08 of the Revised Code;</u>	2497 2498
<u>(11) The rights under sections 5810.10 to 5810.13 of the Revised Code of a person other than a trustee or beneficiary;</u>	2499 2500
<u>(12) Periods of limitation for commencing a judicial proceeding;</u>	2501 2502
<u>(13) The power of the court to take any action and exercise any jurisdiction that may be necessary in the interests of justice;</u>	2503 2504 2505
<u>(14) The subject-matter jurisdiction of the court for commencing a proceeding as provided in section 5802.03 of the Revised Code.</u>	2506 2507 2508
<u>(C) With respect to one or more of the current beneficiaries, the settlor, in the trust instrument, may waive or modify the duties of the trustee described in divisions (B)(8) and (9) of this section. The waiver or modification may be made only by the settlor designating in the trust instrument one or more beneficiary surrogates to receive any notices, information, or</u>	2509 2510 2511 2512 2513 2514

reports otherwise required under those divisions to be provided to 2515
the current beneficiaries. If the settlor makes a waiver or 2516
modification pursuant to this division, the trustee shall provide 2517
the notices, information, and reports to the beneficiary surrogate 2518
or surrogates in lieu of providing them to the current 2519
beneficiaries. The beneficiary surrogate or surrogates shall act 2520
in good faith to protect the interests of the current 2521
beneficiaries for whom the notices, information, or reports are 2522
received. A waiver or modification made under this division shall 2523
be effective for so long as the beneficiary surrogate or 2524
surrogates, or their successor or successors designated in 2525
accordance with the terms of the trust instrument, act in that 2526
capacity. 2527

Sec. 5801.05. The common law of trusts and principles of 2528
equity continue to apply in this state, except to the extent 2529
modified by Chapters 5801. to 5811. or another section of the 2530
Revised Code. 2531

Sec. 5801.06. The law of the jurisdiction designated in the 2532
terms of a trust determines the meaning and effect of the terms 2533
unless the designation of that jurisdiction's law is contrary to a 2534
strong public policy of the jurisdiction having the most 2535
significant relationship to the matter at issue. In the absence of 2536
a controlling designation in the terms of the trust, the law of 2537
the jurisdiction having the most significant relationship to the 2538
matter at issue determines the meaning and effect of the terms. 2539

Sec. 5801.07. (A) Without precluding other means for 2540
establishing a sufficient connection with the designated 2541
jurisdiction, the terms of a trust designating the principal place 2542
of administration of the trust are valid and controlling if a 2543
trustee's principal place of business is located in or a trustee 2544

is a resident of the designated jurisdiction or if all or part of 2545
the administration occurs in the designated jurisdiction. 2546

(B) A trustee is under a continuing duty to administer the 2547
trust at a place appropriate to its purposes, its administration, 2548
and the interests of the beneficiaries. 2549

(C) Without precluding the right of the court to order, 2550
approve, or disapprove a transfer, the trustee, in furtherance of 2551
the duty prescribed by division (B) of this section, may transfer 2552
the trust's principal place of administration to another state or 2553
to a jurisdiction outside of the United States. 2554

(D) The trustee shall notify the current beneficiaries of a 2555
proposed transfer of a trust's principal place of administration 2556
not less than sixty days before initiating the transfer. The 2557
notice of a proposed transfer shall include all of the following: 2558

(1) The name of the jurisdiction to which the principal place 2559
of administration is to be transferred; 2560

(2) The address and telephone number at the new location at 2561
which the trustee can be contacted; 2562

(3) An explanation of the reasons for the proposed transfer; 2563

(4) The date on which the trustee expects the proposed 2564
transfer to occur. 2565

(E) In connection with a transfer of the trust's principal 2566
place of administration, the trustee may transfer some or all of 2567
the trust property to a successor trustee designated in the terms 2568
of the trust or appointed pursuant to section 5807.04 of the 2569
Revised Code. 2570

Sec. 5801.08. (A) Notice to a person or the sending of a 2571
document to a person under Chapters 5801. to 5811. of the Revised 2572
Code shall be accomplished in a manner reasonably suitable under 2573

the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message. 2574
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(B) Notice otherwise required or a document otherwise required to be sent under Chapters 5801. to 5811. of the Revised Code is not required to be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee. 2579
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(C) The person to be notified or sent a document may waive notice or the sending of a document under Chapters 5801. to 5811. of the Revised Code. 2584
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(D) Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure. 2587
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Sec. 5801.09. (A) Whenever Chapters 5801. to 5811. of the Revised Code require notice to current or qualified beneficiaries of a trust, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice. 2589
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(B) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 5804.08 or 5804.09 of the Revised Code has the rights of a current beneficiary under Chapters 5801. to 5811. of the Revised Code. 2593
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Sec. 5801.10. (A) As used in this section, "creditor" means any of the following: 2598
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(1) A person holding a debt or security for a debt entered into by a trustee on behalf of the trust; 2600
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(2) A person holding a debt secured by one or more assets of 2602
the trust; 2603

(3) A person having a claim against the trustee or the assets 2604
of the trust under section 5805.06 of the Revised Code; 2605

(4) A person who has attached through legal process a 2606
beneficiary's interest in the trust. 2607

(B) The parties to an agreement under this section shall be 2608
all of the following, or their representatives under the 2609
representation provisions of Chapter 5803. of the Revised Code, 2610
except that only the settlor and any trustee are required to be 2611
parties to an amendment of any revocable trust: 2612

(1) The settlor if living and if no adverse income or 2613
transfer tax results would arise from the settlor's participation; 2614

(2) All beneficiaries; 2615

(3) All currently serving trustees; 2616

(4) Creditors, if their interest is to be affected by the 2617
agreement. 2618

(C) The persons specified in division (B) of this section may 2619
by written instrument enter into an agreement with respect to any 2620
matter concerning the construction of, administration of, or 2621
distributions under the trust instrument, the investment of income 2622
or principal held by the trustee, or other matters. The agreement 2623
is valid only to the extent that it does not effect a termination 2624
of the trust before the date specified for the trust's termination 2625
in the trust instrument, does not change the interests of the 2626
beneficiaries in the trust except as necessary to effect a 2627
modification described in division (C)(5) or (6) of this section, 2628
and includes terms and conditions that could be properly approved 2629
by the court under Chapters 5801. to 5811. of the Revised Code or 2630
other applicable law. Matters that may be resolved by a private 2631

settlement agreement include, but are not limited to, all of the 2632
following: 2633

(1) Determining classes of creditors, beneficiaries, heirs, 2634
next of kin, or other persons; 2635

(2) Resolving disputes arising out of the administration or 2636
distribution under the trust instrument, including disputes over 2637
the construction of the language of the trust instrument or 2638
construction of the language of other writings that affect the 2639
trust instrument; 2640

(3) Granting to the trustee necessary or desirable powers not 2641
granted in the trust instrument or otherwise provided by law, to 2642
the extent that those powers either are not inconsistent with the 2643
express provisions or purposes of the trust instrument or, if 2644
inconsistent with the express provisions or purposes of the trust 2645
instrument, are necessary for the due administration of the trust 2646
instrument; 2647

(4) Modifying the trust instrument, if the modification is 2648
not inconsistent with any dominant purpose or objective of the 2649
trust; 2650

(5) Modifying the trust instrument in the manner required to 2651
qualify the gift under the trust instrument for the charitable 2652
estate or gift tax deduction permitted by federal law, including 2653
the addition of mandatory governing instrument requirements for a 2654
charitable remainder trust as required by the Internal Revenue 2655
Code and regulations promulgated under it in any case in which all 2656
parties interested in the trust have submitted written agreements 2657
to the proposed changes or written disclaimer of interest; 2658

(6) Modifying the trust instrument in the manner required to 2659
qualify any gift under the trust instrument for the estate tax 2660
marital deduction available to noncitizen spouses, including the 2661
addition of mandatory governing instrument requirements for a 2662

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; 2663
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(7) Resolving any other matter that arises under Chapters 5801. to 5811. of the Revised Code. 2668
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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. 2670
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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, all beneficiaries, and their heirs, successors, and assigns. 2674
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(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. 2678
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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. 2687
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(H) If an agreement entered into under this section contains 2693

<u>a provision requiring binding arbitration of any disputes arising</u>	2694
<u>under the agreement, the provision is enforceable.</u>	2695
<u>(I) Nothing in this section affects any of the following:</u>	2696
<u>(1) The right of a beneficiary to disclaim under section</u>	2697
<u>5815.36 of the Revised Code;</u>	2698
<u>(2) The termination or modification of a trust under section</u>	2699
<u>5804.10, 5804.11, 5804.12, 5804.13, 5804.14, 5804.15, or 5804.16</u>	2700
<u>of the Revised Code;</u>	2701
<u>(3) The ability of a trustee to divide or consolidate a trust</u>	2702
<u>under section 5804.17 of the Revised Code.</u>	2703
<u>(J) Nothing in this section restricts or limits the</u>	2704
<u>jurisdiction of any court to dispose of matters not covered by</u>	2705
<u>agreements under this section or to supervise the acts of trustees</u>	2706
<u>appointed by that court.</u>	2707
<u>(K) This section shall be liberally construed to favor the</u>	2708
<u>validity and enforceability of agreements entered into under it.</u>	2709
<u>(L) A trustee serving under the trust instrument is not</u>	2710
<u>liable to any third person arising from any loss due to that</u>	2711
<u>trustee's actions or inactions taken or omitted in good faith</u>	2712
<u>reliance on the terms of an agreement entered into under this</u>	2713
<u>section.</u>	2714
<u>(M) This section does not apply to any of the following:</u>	2715
<u>(1) A charitable trust that has one or more charitable</u>	2716
<u>organizations as qualified beneficiaries;</u>	2717
<u>(2) A charitable trust the terms of which authorize or direct</u>	2718
<u>the trustee to distribute trust income or principal to one or more</u>	2719
<u>charitable organizations to be selected by the trustee, or for one</u>	2720
<u>or more charitable purposes described in division (A) of section</u>	2721
<u>5804.05 of the Revised Code, if any of the following apply:</u>	2722

(a) The distributions may be made on the date that an agreement under this section would be entered into. 2723
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(b) The distributions could be made on the date that an agreement under this section would be entered into if the interests of the current beneficiaries of the trust terminated on that date, but the termination of those interests would not cause the trust to terminate. 2725
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(c) The distributions could be made on the date that an agreement under this section would be entered into if the trust terminated on that date. 2730
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Sec. 5802.01. (A) A court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law. 2733
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(B) An inter vivos trust is not subject to continuing judicial supervision unless ordered by the court. Trusts created pursuant to a section of the Revised Code or a judgment or decree of a court are subject to continuing judicial supervision to the extent provided by the section, judgment, or decree or by court order. 2736
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(C) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights. 2742
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Sec. 5802.02. (A) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust. 2745
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(B) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of 2750
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administration in this state are subject to the jurisdiction of 2752
the courts of this state regarding any matter involving the trust. 2753
By accepting a distribution from the trust, the recipient submits 2754
personally to the jurisdiction of the courts of this state 2755
regarding any matter involving the trust. 2756

(C) This section does not preclude other methods of obtaining 2757
jurisdiction over a trustee, beneficiary, or other person 2758
receiving property from the trust. 2759

Sec. 5802.03. The probate division of the court of common 2760
pleas has concurrent jurisdiction with, and the same powers at law 2761
and in equity as, the general division of the court of common 2762
pleas to issue writs and orders and to hear and determine any 2763
action that involves an inter vivos trust. 2764

Sec. 5803.01. (A) Notice to a person who may represent and 2765
bind another person under this chapter has the same effect as if 2766
notice were given directly to the other person. 2767

(B) The consent of a person who may represent and bind 2768
another person under this chapter is binding on the person 2769
represented unless the person represented objects to the 2770
representation before the consent would otherwise have become 2771
effective. 2772

(C) Except as otherwise provided in sections 5804.11 and 2773
5806.02 of the Revised Code, a person who under this chapter may 2774
represent a settlor who lacks capacity may receive notice and give 2775
a binding consent on the settlor's behalf. 2776

(D) A settlor may not represent and bind a beneficiary under 2777
this chapter with respect to the termination or modification of a 2778
trust under division (A) of section 5804.11 of the Revised Code. 2779

Sec. 5803.02. To the extent there is no conflict of interest 2780

between the holder of a general testamentary power of appointment 2781
and the persons represented with respect to the particular 2782
question or dispute, the holder may represent and bind persons 2783
whose interests, as permissible appointees, takers in default, or 2784
otherwise, are subject to the power. 2785

Sec. 5803.03. To the extent there is no conflict of interest 2786
between the representative and the person represented or among 2787
those being represented with respect to a particular question or 2788
dispute, all of the following apply: 2789

(A) A guardian of the estate may represent and bind the 2790
estate that the guardian of the estate controls. 2791

(B) A guardian of the person may represent and bind the ward 2792
if a guardian of the estate has not been appointed. 2793

(C) An agent having authority to act with respect to the 2794
particular question or dispute may represent and bind the 2795
principal. 2796

(D) Except as provided in division (F) of section 5801.10 of 2797
the Revised Code, a trustee may represent and bind the 2798
beneficiaries of the trust. 2799

(E) A personal representative of a decedent's estate may 2800
represent and bind persons interested in the estate. 2801

(F) A parent may represent and bind the parent's minor or 2802
unborn child if neither a guardian for the child's estate or a 2803
guardian of the person has been appointed. 2804

Sec. 5803.04. Unless otherwise represented, a minor, 2805
incapacitated individual, unborn individual, or person whose 2806
identity or location is unknown and not reasonably ascertainable 2807
may be represented by and bound by another having a substantially 2808

identical interest with respect to the particular question or 2809
dispute, but only to the extent there is no conflict of interest 2810
between the representative and the person represented. 2811

Sec. 5803.05. (A) If the court determines that an interest is 2812
not represented under this chapter or that the otherwise available 2813
representation might be inadequate, the court may appoint a 2814
representative to receive notice, give consent, and otherwise 2815
represent, bind, and act on behalf of a minor, incapacitated 2816
individual, unborn individual, or person whose identity or 2817
location is unknown. A representative may be appointed to 2818
represent several persons or interests. 2819

(B) A representative may act on behalf of the individual 2820
represented with respect to any matter arising under Chapters 2821
5801. to 5811. of the Revised Code, whether or not a judicial 2822
proceeding concerning the trust is pending. 2823

(C) In making decisions, a representative may consider 2824
general benefit accruing to the living members of the individual's 2825
family. 2826

Sec. 5804.01. A trust may be created by any of the following 2827
methods: 2828

(A) Transfer of property to another person as trustee during 2829
the settlor's lifetime or by will or other disposition taking 2830
effect upon the settlor's death; 2831

(B) Declaration by the owner of property that the owner holds 2832
identifiable property as trustee; 2833

(C) Exercise of a power of appointment in favor of a trustee; 2834

(D) A court order. 2835

<u>Sec. 5804.02. (A) A trust is created only if all of the</u>	2836
<u>following apply:</u>	2837
<u>(1) The settlor of the trust, other than the settlor of a</u>	2838
<u>trust created by a court order, has capacity to create a trust.</u>	2839
<u>(2) The settlor of the trust, other than the settlor of a</u>	2840
<u>trust created by a court order, indicates an intention to create</u>	2841
<u>the trust.</u>	2842
<u>(3) The trust has a definite beneficiary or is one of the</u>	2843
<u>following:</u>	2844
<u>(a) A charitable trust;</u>	2845
<u>(b) A trust for the care of an animal, as provided in section</u>	2846
<u>5804.08 of the Revised Code;</u>	2847
<u>(c) A trust for a noncharitable purpose, as provided in</u>	2848
<u>section 5804.09 of the Revised Code.</u>	2849
<u>(4) The trustee has duties to perform.</u>	2850
<u>(5) The same person is not the sole trustee and sole</u>	2851
<u>beneficiary.</u>	2852
<u>(B) A beneficiary is definite if the beneficiary can be</u>	2853
<u>ascertained now or in the future, subject to any applicable rule</u>	2854
<u>against perpetuities.</u>	2855
<u>(C) A power in a trustee to select a beneficiary from an</u>	2856
<u>indefinite class is valid. If the power is not exercised within a</u>	2857
<u>reasonable time, the power fails, and the property subject to the</u>	2858
<u>power passes to the persons who would have taken the property had</u>	2859
<u>the power not been conferred.</u>	2860
<u>(D) A trust is valid regardless of the existence, size, or</u>	2861
<u>character of the corpus of the trust. This division applies to any</u>	2862
<u>trust that was executed prior to, or is executed on or after, the</u>	2863
<u>effective date of Chapters 5801. to 5811. of the Revised Code.</u>	2864

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

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

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

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

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

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

interests of the beneficiaries in the trust. 2895

Sec. 5804.05. (A) A charitable trust may be created for the 2896
relief of poverty, the advancement of education or religion, the 2897
promotion of health, governmental or municipal purposes, or other 2898
purposes the achievement of which is beneficial to the community. 2899

(B) If the terms of a charitable trust do not indicate a 2900
particular charitable purpose or beneficiary, the court may select 2901
one or more charitable purposes or beneficiaries. The selection 2902
must be consistent with the settlor's intention to the extent it 2903
can be ascertained. 2904

(C) The settlor of a charitable trust, among others, may 2905
maintain a proceeding to enforce the trust. 2906

Sec. 5804.06. A trust is void to the extent its creation was 2907
induced by fraud, duress, or undue influence. As used in this 2908
section, "fraud," "duress," and "undue influence" have the same 2909
meanings for trust validity purposes as they have for purposes of 2910
determining the validity of a will. 2911

Sec. 5804.07. Except as required by any section of the 2912
Revised Code not in Chapters 5801. to 5811. of the Revised Code, a 2913
trust is not required to be evidenced by a trust instrument, but 2914
the creation of an oral trust and its terms may be established 2915
only by clear and convincing evidence. 2916

Sec. 5804.08. (A) A trust may be created to provide for the 2917
care of an animal alive during the settlor's lifetime. The trust 2918
terminates upon the death of the animal or, if the trust was 2919
created to provide for the care of more than one animal alive 2920
during the settlor's lifetime, upon the death of the last 2921
surviving animal. 2922

(B) A person appointed in the terms of a trust or, if no person is so appointed, a person appointed by the court may enforce a trust authorized by this section. A person having an interest in the welfare of an animal that is provided care by a trust authorized by this section may request the court to appoint a person to enforce the trust or to remove a person appointed. 2923
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(C) The property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor if then living or to the settlor's successors in interest. 2929
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Sec. 5804.09. Except as otherwise provided in section 5804.08 of the Revised Code or any other section of the Revised Code: 2936
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(A) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. A trust created for a noncharitable purpose may not be enforced for more than twenty-one years. 2939
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(B) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. 2944
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(C) The property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor if then living or to the 2947
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settlor's successors in interest.

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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.

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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.

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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

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settlor's power to consent to a trust's modification or 2983
termination with the approval of the court supervising the 2984
guardianship if an agent is not so authorized and a guardian of 2985
the estate has not been appointed. This division applies only to 2986
irrevocable trusts created on or after the effective date of 2987
Chapters 5801. to 5811. of the Revised Code and to revocable 2988
trusts that become irrevocable on or after the effective date of 2989
Chapters 5801. to 5811. of the Revised Code. This division does 2990
not apply to a noncharitable irrevocable trust described in 42 2991
U.S.C. 1396p(d)(4). 2992

(B) A noncharitable irrevocable trust may be terminated upon 2993
consent of all of the beneficiaries if the court concludes that 2994
continuance of the trust is not necessary to achieve any material 2995
purpose of the trust. A noncharitable irrevocable trust may be 2996
modified, but not to remove or replace the trustee, upon consent 2997
of all of the beneficiaries if the court concludes that 2998
modification is not inconsistent with a material purpose of the 2999
trust. A spendthrift provision in the terms of the trust may, but 3000
is not presumed to, constitute a material purpose of the trust. 3001

(C) Upon termination of a trust under division (A) or (B) of 3002
this section, the trustee shall distribute the trust property as 3003
agreed by the beneficiaries. 3004

(D) If not all of the beneficiaries consent to a proposed 3005
modification or termination of the trust under division (A) or (B) 3006
of this section, the court may approve the modification or 3007
termination if the court is satisfied of both of the following: 3008

(1) That if all of the beneficiaries had consented, the trust 3009
could have been modified or terminated under this section; 3010

(2) That the interests of a beneficiary who does not consent 3011
will be adequately protected. 3012

Sec. 5804.12. (A) The court may modify the administrative or 3013
dispositive terms of a trust or terminate the trust if because of 3014
circumstances not anticipated by the settlor modification or 3015
termination will further the purposes of the trust. To the extent 3016
practicable, the court shall make the modification in accordance 3017
with the settlor's probable intention. 3018

(B) The court may modify the administrative terms of a trust 3019
if continuation of the trust on its existing terms would be 3020
impracticable or impair the trust's administration. 3021

(C) Upon termination of a trust under this section, the 3022
trustee shall distribute the trust property in a manner consistent 3023
with the purposes of the trust. 3024

Sec. 5804.13. (A) Except as otherwise provided in division 3025
(B) of this section, if a particular charitable purpose becomes 3026
unlawful, impracticable, or impossible to achieve, all of the 3027
following apply: 3028

(1) The trust does not fail in whole or in part. 3029

(2) The trust property does not revert to the settlor or the 3030
settlor's successors in interest. 3031

(3) The court may apply cy pres to modify or terminate the 3032
trust by directing that the trust property be applied or 3033
distributed, in whole or in part, in a manner consistent with the 3034
settlor's charitable purposes. In accordance with section 109.25 3035
of the Revised Code, the attorney general is a necessary party to 3036
a judicial proceeding brought under this section. 3037

(B) A provision in the terms of a charitable trust for the 3038
distribution of the trust property to a noncharitable beneficiary 3039
prevails over the power of the court under division (A) of this 3040
section to apply cy pres to modify or terminate the trust. 3041

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

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

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

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

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

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

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

(B) If an inter vivos trust consists of trust property having a total value of less than one hundred thousand dollars, the court may modify or terminate the trust or remove the trustee and appoint a different trustee if it determines that the value of the

trust property is insufficient to justify the cost of 3072
administration. 3073

(C) Upon the termination of a trust pursuant to division 3074
(A)(1) of this section, the trustee shall distribute the trust 3075
estate in accordance with any provision specified in the trust 3076
instrument for the premature termination of the trust. If there is 3077
no provision of that nature in the trust instrument, the trustee 3078
shall distribute the trust estate among the beneficiaries of the 3079
trust in accordance with their respective beneficial interests and 3080
in a manner that the trustee determines to be equitable. For 3081
purposes of distributing the trust estate among the beneficiaries 3082
of the trust under this division, the trustee shall consider all 3083
of the following: 3084

(1) The existence of any agreement among the beneficiaries 3085
with respect to their beneficial interests; 3086

(2) The actuarial values of the separate beneficial interests 3087
of the beneficiaries; 3088

(3) Any expression of preference of the beneficiaries that is 3089
contained in the trust instrument. 3090

(D) Upon the termination of a trust pursuant to division (B) 3091
of this section, the probate court shall order the distribution of 3092
the trust estate in accordance with any provision specified in the 3093
trust instrument for the premature termination of the trust. If 3094
there is no provision of that nature in the trust instrument, the 3095
probate court shall order the distribution of the trust estate 3096
among the beneficiaries of the trust in accordance with their 3097
respective beneficial interests and in a manner that the court 3098
determines to be equitable. For purposes of ordering the 3099
distribution of the trust estate among the beneficiaries of the 3100
trust under this division, the court shall consider the three 3101
factors listed in division (C) of this section. 3102

(E) The existence of a spendthrift or similar provision in a trust instrument or will does not preclude the termination of a trust pursuant to this section. 3103
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3105

(F) This section does not apply to an easement for conservation or preservation. 3106
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Sec. 5804.15. The court may reform the terms of a trust, even if they are unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement. 3108
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Sec. 5804.16. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect. 3114
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Sec. 5804.17. After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust. 3118
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Sec. 5804.18. A trust described in 42 U.S.C. 1396p(d)(4) is irrevocable if the terms of the trust prohibit the settlor from revoking it, whether or not the settlor's estate or the settlor's heirs are named as the remainder beneficiary or beneficiaries of the trust upon the settlor's death. 3123
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Sec. 5805.01. (A) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest or if it restrains involuntary transfer of 3128
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a beneficiary's interest and permits voluntary transfer of a 3131
beneficiary's interest only with the consent of a trustee who is 3132
not the beneficiary. 3133

(B) A term of a trust providing that the interest of a 3134
beneficiary is held subject to a "spendthrift trust," or words of 3135
similar import, is sufficient to restrain both voluntary and 3136
involuntary transfer of the beneficiary's interest. 3137

(C) A beneficiary may not transfer an interest in a trust in 3138
violation of a valid spendthrift provision and, except as 3139
otherwise provided in this chapter and in section 5810.04 of the 3140
Revised Code, a creditor or assignee of the beneficiary may not 3141
reach the interest or a distribution by the trustee before its 3142
receipt by the beneficiary. Real property or tangible personal 3143
property that is owned by the trust but that is made available for 3144
a beneficiary's use or occupancy in accordance with the trustee's 3145
authority under the trust instrument shall not be considered to 3146
have been distributed by the trustee or received by the 3147
beneficiary for purposes of allowing a creditor or assignee of the 3148
beneficiary to reach the property. 3149

Sec. 5805.02. (A) As used in this section, "child" includes 3150
any person for whom an order or judgment for child support has 3151
been entered in this or another state. 3152

(B) Subject to section 5805.03 of the Revised Code, a 3153
spendthrift provision is unenforceable against either of the 3154
following: 3155

(1) The beneficiary's child or spouse who has a judgment or 3156
court order against the beneficiary for support, but only if 3157
distributions can be made for the beneficiary's support or the 3158
beneficiary is entitled to receive mandatory distributions under 3159
the terms of the trust; 3160

(2) A claim of this state or the United States to the extent 3161
provided by the Revised Code or federal law. 3162

(C) A spendthrift provision is enforceable against the 3163
beneficiary's former spouse. 3164

(D) A claimant described in division (B) of this section may 3165
obtain from the court an order attaching present or future 3166
distributions to or for the benefit of the beneficiary. The court 3167
may limit the award to the relief that is appropriate under the 3168
circumstances, considering among any other factors determined 3169
appropriate by the court the support needs of the beneficiary, the 3170
beneficiary's spouse, and the beneficiary's dependent children or, 3171
with respect to a beneficiary who is the recipient of public 3172
benefits, the supplemental needs of the beneficiary if the trust 3173
was not intended to provide for the beneficiary's basic support. 3174

(E) The only exceptions to the effectiveness of a spendthrift 3175
provision are those described in divisions (B) and (D) of this 3176
section, in division (B) of section 5805.05 of the Revised Code, 3177
and in sections 5805.06 and 5810.04 of the Revised Code. 3178

Sec. 5805.03. Notwithstanding anything to the contrary in 3179
division (B) of section 5805.02 of the Revised Code, no creditor 3180
or assignee of a beneficiary of a wholly discretionary trust may 3181
reach the beneficiary's interest in the trust, or a distribution 3182
by the trustee before its receipt by the beneficiary, whether by 3183
attachment of present or future distributions to or for the 3184
benefit of the beneficiary, by judicial sale, by obtaining an 3185
order compelling the trustee to make distributions from the trust, 3186
or by any other means, regardless of whether the trust instrument 3187
includes a spendthrift provision. 3188

Sec. 5805.04. (A) As used in this section, "child" includes 3189
any person for whom an order or judgment for child support has 3190

been entered in this or any other state. 3191

(B) Except as otherwise provided in divisions (C) and (D) of 3192
this section, whether or not a trust contains a spendthrift 3193
provision, a creditor of a beneficiary may not compel a 3194
distribution that is subject to the trustee's discretion, even if 3195
the discretion is expressed in the form of a standard of 3196
distribution or the trustee has abused the discretion. 3197

(C) Division (B) of this section does not apply to this state 3198
for any claim for support of a beneficiary in a state institution 3199
if the terms of the trust do not include a spendthrift provision 3200
and do include a standard for distributions to or for the 3201
beneficiary under which the trustee may make distributions for the 3202
beneficiary's support. 3203

(D) Unless the settlor has explicitly provided in the trust 3204
that the beneficiary's child or spouse or both are excluded from 3205
benefiting from the trust, to the extent a trustee of a trust that 3206
is not a wholly discretionary trust has not complied with a 3207
standard of distribution or has abused a discretion, both of the 3208
following apply: 3209

(1) The court may order a distribution to satisfy a judgment 3210
or court order against the beneficiary for support of the 3211
beneficiary's child or spouse, provided that the court may order 3212
the distributions only if distributions can be made for the 3213
beneficiary's support under the terms of the trust and that the 3214
court may not order any distributions under this division to 3215
satisfy a judgment or court order against the beneficiary for 3216
support of the beneficiary's former spouse. 3217

(2) The court shall direct the trustee to pay to the child or 3218
spouse the amount that is equitable under the circumstances but 3219
not more than the amount the trustee would have been required to 3220

distribute to or for the benefit of the beneficiary had the 3221
trustee complied with the standard or not abused the discretion. 3222

(E) Even if a trust does not contain a spendthrift provision, 3223
to the extent a beneficiary's interest in a trust is subject to 3224
the exercise of the trustee's discretion, whether or not such 3225
discretion is subject to one or more standards of distribution, 3226
the interest may not be ordered sold to satisfy or partially 3227
satisfy a claim of the beneficiary's creditor or assignee. 3228

(F) If the trustee's or cotrustee's discretion to make 3229
distributions for the trustee's or cotrustee's own benefit is 3230
limited by an ascertainable standard, a creditor may not reach or 3231
compel distribution of the beneficial interest except to the 3232
extent the interest would be subject to the creditor's claim if 3233
the beneficiary were not acting as trustee or cotrustee. 3234

Sec. 5805.05. (A) To the extent that a trust that gives a 3235
beneficiary the right to receive one or more mandatory 3236
distributions does not contain a spendthrift provision, the court 3237
may authorize a creditor or assignee of the beneficiary to attach 3238
present or future mandatory distributions to or for the benefit of 3239
the beneficiary or to reach the beneficiary's interest by other 3240
means. The court may limit an award under this section to the 3241
relief that is appropriate under the circumstances, considering 3242
among any other factors determined appropriate by the court, the 3243
support needs of the beneficiary, the beneficiary's spouse, and 3244
the beneficiary's dependent children or, with respect to a 3245
beneficiary who is the recipient of public benefits, the 3246
supplemental needs of the beneficiary if the trust was not 3247
intended to provide for the beneficiary's basic support. If in 3248
exercising its power under this section the court decides to order 3249
either a sale of a beneficiary's interest or that a lien be placed 3250
on the interest, in deciding between the two types of action, the 3251

court shall consider among any other factors it considers relevant 3252
the amount of the claim of the creditor or assignee and the 3253
proceeds a sale would produce relative to the potential value of 3254
the interest to the beneficiary. 3255

(B) Whether or not a trust contains a spendthrift provision, 3256
a creditor or assignee of a beneficiary may reach a mandatory 3257
distribution the beneficiary is entitled to receive if the trustee 3258
has not made the distribution to the beneficiary within a 3259
reasonable time after the designated distribution date. 3260

Sec. 5805.06. (A) Whether or not the terms of a trust contain 3261
a spendthrift provision, all of the following apply: 3262

(1) During the lifetime of the settlor, the property of a 3263
revocable trust is subject to claims of the settlor's creditors. 3264

(2) With respect to an irrevocable trust, a creditor or 3265
assignee of the settlor may reach the maximum amount that can be 3266
distributed to or for the settlor's benefit. If a trust has more 3267
than one settlor, the amount the creditor or assignee of a 3268
particular settlor may reach may not exceed the settlor's interest 3269
in the portion of the trust attributable to that settlor's 3270
contribution. 3271

(3) With respect to a trust described in 42 U.S.C. section 3272
1396p(d)(4)(A) or (C), the court may limit the award of a 3273
settlor's creditor under division (A)(1) or (2) of this section to 3274
the relief that is appropriate under the circumstances, 3275
considering among any other factors determined appropriate by the 3276
court, the supplemental needs of the beneficiary. 3277

(B) For purposes of this section, all of the following apply: 3278

(1) The holder of a power of withdrawal is treated in the 3279
same manner as the settlor of a revocable trust to the extent of 3280

the property subject to the power during the period the power may 3281
be exercised. 3282

(2) Upon the lapse, release, or waiver of the power of 3283
withdrawal, the holder is treated as the settlor of the trust only 3284
to the extent the value of the property affected by the lapse, 3285
release, or waiver exceeds the greatest of the following amounts: 3286

(a) The amount specified in section 2041(b)(2) or 2514(e) of 3287
the Internal Revenue Code; 3288

(b) If the donor of the property subject to the holder's 3289
power of withdrawal is not married at the time of the transfer of 3290
the property to the trust, the amount specified in section 2503(b) 3291
of the Internal Revenue Code; 3292

(c) If the donor of the property subject to the holder's 3293
power of withdrawal is married at the time of the transfer of the 3294
property to the trust, twice the amount specified in section 3295
2503(b) of the Internal Revenue Code. 3296

Sec. 5805.07. Trust property is not subject to personal 3297
obligations of the trustee, even if the trustee becomes insolvent 3298
or bankrupt. 3299

Sec. 5806.01. The capacity required to create, amend, revoke, 3300
or add property to a revocable trust, or to direct the actions of 3301
the trustee of a revocable trust, is the same as that required to 3302
make a will. 3303

Sec. 5806.02. (A) Unless the terms of a trust expressly 3304
provide that the trust is irrevocable, the settlor may revoke or 3305
amend the trust. This division does not apply to a trust created 3306
under an instrument executed before the effective date of this 3307
section. 3308

(B) If a revocable trust is created or funded by more than 3309
one settlor, all of the following apply: 3310

(1) To the extent the trust consists of community property, 3311
either spouse acting alone may revoke the trust, but the trust may 3312
be amended only by joint action of both spouses. 3313

(2) To the extent the trust consists of property other than 3314
community property, each settlor may revoke or amend the trust 3315
with regard to the portion of the trust property attributable to 3316
that settlor's contribution. 3317

(3) Upon the revocation or amendment of the trust by less 3318
than all of the settlors, the trustee shall promptly notify the 3319
other settlors of the revocation or amendment. 3320

(C) The settlor may revoke or amend a revocable trust by 3321
substantial compliance with a method provided in the terms of the 3322
trust or, if the terms of the trust do not provide a method, by 3323
any other method manifesting clear and convincing evidence of the 3324
settlor's intent, provided that a revocable trust may not be 3325
revoked or amended by a will or codicil, regardless of whether it 3326
refers to the trust or specifically devises property that would 3327
otherwise have passed according to the terms of the trust unless 3328
the terms of the trust expressly allow it to be revoked or amended 3329
by a will or codicil. 3330

(D) Upon revocation of a revocable trust, the trustee shall 3331
deliver the trust property as the settlor directs. 3332

(E) An agent under a power of attorney may exercise a 3333
settlor's powers with respect to revocation, amendment, or 3334
distribution of trust property only to the extent expressly 3335
authorized by both the terms of the trust and the power. 3336

(F) A guardian of the estate of the settlor or, if no 3337
guardian of the estate has been appointed, a guardian of the 3338

person of the settlor may exercise a settlor's powers with respect 3339
to revocation, amendment, or distribution of trust property only 3340
with the approval of the court supervising the guardianship. 3341

(G) A trustee who does not know that a trust has been revoked 3342
or amended is not liable to the settlor or settlor's successors in 3343
interest for distributions made and other actions taken on the 3344
assumption that the trust had not been amended or revoked. 3345

Sec. 5806.03. (A) During the lifetime of the settlor of a 3346
revocable trust, whether or not the settlor has capacity to revoke 3347
the trust, the rights of the beneficiaries are subject to the 3348
control of, and the duties of the trustee are owed exclusively to, 3349
the settlor. If the trustee breaches its duty during the lifetime 3350
of the settlor, any recovery obtained from the trustee after the 3351
settlor becomes incapacitated or dies shall be apportioned by the 3352
court. If the settlor is living when the recovery is obtained, the 3353
court shall apportion the recovery between the settlor and the 3354
trust, or allocate the entire recovery to the settlor or the 3355
trust, as it determines to be equitable under the circumstances. 3356
If the settlor is not living when the recovery is obtained, the 3357
court shall apportion the recovery between the settlor's estate 3358
and the trust, or allocate the entire recovery to the settlor's 3359
estate or the trust, as it determines to be equitable under the 3360
circumstances. 3361

(B) During the period the power may be exercised, the holder 3362
of a power of withdrawal has the rights of a settlor of a 3363
revocable trust under this section to the extent of the property 3364
subject to the power. 3365

Sec. ~~2305.121~~ 5806.04. (A) Any of the following actions 3366
pertaining to a revocable trust that is made irrevocable by the 3367
death of the ~~grantor~~ settlor of the trust shall be commenced 3368

within two years after the date of the death of the grantor	3369
<u>settlor</u> of the trust:	3370
(1) An action to contest the validity of the trust;	3371
(2) An action to contest the validity of any amendment to the	3372
trust that was made during the lifetime of the grantor <u>settlor</u> of	3373
the trust;	3374
(3) An action to contest the revocation of the trust during	3375
the lifetime of the grantor <u>settlor</u> of the trust;	3376
(4) An action to contest the validity of any transfer made to	3377
the trust during the lifetime of the grantor <u>settlor</u> of the trust.	3378
(B) Upon the death of the grantor <u>settlor</u> of a revocable	3379
trust that was made irrevocable by the death of the grantor	3380
<u>settlor</u> , the trustee, without liability, may proceed to distribute	3381
the trust property in accordance with the terms of the trust	3382
unless either of the following applies:	3383
(1) The trustee has actual knowledge of a pending action to	3384
contest the validity of the trust, any amendment to the trust, the	3385
revocation of the trust, or any transfer made to the trust during	3386
the lifetime of the grantor <u>settlor</u> of the trust.	3387
(2) The trustee receives written notification from a	3388
potential contestant of a potential action to contest the validity	3389
of the trust, any amendment to the trust, the revocation of the	3390
trust, or any transfer made to the trust during the lifetime of	3391
the grantor <u>settlor</u> of the trust, and the action is actually filed	3392
within ninety days after the written notification was given to the	3393
trustee.	3394
(C) If a distribution of trust property is made pursuant to	3395
division (B) of this section, a beneficiary of the trust shall	3396
return any distribution to the extent that it exceeds the	3397
distribution to which the beneficiary is entitled if the trust, an	3398

amendment to the trust, or a transfer made to the trust later is 3399
determined to be invalid. 3400

(D) This section applies only to revocable trusts that are 3401
made irrevocable by the death of the ~~grantor~~ settlor of the trust 3402
if the grantor dies on or after ~~the effective date of this section~~ 3403
July 23, 2002. 3404

Sec. 5807.01. (A) Except as otherwise provided in division 3405
(C) of this section, a person designated as trustee accepts the 3406
trusteeship by substantially complying with a method of acceptance 3407
provided in the terms of the trust or, if the terms of the trust 3408
do not provide a method or the method provided in the terms is not 3409
expressly made exclusive, by accepting delivery of the trust 3410
property, exercising powers or performing duties as trustee, or 3411
otherwise indicating acceptance of the trusteeship. 3412

(B) A person designated as trustee who has not yet accepted 3413
the trusteeship may reject the trusteeship. A designated trustee 3414
who does not accept the trusteeship within a reasonable time after 3415
knowing of the designation is deemed to have rejected the 3416
trusteeship. 3417

(C) A person designated as trustee, without accepting the 3418
trusteeship, may do either or both of the following: 3419

(1) Act to preserve the trust property if, within a 3420
reasonable time after acting, the person sends a rejection of the 3421
trusteeship to the settlor or, if the settlor is dead or lacks 3422
capacity, to a qualified beneficiary; 3423

(2) Inspect or investigate trust property to determine 3424
potential liability under environmental or other law or for any 3425
other purpose. 3426

Sec. 5807.02. (A) A trustee shall give bond to secure 3427

performance of the trustee's duties only if the court finds that a 3428
bond is needed to protect the interests of the beneficiaries or is 3429
required by the terms of the trust and the court has not dispensed 3430
with the requirement. 3431

(B) The court may specify the amount of a bond, its 3432
liabilities, and whether sureties are necessary. The court may 3433
modify or terminate a bond at any time. 3434

(C) A regulated financial-service institution qualified to do 3435
trust business in this state need not give bond, even if required 3436
by the terms of the trust. 3437

Sec. 5807.03. (A) If there are three or more cotrustees 3438
serving, the cotrustees may act by majority decision. 3439

(B) If a vacancy occurs in a cotrusteeship, the remaining 3440
cotrustees may act for the trust. 3441

(C) A cotrustee must participate in the performance of a 3442
trustee's function unless the cotrustee is unavailable to perform 3443
the function because of absence, illness, disqualification under 3444
other law, or other temporary incapacity or the cotrustee has 3445
properly delegated the performance of the function to another 3446
trustee. 3447

(D) If a cotrustee is unavailable to perform duties because 3448
of absence, illness, disqualification under other law, or other 3449
temporary incapacity and prompt action is necessary to achieve the 3450
purposes of the trust or to avoid injury to the trust property, 3451
the remaining cotrustee or a majority of the remaining cotrustees 3452
may act for the trust. 3453

(E) A trustee may delegate to a cotrustee duties and powers 3454
that a prudent trustee of comparable skills could properly 3455
delegate under the circumstances. A delegation made under this 3456

division shall be governed by section 5808.07 of the Revised Code. 3457
Unless a delegation was irrevocable, a trustee may revoke a 3458
delegation previously made. 3459

(F) Except as otherwise provided in division (G) of this 3460
section, and subject to divisions (C) and (E) of this section, a 3461
trustee who does not join in an action of another trustee is not 3462
liable for the action. 3463

(G) Except as otherwise provided in this division, each 3464
trustee shall exercise reasonable care to prevent a cotrustee from 3465
committing a serious breach of trust and to compel a cotrustee to 3466
redress a serious breach of trust. A trustee is not required to 3467
exercise reasonable care of that nature under this division, and a 3468
trustee is not liable for resulting losses, when section 5815.25 3469
of the Revised Code is applicable or there is more than one other 3470
trustee and the other trustees act by majority vote. 3471

(H) A dissenting trustee who joins in an action at the 3472
direction of the majority of the trustees and who notified any 3473
cotrustee of the dissent at or before the time of the action is 3474
not liable for the action. 3475

Sec. 5807.04. (A) A vacancy in a trusteeship occurs under any 3476
of the following circumstances: 3477

(1) A person designated as trustee rejects the trusteeship; 3478

(2) A person designated as trustee cannot be identified or 3479
does not exist; 3480

(3) A trustee resigns; 3481

(4) A trustee is disqualified or removed; 3482

(5) A trustee dies; 3483

(6) A guardian of the estate or person is appointed for an 3484
individual serving as trustee. 3485

(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. 3486
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(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: 3489
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(1) By a person designated in the terms of the trust to act as successor trustee; 3492
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(2) By a person appointed by someone designated in the terms of the trust to appoint a successor trustee; 3494
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(3) By a person appointed by unanimous agreement of the qualified beneficiaries; 3496
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(4) By a person appointed by the court. 3498

(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: 3499
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3501

(1) By a person designated in the terms of the trust to act as successor trustee; 3502
3503

(2) By a person appointed by someone designated in the terms of the trust to appoint a successor trustee; 3504
3505

(3) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust; 3506
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(4) By a person appointed by the court. 3509

(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. 3510
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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.

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

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

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

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

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

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

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

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

Sec. 5807.07. (A) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered

to a successor trustee or other person entitled to it, a trustee 3542
who has resigned or been removed has the duties of a trustee and 3543
the powers necessary to protect the trust property. 3544

(B) A trustee who has resigned or been removed shall proceed 3545
expeditiously to deliver the trust property within the trustee's 3546
possession to the cotrustee, successor trustee, or other person 3547
entitled to it. 3548

Sec. 5807.08. (A) If the terms of a trust do not specify the 3549
trustee's compensation, a trustee is entitled to compensation that 3550
is reasonable under the circumstances. 3551

(B) If the terms of a trust specify the trustee's 3552
compensation, the trustee is entitled to be compensated as 3553
specified, but the court may allow more or less compensation if 3554
the duties of the trustee are substantially different from those 3555
contemplated when the trust was created or the compensation 3556
specified by the terms of the trust would be unreasonably low or 3557
high. 3558

Sec. 5807.09. (A) A trustee is entitled to be reimbursed out 3559
of the trust property, with interest as appropriate, for expenses 3560
that were properly incurred in the administration of the trust 3561
and, to the extent necessary to prevent unjust enrichment of the 3562
trust, expenses that were not properly incurred in the 3563
administration of the trust. 3564

(B) An advance by the trustee of money for the protection of 3565
the trust gives rise to a lien against trust property to secure 3566
reimbursement with reasonable interest. 3567

Sec. 5808.01. Upon acceptance of a trusteeship, the trustee 3568
shall administer the trust in good faith, in accordance with its 3569

terms and purposes and the interests of the beneficiaries, and in 3570
accordance with Chapters 5801. to 5811. of the Revised Code. 3571

Sec. 5808.02. (A) A trustee shall administer the trust solely 3572
in the interests of the beneficiaries. 3573

(B) Subject to the rights of persons dealing with or 3574
assisting the trustee as provided in section 5810.12 of the 3575
Revised Code, a sale, encumbrance, or other transaction involving 3576
the investment or management of trust property entered into by the 3577
trustee for the trustee's own personal account or that is 3578
otherwise affected by a conflict between the trustee's fiduciary 3579
and personal interests is voidable by a beneficiary affected by 3580
the transaction unless one of the following applies: 3581

(1) The transaction was authorized by the terms of the trust 3582
or by other provisions of the Revised Code. 3583

(2) The transaction was approved by the court. 3584

(3) The beneficiary did not commence a judicial proceeding 3585
within the time allowed by section 5810.05 of the Revised Code. 3586

(4) The beneficiary consented to the trustee's conduct, 3587
ratified the transaction, or released the trustee in compliance 3588
with section 5810.09 of the Revised Code. 3589

(5) The transaction involves a contract entered into or claim 3590
acquired by the trustee before the person became or contemplated 3591
becoming trustee. 3592

(C) A sale, encumbrance, or other transaction involving the 3593
investment or management of trust property is presumed to be 3594
affected by a conflict between personal and fiduciary interests if 3595
it is entered into by the trustee with one of the following: 3596

(1) The trustee's spouse; 3597

<u>(2) The trustee's descendant, sibling, or parent or the spouse of a trustee's descendant, sibling, or parent;</u>	3598
	3599
<u>(3) An agent or attorney of the trustee;</u>	3600
<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>	3601
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<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>	3605
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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>	3610
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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>	3615
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<u>(G) This section does not preclude either of the following:</u>	3622
<u>(1) Any transaction authorized by another section of the Revised Code;</u>	3623
	3624
<u>(2) Unless the beneficiaries establish that it is unfair, any of the following transactions:</u>	3625
	3626
<u>(a) An agreement between a trustee and a beneficiary relating</u>	3627

<u>to the appointment or compensation of the trustee;</u>	3628
<u>(b) Payment of reasonable compensation to the trustee;</u>	3629
<u>(c) A transaction between a trust and another trust,</u>	3630
<u>decedent's estate, or guardianship of which the trustee is a</u>	3631
<u>fiduciary or in which a beneficiary has an interest;</u>	3632
<u>(d) A deposit of trust money in a regulated</u>	3633
<u>financial-services institution that is an affiliate of the</u>	3634
<u>trustee;</u>	3635
<u>(e) An advance by the trustee of money for the protection of</u>	3636
<u>the trust.</u>	3637
<u>(H) The court may appoint a special fiduciary to make a</u>	3638
<u>decision with respect to any proposed transaction that might</u>	3639
<u>violate this section if entered into by the trustee.</u>	3640
<u>Sec. 1339.55 5808.03. (A) A trustee shall invest and manage</u>	3641
<u>the trust assets solely in the interest of the beneficiaries.</u>	3642
<u>(B) If a trust has two or more beneficiaries, the trustee</u>	3643
<u>shall act impartially in investing and, managing, and distributing</u>	3644
<u>the trust assets taking into account any differing property,</u>	3645
<u>giving due regard to the beneficiaries' respective interests of</u>	3646
<u>the beneficiaries.</u>	3647
<u>Sec. 5808.04. A trustee shall administer the trust as a</u>	3648
<u>prudent person would and shall consider the purposes, terms,</u>	3649
<u>distributional requirements, and other circumstances of the trust.</u>	3650
<u>In satisfying this standard, the trustee shall exercise reasonable</u>	3651
<u>care, skill, and caution.</u>	3652
<u>Sec. 1339.57 5808.05. Except as otherwise permitted by law,</u>	3653
<u>in investing and managing administering a trust assets, a trustee</u>	3654
<u>may only incur <u>only</u> costs that are appropriate and reasonable in</u>	3655

relation to the assets, the purposes of the trust, and the skills 3656
of the trustee. 3657

Sec. 5808.06. A trustee who has special skills or expertise, 3658
or is named trustee in reliance upon the trustee's representation 3659
that the trustee has special skills or expertise, shall use those 3660
special skills or expertise. 3661

~~Sec. 1339.59~~ 5808.07. (A) A trustee may delegate ~~investment~~ 3662
~~duties~~ and ~~management functions of a trust~~ powers that a prudent 3663
trustee having comparable skills could properly delegate under the 3664
circumstances. In accordance with this division, a trustee shall 3665
exercise reasonable care, skill, and caution in doing all of the 3666
following: 3667

(1) Selecting an agent, cotrustee, or other fiduciary to whom 3668
the delegation is made; 3669

(2) Establishing the scope and terms of the delegation 3670
consistent with the purposes and terms of the trust; 3671

(3) Periodically reviewing the agent's, cotrustee's, or other 3672
fiduciary's actions in order to monitor the agent's, cotrustee's, 3673
or other fiduciary's performance and compliance with the terms of 3674
the delegation. 3675

(B) In performing ~~investment or management functions of a~~ 3676
~~trust that are~~ delegated to an agent function, an agent, 3677
cotrustee, or other fiduciary owes a duty to the trust to exercise 3678
reasonable care to comply with the terms of the delegation. 3679

(C) A trustee who complies with division (A) of this section 3680
is not liable to the beneficiaries of the trust or to the trust 3681
for the decisions or actions of the agent, cotrustee, or other 3682
fiduciary to whom the function was delegated. 3683

(D) By accepting the delegation of ~~investment~~ powers or 3684

~~management functions~~ duties from the trustee of a trust that is 3685
subject to the laws of this state, an agent, cotrustee, or other 3686
fiduciary submits to the jurisdiction of this state. 3687

Sec. 5808.08. (A) While a trust is revocable, the trustee may 3688
follow a direction of the settlor that is contrary to the terms of 3689
the trust. 3690

(B) As provided in section 5815.25 of the Revised Code, a 3691
trustee is not liable for losses resulting from certain actions or 3692
failures to act when other persons are granted certain powers with 3693
respect to the administration of the trust. 3694

(C) The terms of a trust may confer upon a trustee or other 3695
person a power to direct the modification or termination of the 3696
trust. 3697

(D) A person other than a beneficiary who holds a power to 3698
direct is presumptively a fiduciary who, as a fiduciary, is 3699
required to act in good faith with regard to the purposes of the 3700
trust and the interests of the beneficiaries. The holder of a 3701
power to direct is liable for any loss that results from breach of 3702
a fiduciary duty. 3703

Sec. 5808.09. A trustee shall take reasonable steps to take 3704
control of and protect the trust property. 3705

Sec. 5808.10. (A) A trustee shall keep adequate records of 3706
the administration of the trust. 3707

(B) A trustee shall keep trust property separate from the 3708
trustee's own property. 3709

(C) Except as otherwise provided in division (D) of this 3710
section and in section 2131.21 of the Revised Code, a trustee not 3711
subject to federal or state banking regulation shall cause the 3712
trust property to be designated so that the interest of the trust, 3713

to the extent feasible, appears in records maintained by a party 3714
other than a trustee or beneficiary. 3715

(D) If the trustee maintains records clearly indicating the 3716
respective interests, a trustee may invest as a whole the property 3717
of two or more separate trusts. 3718

Sec. 5808.11. A trustee shall take reasonable steps to 3719
enforce claims of the trust and to defend claims against the 3720
trust. 3721

Sec. 5808.12. A trustee shall take reasonable steps to 3722
collect trust property held by third persons. The responsibility 3723
of a successor trustee with respect to the administration of the 3724
trust by a prior trustee shall be governed by section 5815.24 of 3725
the Revised Code. 3726

Sec. 5808.13. (A) A trustee shall keep the current 3727
beneficiaries of the trust reasonably informed about the 3728
administration of the trust and of the material facts necessary 3729
for them to protect their interests. Unless unreasonable under the 3730
circumstances, a trustee shall promptly respond to a beneficiary's 3731
request for information related to the administration of the 3732
trust. 3733

(B) A trustee shall do all of the following: 3734

(1) Upon the request of a beneficiary, promptly furnish to 3735
the beneficiary a copy of the trust instrument. If the settlor of 3736
a revocable trust that has become irrevocable has completely 3737
restated the terms of the trust, the trust instrument furnished by 3738
the trustee shall be the restated trust instrument, including any 3739
amendments to the restated trust instrument. Nothing in division 3740
(B)(1) of this section limits the ability of a beneficiary to 3741
obtain a copy of the original trust instrument, any other 3742

restatements of the original trust instrument, or amendments to 3743
the original trust instrument and any other restatements of the 3744
original trust instrument in a judicial proceeding with respect to 3745
the trust. 3746

(2) Within sixty days after accepting a trusteeship, notify 3747
the current beneficiaries of the acceptance and of the trustee's 3748
name, address, and telephone number; 3749

(3) Within sixty days after the date the trustee acquires 3750
knowledge of the creation of an irrevocable trust, or the date the 3751
trustee acquires knowledge that a formerly revocable trust has 3752
become irrevocable, whether by the death of the settlor or 3753
otherwise, notify the current beneficiaries of the trust's 3754
existence, of the identity of the settlor or settlors, of the 3755
right to request a copy of the trust instrument, and of the right 3756
to a trustee's report as provided in division (C) of this section; 3757

(4) Notify the current beneficiaries in advance of any change 3758
in the method or rate of the trustee's compensation. 3759

(C) A trustee shall send to the current beneficiaries, and to 3760
other beneficiaries who request it, at least annually and at the 3761
termination of the trust, a report of the trust property, 3762
liabilities, receipts, and disbursements, including the source and 3763
amount of the trustee's compensation, a listing of the trust 3764
assets, and, if feasible, the trust assets' respective market 3765
values. Upon a vacancy in a trusteeship, unless a cotrustee 3766
remains in office, a report for the period during which the former 3767
trustee served must be sent to the current beneficiaries by the 3768
former trustee. A personal representative or guardian may send the 3769
current beneficiaries a report on behalf of a deceased or 3770
incapacitated trustee. 3771

(D) A beneficiary may waive the right to a trustee's report 3772
or other information otherwise required to be furnished under this 3773

section. A beneficiary, with respect to future reports and other 3774
information, may withdraw a waiver previously given. 3775

(E) The trustee may provide information and reports to 3776
beneficiaries to whom the provided information and reports are not 3777
required to be provided under this section. 3778

(F) Divisions (B)(2) and (3) of this section apply only to a 3779
trustee who accepts a trusteeship on or after the effective date 3780
of this section, to an irrevocable trust created on or after the 3781
effective date of this section, and to a revocable trust that 3782
becomes irrevocable on or after the effective date of this 3783
section. 3784

Sec. 5808.14. (A) The judicial standard of review for 3785
discretionary trusts is that the trustee shall exercise a 3786
discretionary power reasonably, in good faith, and in accordance 3787
with the terms and purposes of the trust and the interests of the 3788
beneficiaries, except that a reasonableness standard shall not be 3789
applied to the exercise of discretion by the trustee of a wholly 3790
discretionary trust. The greater the grant of discretion by the 3791
settlor to the trustee, the broader the range of permissible 3792
conduct by the trustee in exercising it. 3793

(B) Subject to division (D) of this section, and unless the 3794
terms of the trust expressly indicate that a rule in this division 3795
does not apply: 3796

(1) A person other than a settlor who is a beneficiary and 3797
trustee of a trust that confers on the trustee a power to make 3798
discretionary distributions to or for the trustee's personal 3799
benefit may exercise the power only in accordance with an 3800
ascertainable standard. 3801

(2) A trustee may not exercise a power to make discretionary 3802
distributions to satisfy a legal obligation of support that the 3803

trustee personally owes another person. 3804

(C) A power whose exercise is limited or prohibited by 3805
division (B) of this section may be exercised by a majority of the 3806
remaining trustees whose exercise of the power is not so limited 3807
or prohibited. If the power of all trustees is so limited or 3808
prohibited, the court may appoint a special fiduciary with 3809
authority to exercise the power. 3810

(D) Division (B) of this section does not apply to any of the 3811
following: 3812

(1) A power held by the settlor's spouse who is the trustee 3813
of a trust for which a marital deduction, as defined in section 3814
2056(b)(5) or 2523(e) of the Internal Revenue Code, was previously 3815
allowed; 3816

(2) Any trust during any period that the trust may be revoked 3817
or amended by its settlor; 3818

(3) A trust if contributions to the trust qualify for the 3819
annual exclusion under section 2503(c) of the Internal Revenue 3820
Code. 3821

Sec. 5808.15. (A) A trustee, without authorization by the 3822
court, may exercise powers conferred by the terms of the trust 3823
and, except as limited by the terms of the trust, may exercise all 3824
of the following powers: 3825

(1) All powers over the trust property that an unmarried 3826
competent owner has over individually owned property; 3827

(2) Any other powers appropriate to achieve the proper 3828
investment, management, and distribution of the trust property; 3829

(3) Any other powers conferred by Chapters 5801. to 5811. of 3830
the Revised Code. 3831

(B) The exercise of a power is subject to the fiduciary 3832

<u>duties prescribed by Chapter 5808. of the Revised Code.</u>	3833
<u>Sec. 5808.16. Without limiting the authority conferred by</u>	3834
<u>section 5808.15 of the Revised Code, a trustee may do all of the</u>	3835
<u>following:</u>	3836
<u>(A) Collect trust property and accept or reject additions to</u>	3837
<u>the trust property from a settlor or any other person;</u>	3838
<u>(B) Acquire or sell property, for cash or on credit, at</u>	3839
<u>public or private sale;</u>	3840
<u>(C) Exchange, partition, or otherwise change the character of</u>	3841
<u>trust property;</u>	3842
<u>(D) Deposit trust money in an account in a regulated</u>	3843
<u>financial-service institution;</u>	3844
<u>(E) Borrow money, with or without security, and mortgage or</u>	3845
<u>pledge trust property for a period within or extending beyond the</u>	3846
<u>duration of the trust;</u>	3847
<u>(F) With respect to an interest in a proprietorship,</u>	3848
<u>partnership, limited liability company, business trust,</u>	3849
<u>corporation, or other form of business or enterprise, continue the</u>	3850
<u>business or other enterprise and take any action that may be taken</u>	3851
<u>by shareholders, members, or property owners, including merging,</u>	3852
<u>dissolving, or otherwise changing the form of business</u>	3853
<u>organization or contributing additional capital;</u>	3854
<u>(G) With respect to stocks or other securities, exercise the</u>	3855
<u>rights of an absolute owner, including the right to do any of the</u>	3856
<u>following:</u>	3857
<u>(1) Vote, or give proxies to vote, with or without power of</u>	3858
<u>substitution, or enter into or continue a voting trust agreement;</u>	3859
<u>(2) Hold a security in the name of a nominee or in other form</u>	3860
<u>without disclosure of the trust so that title may pass by</u>	3861

<u>delivery;</u>	3862
<u>(3) Pay calls, assessments, and other sums chargeable or</u>	3863
<u>accruing against the securities and sell or exercise stock</u>	3864
<u>subscription or conversion rights;</u>	3865
<u>(4) Deposit the securities with a depository or other</u>	3866
<u>regulated financial-service institution.</u>	3867
<u>(H) With respect to an interest in real property, construct,</u>	3868
<u>or make ordinary or extraordinary repairs to, alterations to, or</u>	3869
<u>improvements in, buildings or other structures, demolish</u>	3870
<u>improvements, raze existing or erect new party walls or buildings,</u>	3871
<u>subdivide or develop land, dedicate land to public use or grant</u>	3872
<u>public or private easements, and make or vacate plats and adjust</u>	3873
<u>boundaries;</u>	3874
<u>(I) Enter into a lease for any purpose as lessor or lessee,</u>	3875
<u>including a lease or other arrangement for exploration and removal</u>	3876
<u>of natural resources, with or without the option to purchase or</u>	3877
<u>renew, for a period within or extending beyond the duration of the</u>	3878
<u>trust;</u>	3879
<u>(J) Grant an option involving a sale, lease, or other</u>	3880
<u>disposition of trust property or acquire an option for the</u>	3881
<u>acquisition of property, including an option exercisable beyond</u>	3882
<u>the duration of the trust, and exercise an option so acquired;</u>	3883
<u>(K) Insure the property of the trust against damage or loss</u>	3884
<u>and insure the trustee, the trustee's agents, and beneficiaries</u>	3885
<u>against liability arising from the administration of the trust;</u>	3886
<u>(L) Abandon or decline to administer property of no value or</u>	3887
<u>of insufficient value to justify its collection or continued</u>	3888
<u>administration;</u>	3889
<u>(M) With respect to possible liability for violation of</u>	3890
<u>environmental law, do any of the following:</u>	3891

(1) Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property; 3892
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(2) Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement; 3897
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(3) Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law; 3902
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(4) Compromise claims against the trust that may be asserted for an alleged violation of environmental law; 3905
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(5) Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law. 3907
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(N) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust; 3909
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(O) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust; 3912
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(P) Exercise elections with respect to federal, state, and local taxes; 3915
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(O) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance policy payable to the trustee, exercise rights under any employee benefit or retirement plan, annuity, or life insurance policy payable to the trustee, including the right to indemnification for expenses and against 3917
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<u>liabilities, and take appropriate action to collect the proceeds;</u>	3922
<u>(R) Make loans out of trust property, including loans to a</u>	3923
<u>beneficiary on terms and conditions the trustee considers to be</u>	3924
<u>fair and reasonable under the circumstances, and the trustee has a</u>	3925
<u>lien on future distributions for repayment of those loans;</u>	3926
<u>(S) Pledge the property of a revocable trust to guarantee</u>	3927
<u>loans made by others to the settlor of the revocable trust, or, if</u>	3928
<u>the settlor so directs, to guarantee loans made by others to a</u>	3929
<u>third party;</u>	3930
<u>(T) Appoint a trustee to act in another jurisdiction with</u>	3931
<u>respect to trust property located in the other jurisdiction,</u>	3932
<u>confer upon the appointed trustee all of the powers and duties of</u>	3933
<u>the appointing trustee, require that the appointed trustee furnish</u>	3934
<u>security, and remove any trustee so appointed;</u>	3935
<u>(U) Pay an amount distributable to a beneficiary who is under</u>	3936
<u>a legal disability or who the trustee reasonably believes is</u>	3937
<u>incapacitated, by paying it directly to the beneficiary or</u>	3938
<u>applying it for the beneficiary's benefit, or by doing any of the</u>	3939
<u>following:</u>	3940
<u>(1) Paying it to the beneficiary's guardian of the estate,</u>	3941
<u>or, if the beneficiary does not have a guardian of the estate, the</u>	3942
<u>beneficiary's guardian of the person;</u>	3943
<u>(2) Paying it to the beneficiary's custodian under sections</u>	3944
<u>5814.01 to 5814.09 of the Revised Code and, for that purpose,</u>	3945
<u>creating a custodianship;</u>	3946
<u>(3) If the trustee does not know of a guardian of the person</u>	3947
<u>or estate, or custodian, paying it to an adult relative or other</u>	3948
<u>person having legal or physical care or custody of the</u>	3949
<u>beneficiary, to be expended on the beneficiary's behalf;</u>	3950
<u>(4) Managing it as a separate fund on the beneficiary's</u>	3951

behalf, subject to the beneficiary's continuing right to withdraw 3952
the distribution. 3953

(V) On distribution of trust property or the division or 3954
termination of a trust, make distributions in divided or undivided 3955
interests, allocate particular assets in proportionate or 3956
disproportionate shares, value the trust property for those 3957
purposes, and adjust for resulting differences in valuation; 3958

(W) Resolve a dispute concerning the interpretation of the 3959
trust or its administration by mediation, arbitration, or other 3960
procedure for alternative dispute resolution; 3961

(X) Prosecute or defend an action, claim, or judicial 3962
proceeding in any jurisdiction to protect trust property and the 3963
trustee in the performance of the trustee's duties; 3964

(Y) Sign and deliver contracts and other instruments that are 3965
useful to achieve or facilitate the exercise of the trustee's 3966
powers; 3967

(Z) On termination of the trust, exercise the powers 3968
appropriate to wind up the administration of the trust and 3969
distribute the trust property to the persons entitled to it. 3970

Sec. 5808.17. (A) Upon termination or partial termination of 3971
a trust, the trustee may send to the beneficiaries a proposal for 3972
distribution. The right of any beneficiary to object to the 3973
proposed distribution terminates if the beneficiary does not 3974
notify the trustee of an objection within thirty days after the 3975
proposal was sent but only if the proposal informed the 3976
beneficiary of the right to object and of the time allowed for 3977
objection. 3978

(B) Upon the occurrence of an event terminating or partially 3979
terminating a trust, the trustee shall proceed expeditiously to 3980
distribute the trust property to the persons entitled to it, 3981

subject to the right of the trustee to retain a reasonable reserve 3982
for the payment of debts, expenses, and taxes. 3983

(C) A release by a beneficiary of a trustee from liability 3984
for breach of trust is invalid to the extent that it was induced 3985
by improper conduct of the trustee or that the beneficiary, at the 3986
time of the release, did not know of the beneficiary's rights or 3987
of the material facts relating to the breach. 3988

Sec. ~~1339.52~~ 5809.01. (A)(1) As used in the Revised Code, the 3989
"Ohio Uniform Prudent Investor Act" means sections 5809.01 to 3990
5809.08, 5808.03, 5808.05, and 5808.06, division (A) of section 3991
5808.02, and division (B) of section 5808.07 of the Revised Code, 3992
and those sections may be cited as the "Ohio Uniform Prudent 3993
Investor Act." 3994

(2) As used in ~~sections 1339.52 to 1339.61~~ of the Revised 3995
Code ~~the Ohio Uniform Prudent Investor Act,~~ "trustee" means a 3996
trustee under any testamentary, inter vivos, or other trust. 3997

(B) Except as provided in division (C) or (D) of this 3998
section, a trustee who invests and manages trust assets under 3999
~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform 4000
Prudent Investor Act owes a duty to the beneficiaries of the trust 4001
to comply with ~~sections 1339.52 to 1339.61 of the Revised Code~~ the 4002
Ohio Uniform Prudent Investor Act. 4003

(C) ~~Sections 1339.52 to 1339.61 of the Revised Code~~ The Ohio 4004
Uniform Prudent Investor Act may be expanded, restricted, 4005
eliminated, or otherwise altered, without express reference ~~to~~ 4006
~~these sections~~ by the instrument creating a trust to the Ohio 4007
Uniform Prudent Investor Act or any section of the Revised Code 4008
that is part of that act. 4009

(D) A trustee is not liable to a beneficiary of a trust to 4010
the extent the trustee acted in reasonable reliance on the 4011

provisions of the trust.

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

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

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

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

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

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(1) The general economic conditions;

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(2) The possible effect of inflation or deflation;

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

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(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

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(5) The expected total return from income and appreciation of

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capital;	4041
(6) Other resources of the beneficiaries;	4042
(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;	4043 4044
(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.	4045 4046 4047
 Sec. 1339.54 <u>5809.03</u>. (A) A trustee may invest in any kind of property or type of investment provided that the investment is consistent with the requirements and standards of sections 1339.52 to 1339.61 of the Revised Code <u>the Ohio Uniform Prudent Investor</u> <u>Act</u> .	4048 4049 4050 4051 4052
(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.	4053 4054 4055 4056
 Sec. 1339.56 <u>5809.04</u>. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of trust assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and in order to comply with the requirements and standards of sections 1339.52 to 1339.61 of the Revised Code <u>the Ohio</u> <u>Uniform Prudent Investor Act</u> .	4057 4058 4059 4060 4061 4062 4063 4064 4065
 Sec. 1339.58 <u>5809.05</u>. Compliance with sections 1339.52 to 1339.61 of the Revised Code <u>the Ohio Uniform Prudent Investor Act</u> shall be determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by	4066 4067 4068 4069

hindsight. 4070

Sec. 5809.06. (A) A trustee may delegate investment and 4071
management functions of a trust that a prudent trustee having 4072
comparable skills could properly delegate under the circumstances. 4073
A trustee that exercises its delegation authority under this 4074
division shall comply with the requirements of division (A) of 4075
section 5808.07 of the Revised Code. 4076

(B) In performing investment or management functions of a 4077
trust that are delegated to an agent, an agent owes a duty to the 4078
trust to exercise reasonable care to comply with the terms of the 4079
delegation. 4080

(C) A trustee who delegates a function to an agent in 4081
compliance with division (A) of this section is not liable to the 4082
beneficiaries of the trust or to the trust for the decisions or 4083
actions of the agent to whom the function was delegated. 4084

(D) By accepting the delegation of investment or management 4085
functions of a trust that is subject to the laws of this state, an 4086
agent submits to the jurisdiction of this state. 4087

Sec. ~~1339.60~~ 5809.07. The following terms or comparable 4088
language in the provisions of a trust, unless otherwise limited or 4089
modified, authorizes any investment or strategy permitted by 4090
sections ~~1339.52 to 1339.61~~ of the Revised Code the Ohio Uniform 4091
Prudent Investor Act: "investments permissible by law for 4092
investment of trust funds"; "legal investments"; "authorized 4093
investments"; "using the judgment and care under the circumstances 4094
then prevailing that persons of prudence, discretion, and 4095
intelligence exercise in the management of their own affairs, not 4096
in regard to speculation but in regard to the permanent 4097
disposition of their funds considering the probable income as well 4098
as the probable safety of their capital"; "prudent man rule"; 4099

"prudent trustee rule"; "prudent person rule"; and "prudent investor rule." 4100
4101

Sec. ~~1339.61~~ 5809.08. (A) ~~Sections 1339.52 to 1339.61 of the Revised Code~~ The Ohio Uniform Prudent Investor Act shall be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of these sections among the states enacting it. ~~These sections may be cited as the "Ohio Uniform Prudent Investor Act."~~ 4102
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(B) ~~Sections 1339.52 to 1339.61 of the Revised Code apply~~ The Ohio Uniform Prudent Investor Act applies to trusts existing on or created after ~~the effective date of these sections~~ March 22, 1999. As applied to trusts existing on ~~the effective date of these sections~~ March 22, 1999, ~~sections 1339.52 to 1339.61 of the Revised Code govern~~ Ohio Uniform Prudent Investor Act governs only decisions or actions occurring after ~~the effective date of these sections~~ March 22, 1999. 4108
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(C) The temporary investment of cash or funds pursuant to section ~~1339.44~~ 5815.26 or 2109.372 of the Revised Code shall be considered a prudent investment in compliance with ~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform Prudent Investor Act. 4116
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Sec. 5810.01. (A) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust. 4121
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(B) To remedy a breach of trust that has occurred or may occur, the court may do any of the following: 4123
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(1) Compel the trustee to perform the trustee's duties; 4125

(2) Enjoin the trustee from committing a breach of trust; 4126

(3) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means; 4127
4128

<u>(4) Order a trustee to account;</u>	4129
<u>(5) Appoint a special fiduciary to take possession of the trust property and administer the trust;</u>	4130 4131
<u>(6) Suspend the trustee;</u>	4132
<u>(7) Remove the trustee as provided in section 5807.06 of the Revised Code;</u>	4133 4134
<u>(8) Reduce or deny compensation to the trustee;</u>	4135
<u>(9) Subject to section 5810.12 of the Revised Code, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds;</u>	4136 4137 4138 4139
<u>(10) Order any other appropriate relief.</u>	4140
<u>Sec. 5810.02.</u> (A) <u>A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of the following:</u>	4141 4142 4143
<u>(1) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred;</u>	4144 4145 4146
<u>(2) The profit the trustee made by reason of the breach.</u>	4147
(B) <u>Except as otherwise provided in this division, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.</u>	4148 4149 4150 4151 4152 4153 4154 4155 4156 4157

Sec. 5810.03. (A) Absent a breach of trust, a trustee is not 4158
accountable to a beneficiary for any profit made by the trustee 4159
arising from the administration of the trust. 4160

(B) Absent a breach of trust, a trustee is not liable to a 4161
beneficiary for a loss or depreciation in the value of trust 4162
property or for not having made a profit. 4163

Sec. 5810.04. In a judicial proceeding involving the 4164
administration of a trust, including a trust that contains a 4165
spendthrift provision, the court, as justice and equity may 4166
require, may award costs, expenses, and reasonable attorney's fees 4167
to any party, to be paid by another party, from the trust that is 4168
the subject of the controversy, or from a party's interest in the 4169
trust that is the subject of the controversy. 4170

Sec. 5810.05. (A) A beneficiary may not commence a proceeding 4171
against a trustee for breach of trust more than two years after 4172
the date the beneficiary, a representative of the beneficiary, or 4173
a beneficiary surrogate is sent a report that adequately discloses 4174
the existence of a potential claim for breach of trust and informs 4175
the beneficiary, the representative of the beneficiary, or the 4176
beneficiary surrogate of the time allowed for commencing a 4177
proceeding against a trustee. 4178

(B) A report adequately discloses the existence of a 4179
potential claim for breach of trust if it provides sufficient 4180
information so that the beneficiary or the representative of the 4181
beneficiary knows of the potential claim or should know of the 4182
existence of the potential claim. 4183

(C) If division (A) of this section does not apply, 4184
notwithstanding section 2305.09 of the Revised Code, a judicial 4185
proceeding by a beneficiary against a trustee for breach of trust 4186

must be commenced within four years after the first of the 4187
following to occur: 4188

(1) The removal, resignation, or death of the trustee; 4189

(2) The termination of the beneficiary's interest in the 4190
trust; 4191

(3) The termination of the trust; 4192

(4) The time at which the beneficiary knew or should have 4193
known of the breach of trust. 4194

Sec. 5810.06. A trustee who acts in reasonable reliance on 4195
the terms of the trust as expressed in the trust instrument is not 4196
liable to a beneficiary for a breach of trust to the extent the 4197
breach resulted from the reliance. 4198

Sec. 5810.07. If the happening of an event, including 4199
marriage, divorce, performance of educational requirements, or 4200
death, affects the administration or distribution of a trust, a 4201
trustee who has exercised reasonable care to ascertain the 4202
happening of the event is not liable for a loss resulting from the 4203
trustee's lack of knowledge. 4204

Sec. 5810.08. A term of a trust relieving a trustee of 4205
liability for breach of trust is unenforceable to the extent that 4206
it relieves the trustee of liability for breach of trust committed 4207
in bad faith or with reckless indifference to the purposes of the 4208
trust or the interests of the beneficiaries or was inserted as the 4209
result of an abuse by the trustee of a fiduciary or confidential 4210
relationship to the settlor. 4211

Sec. 5810.09. A trustee is not liable to a beneficiary for 4212
breach of trust if the beneficiary consented to the conduct 4213
constituting the breach, released the trustee from liability for 4214

the breach, or ratified the transaction constituting the breach, 4215
unless the consent, release, or ratification of the beneficiary 4216
was induced by improper conduct of the trustee or, at the time of 4217
the consent, release, or ratification, the beneficiary did not 4218
know of the beneficiary's rights or of the material facts relating 4219
to the breach. 4220

Sec. 5810.10. (A) Except as otherwise provided in the 4221
contract, for contracts entered into on or after March 22, 1984, a 4222
trustee is not personally liable on a contract properly entered 4223
into in the trustee's fiduciary capacity in the course of 4224
administering the trust if the trustee in the contract disclosed 4225
the fiduciary capacity. The words "trustee," "as trustee," 4226
"fiduciary," or "as fiduciary," or other words that indicate one's 4227
trustee capacity, following the name or signature of a trustee are 4228
sufficient disclosure for purposes of this division. 4229

(B) A trustee is personally liable for torts committed in the 4230
course of administering a trust or for obligations arising from 4231
ownership or control of trust property, including liability for 4232
violation of environmental law, only if the trustee is personally 4233
at fault. 4234

(C) A claim based on a contract entered into by a trustee in 4235
the trustee's fiduciary capacity, on an obligation arising from 4236
ownership or control of trust property, or on a tort committed in 4237
the course of administering a trust may be asserted in a judicial 4238
proceeding against the trustee in the trustee's fiduciary 4239
capacity, whether or not the trustee is personally liable for the 4240
claim. 4241

Sec. 5810.11. (A)(1) Except as otherwise provided in division 4242
(C) of this section or unless personal liability is imposed in the 4243
contract, a trustee who holds an interest as a general partner in 4244

a general or limited partnership is not personally liable on a 4245
contract entered into by the partnership after the trust's 4246
acquisition of the interest if the fiduciary capacity was 4247
disclosed. A partnership certificate that is filed pursuant to 4248
Chapter 1777. or another chapter of the Revised Code and that 4249
indicates that a trustee holds a general partnership interest in a 4250
fiduciary capacity by the use following the name or signature of 4251
the trustee of the words "as trustee" or other words that indicate 4252
the trustee's fiduciary capacity constitutes a sufficient 4253
disclosure for purposes of this division. 4254

(2) If a partnership certificate is not required to be filed 4255
pursuant to Chapter 1777. or another chapter of the Revised Code, 4256
a sufficient disclosure for purposes of division (A) of this 4257
section can be made by a trustee if a certificate that is filed 4258
with the recorder of the county in which the partnership's 4259
principal office or place of business is situated and with the 4260
recorder of each county in which the partnership owns real estate 4261
satisfies all of the following requirements: 4262

(a) The certificate states in full the names of all persons 4263
holding interests in the partnership and their places of 4264
residence. 4265

(b) The certificate is signed by all persons who are general 4266
partners in the partnership and is acknowledged by a person 4267
authorized to take acknowledgements of deeds. 4268

(c) The certificate uses the words "trustee under the (will 4269
or trust) of (name of decedent or settlor)," or other words that 4270
indicate the trustee's fiduciary capacity, following the trustee's 4271
name or signature. 4272

(3) A contract or other written instrument that is delivered 4273
to a party that contracts with the partnership in which a trustee 4274

holds a general partnership interest in a fiduciary capacity and 4275
that indicates that the trustee so holds the interest constitutes 4276
a disclosure for purposes of division (A)(1) of this section with 4277
respect to transactions between the party and the partnership. If 4278
a disclosure has been made by a certificate in accordance with 4279
division (A) of this section, a disclosure for purposes of 4280
division (A) of this section with respect to such transactions 4281
exists regardless of whether a contract or other instrument 4282
indicates the trustee holds the general partnership interest in a 4283
fiduciary capacity. 4284

(B) Except as otherwise provided in division (C) of this 4285
section, a trustee who holds an interest as a general partner in a 4286
general or limited partnership is not personally liable for torts 4287
committed by the partnership or for obligations arising from 4288
ownership or control of the interest unless the trustee is 4289
personally at fault. 4290

(C) The immunity provided by this section does not apply if 4291
an interest in the partnership is held by the trustee in a 4292
capacity other than that of trustee or is held by the trustee's 4293
spouse or one or more of the trustee's descendants, siblings, or 4294
parents, or the spouse of any of them. 4295

(D) If the trustee of a revocable trust holds an interest as 4296
a general partner in a general or limited partnership, the settlor 4297
is personally liable for contracts and other obligations of the 4298
partnership as if the settlor were a general partner. 4299

Sec. 5810.12. (A) A person other than a beneficiary who in 4300
good faith assists a trustee, or who in good faith and for value 4301
deals with a trustee, without knowledge that the trustee is 4302
exceeding or improperly exercising the trustee's powers is 4303
protected from liability as if the trustee properly exercised the 4304
power. 4305

(B) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise. 4306
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(C) A person who in good faith delivers assets to a trustee is not required to ensure their proper application. 4309
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(D) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee. 4311
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(E) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section. 4316
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Sec. 5810.13. (A) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing all of the following information: 4319
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(1) A statement that the trust exists and the date the trust instrument was executed; 4323
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(2) The identity of the settlor; 4325

(3) The identity and address of the currently acting trustee; 4326

(4) The powers of the trustee; 4327

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust; 4328
4329

(6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; 4330
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(7) The trust's taxpayer identification number; 4333

<u>(8) The manner of taking title to trust property.</u>	4334
<u>(B) Any trustee may sign or otherwise authenticate a certification of trust.</u>	4335 4336
<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>	4337 4338 4339 4340
<u>(D) A certification of trust is not required to contain the dispositive terms of a trust.</u>	4341 4342
<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>	4343 4344 4345 4346 4347
<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>	4348 4349 4350 4351 4352 4353 4354 4355
<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>	4356 4357 4358 4359
<u>(H) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.</u>	4360 4361 4362 4363

(I) This section does not limit the right of a person to 4364
obtain a copy of the trust instrument in a judicial proceeding 4365
concerning the trust. 4366

Sec. 5811.01. In applying and construing Chapters 5801. to 4367
5811. of the Revised Code, a court may consider the need to 4368
promote uniformity of the law with respect to the subject matter 4369
of those chapters among states that enact the uniform trust code. 4370

Sec. 5811.02. The provisions of Chapters 5801. to 5811. of 4371
the Revised Code governing the legal effect, validity, or 4372
enforceability of electronic records or electronic signatures and 4373
of contracts formed or performed with the use of electronic 4374
records or electronic signatures conform to the requirements of 4375
section 102 of the Electronic Signatures in Global and National 4376
Commerce Act, 15 U.S.C. 7002, 114 Stat. 467, and supersede, 4377
modify, and limit the requirements of the Electronic Signatures in 4378
Global and National Commerce Act. 4379

Sec. 5811.03. (A) Except as otherwise provided in Chapters 4380
5801. to 5811. of the Revised Code, all of the following apply: 4381

(1) Chapters 5801. to 5811. of the Revised Code apply to all 4382
trusts created before, on, or after their effective date. 4383

(2) Chapters 5801. to 5811. of the Revised Code apply to all 4384
judicial proceedings concerning trusts commenced on or after their 4385
effective date. 4386

(3) Chapters 5801. to 5811. of the Revised Code apply to 4387
judicial proceedings concerning trusts commenced before the 4388
effective date of those chapters unless the court finds that 4389
application of a particular provision of those chapters would 4390
substantially interfere with the effective conduct of the judicial 4391
proceedings or prejudice the rights of the parties, in which case 4392

the particular provision does not apply, and the superseded law applies. 4393
4394

(4) Any rule of construction or presumption provided in Chapters 5801. to 5811. of the Revised Code applies to trust instruments executed before the effective date of those chapters unless there is a clear indication of a contrary intent in the terms of the trust. 4395
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(5) Chapters 5801. to 5811. of the Revised Code do not affect an act done before the effective date of those chapters. 4400
4401

(B) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of Chapters 5801. to 5811. of the Revised Code, that statute continues to apply to the right even if it has been repealed or superseded. 4402
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Sec. ~~1340.40~~ 5812.01. As used in sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code: 4407
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(A) "Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. "Accounting period" includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends. 4409
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(B) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary. 4414
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(C) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function. 4417
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(D) "Income" means money or property that a fiduciary receives as current return from a principal asset. "Income" 4421
4422

includes a portion of receipts from a sale, exchange, or 4423
liquidation of a principal asset, to the extent provided in 4424
sections ~~1340.57~~ 5812.18 to ~~1340.77~~ 5812.38 of the Revised Code. 4425

(E) "Income beneficiary" means a person to whom net income of 4426
a trust is or may be payable. 4427

(F) "Income interest" means the right of an income 4428
beneficiary to receive all or part of net income, whether the 4429
terms of the trust require or authorize it to be distributed in 4430
the trustee's discretion. 4431

(G) "Mandatory income interest" means the right of an income 4432
beneficiary to receive net income that the terms of the trust 4433
require the fiduciary to distribute. 4434

(H) "Net income" means the total receipts allocated to income 4435
during an accounting period minus the disbursements made from 4436
income during the period, plus or minus transfers under sections 4437
~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code to or from 4438
income during the period. 4439

(I) "Person" means an individual, corporation, business 4440
trust, estate, trust, partnership, limited liability company, 4441
association, joint venture, or government; governmental 4442
subdivision, agency, or instrumentality; public corporation; or 4443
any other legal or commercial entity. 4444

(J) "Principal" means property held in trust for distribution 4445
to a remainder beneficiary when the trust terminates. 4446

(K) "Remainder beneficiary" means a person entitled to 4447
receive principal when an income interest ends. 4448

(L) "Terms of a trust" means the manifestation of the intent 4449
of a settlor or decedent with respect to the trust, expressed in a 4450
manner that admits of its proof in a judicial proceeding, whether 4451
by written or spoken words or by conduct. 4452

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

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

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

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

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

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

(B) In exercising the power to adjust under division (A) of section ~~1340.42~~ 5812.03 of the Revised Code or a discretionary power of administration regarding a matter within the scope of sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code,

whether granted by the terms of a trust, a will, or a provision of 4483
any such section, a fiduciary shall administer a trust or estate 4484
impartially, based on what is fair and reasonable to all of the 4485
beneficiaries, except to the extent that the terms of the trust or 4486
the will clearly manifest an intention that the fiduciary shall or 4487
may favor one or more of the beneficiaries. A determination in 4488
accordance with sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the 4489
Revised Code is presumed to be fair and reasonable to all of the 4490
beneficiaries. 4491

(C) In allocating receipts and disbursements to or between 4492
principal and income, a fiduciary may credit a receipt or charge 4493
an expenditure to income or principal with respect to a decedent's 4494
estate, a trust, or property passing to a trust, that is eligible 4495
for a federal estate tax marital deduction or Ohio estate tax 4496
marital deduction, or for a federal estate tax charitable 4497
deduction or Ohio estate tax charitable deduction, or for a 4498
federal gift tax marital deduction or federal gift tax charitable 4499
deduction only to the extent that the credit of the receipt or 4500
charge of the expenditure will not cause the reduction or loss of 4501
the deduction. 4502

(D) As used in division (C) of this section: 4503

(1) "Federal estate tax charitable deduction" means the 4504
estate tax charitable deduction allowed by subtitle B, Chapter 11 4505
of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2055, as 4506
amended. 4507

(2) "Federal estate tax marital deduction" means the estate 4508
tax marital deduction allowed by subtitle B, Chapter 11 of the 4509
"Internal Revenue Code of 1986," 26 U.S.C.A. 2056, as amended. 4510

(3) "Federal gift tax charitable deduction" means the gift 4511
tax charitable deduction allowed by subtitle B, Chapter 12 of the 4512
"Internal Revenue Code of 1986," 26 U.S.C.A. 2522, as amended. 4513

(4) "Federal gift tax marital deduction" means the gift tax marital deduction allowed by subtitle B, Chapter 12 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2523, as amended.

(5) "Ohio estate tax charitable deduction" means the estate tax charitable deduction allowed by division (A) of section 5731.17 of the Revised Code.

(6) "Ohio estate tax marital deduction" means the estate tax marital deduction allowed by section 5731.15 of the Revised Code.

Sec. ~~1340.42~~ 5812.03. (A) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages the trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying division (A) of section ~~1340.41~~ 5812.02 of the Revised Code, that the trustee is unable to comply with division (B) of that section.

(B) In deciding whether and to what extent to exercise the power conferred by division (A) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including all of the following factors to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) The intent of the settlor;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real

property; the extent to which an asset is used by a beneficiary; 4543
and whether an asset was purchased by the trustee or received from 4544
the settlor; 4545

(6) The net amount allocated to income under sections ~~1340.40~~ 4546
~~5812.01, 1340.41~~ 5812.02, and ~~1340.46~~ 5812.07 to ~~1340.91~~ 5812.52 4547
of the Revised Code; and the increase or decrease in the value of 4548
the principal assets, which the trustee may estimate as to assets 4549
for which market values are not readily available; 4550

(7) Whether and to what extent the terms of the trust give 4551
the trustee the power to invade principal or accumulate income or 4552
prohibit the trustee from invading principal or accumulating 4553
income, and the extent to which the trustee has exercised a power 4554
from time to time to invade principal or accumulate income; 4555

(8) The actual and anticipated effect of economic conditions 4556
on principal and income and effects of inflation and deflation; 4557

(9) The anticipated tax consequences of an adjustment. 4558

(C) A trustee shall not make an adjustment if any of the 4559
following applies: 4560

(1) The adjustment diminishes the income interest in a trust 4561
that requires all of the income to be paid at least annually to a 4562
spouse and for which an estate tax or gift tax marital deduction 4563
would be allowed, in whole or in part, if the trustee did not have 4564
the power to make the adjustment. 4565

(2) The adjustment reduces the actuarial value of the income 4566
interest in a trust to which a person transfers property with the 4567
intent to qualify for a gift tax exclusion. 4568

(3) The adjustment changes the amount payable to a 4569
beneficiary as a fixed annuity or a fixed fraction of the value of 4570
the trust assets. 4571

(4) The adjustment is from any amount that is permanently set 4572

aside for charitable purposes under a will or the terms of a trust 4573
unless both income and principal are so set aside. 4574

(5) If possessing or exercising the power to make the 4575
adjustment causes an individual to be treated as the owner of all 4576
or part of the trust for income tax purposes, and the individual 4577
would not be treated as the owner if the trustee did not possess 4578
the power to make the adjustment; 4579

(6) If possessing or exercising the power to make the 4580
adjustment causes all or part of the trust assets to be included 4581
for estate tax purposes in the estate of an individual who has the 4582
power to remove a trustee or appoint a trustee, or both, and the 4583
assets would not be included in the estate of the individual if 4584
the trustee did not possess the power to make the adjustment; 4585

(7) If the trustee is a beneficiary of the trust; 4586

(8) If the trustee is not a beneficiary, but the adjustment 4587
would benefit the trustee directly or indirectly. 4588

(D) If division (C)(5), (6), (7), or (8) of this section 4589
applies to a trustee and there is more than one trustee, a 4590
cotrustee to whom the provision does not apply may make the 4591
adjustment unless the exercise of the power by the remaining 4592
trustee or trustees is not permitted by the terms of the trust. 4593

(E) A trustee may release the entire power conferred by 4594
division (A) of this section or may release only the power to 4595
adjust from income to principal or the power to adjust from 4596
principal to income if the trustee is uncertain about whether 4597
possessing or exercising the power will cause a result described 4598
in division (C)(1), (2), (3), (4), (5), (6), or (8) of this 4599
section or if the trustee determines that possessing or exercising 4600
the power will or may deprive the trust of a tax benefit or impose 4601
a tax burden not described in division (C) of this section. The 4602
release may be permanent or for a specified period, including a 4603

period measured by the life of an individual. 4604

(F) Terms of a trust that limit the power of a trustee to 4605
make an adjustment between principal and income do not affect the 4606
application of this section unless it is clear from the terms of 4607
the trust that the terms are intended to deny the trustee the 4608
power of adjustment conferred by division (A) of this section. 4609

(G) The liability of a trustee relative to the exercise of 4610
adjustment authority conferred by divisions (A) to (F) of this 4611
section shall be limited in the following manner: 4612

(1) Unless a court determines that a trustee has acted in bad 4613
faith, no trustee shall be held liable for damages for choosing 4614
not to make an adjustment. 4615

(2) Unless a court determines that a trustee has acted in bad 4616
faith with respect to an adjustment, the sole remedy to be ordered 4617
by a court shall be a prospective correction of the adjustment. 4618

(3) For purposes of this section, and subject to division (C) 4619
of this section, from time to time a trustee may make a 4620
safe-harbor adjustment to increase net trust accounting income up 4621
to and including an amount equal to four per cent of the trust's 4622
fair market value determined as of the first business day of the 4623
current year. If a trustee determines to make this safe-harbor 4624
adjustment, the propriety of this adjustment shall be conclusively 4625
presumed. Nothing in division (G)(3) of this section prohibits any 4626
other type of adjustment authorized under any provision of this 4627
section. 4628

Sec. ~~1340.46~~ 5812.07. After a decedent dies, in the case of 4629
an estate, or after an income interest in a trust ends, all of the 4630
following apply: 4631

(A) The fiduciary of the estate or of the terminating income 4632
interest shall determine, under the provisions of sections ~~1340.51~~ 4633

5812.12 to ~~1340.86~~ 5812.47 of the Revised Code that apply to 4634
trustees and under division (E) of this section, the amount of net 4635
income and net principal receipts received from property 4636
specifically given to a beneficiary. The fiduciary shall 4637
distribute the net income and net principal receipts to the 4638
beneficiary that is to receive the specific property. 4639

(B) A fiduciary shall determine the remaining net income of a 4640
decedent's estate or a terminating income interest under the 4641
provisions of sections ~~1340.51~~ 5812.12 to ~~1340.86~~ 5812.47 of the 4642
Revised Code that apply to trustees and by doing all of the 4643
following: 4644

(1) Including in net income all income from property used to 4645
discharge liabilities; 4646

(2) Paying from income or principal, in the fiduciary's 4647
discretion, fees of attorneys, accountants, and fiduciaries; court 4648
costs and other expenses of administration; and interest on death 4649
taxes. However, the fiduciary may pay those expenses from income 4650
of property passing to a trust for which the fiduciary claims an 4651
estate tax marital or charitable deduction only to the extent that 4652
the payment of those expenses from income will not cause the 4653
reduction or loss of the deduction. 4654

(3) Paying from principal all other disbursements made or 4655
incurred in connection with the settlement of a decedent's estate 4656
or the winding up of a terminating income interest, including 4657
debts, funeral expenses, disposition of remains, family 4658
allowances, and death taxes and related penalties that are 4659
apportioned to the estate or terminating income interest by the 4660
will, the terms of the trust, or applicable law. 4661

(C) A fiduciary shall distribute to a beneficiary that 4662
receives a pecuniary amount outright the interest or any other 4663
amount provided by the will, the terms of the trust, or applicable 4664

law from net income determined under division (B) of this section 4665
or from principal to the extent that net income is insufficient. 4666
If a beneficiary is to receive a pecuniary amount outright from a 4667
trust after an income interest ends and no interest or other 4668
amount is provided for by the terms of the trust or applicable 4669
law, the fiduciary shall distribute the interest or other amount 4670
to which the beneficiary would be entitled under applicable law if 4671
the pecuniary amount were required to be paid under a will. 4672

(D) A fiduciary shall distribute the net income remaining 4673
after distributions required by division (C) of this section, in 4674
the manner described in section ~~1340.47~~ 5812.08 of the Revised 4675
Code, to all other beneficiaries, including a beneficiary that 4676
receives a pecuniary amount in trust, even if the beneficiary 4677
holds an unqualified power to withdraw assets from the trust or 4678
other presently exercisable, general power of appointment over the 4679
trust. 4680

(E) A fiduciary shall not reduce principal or income receipts 4681
from property described in division (A) of this section because of 4682
a payment described in section ~~1340.81~~ 5812.42 or ~~1340.82~~ 5812.43 4683
of the Revised Code to the extent that the will, the terms of the 4684
trust, or applicable law requires the fiduciary to make the 4685
payment from assets other than the property or to the extent that 4686
the fiduciary recovers or expects to recover the payment from a 4687
third party. The net income and principal receipts from the 4688
property are determined by including all of the amounts the 4689
fiduciary receives or pays with respect to the property, whether 4690
those amounts accrued or became due before, on, or after the date 4691
of a decedent's death or an income interest's terminating event, 4692
and by making a reasonable provision for amounts that the 4693
fiduciary believes the estate or terminating income interest may 4694
become obligated to pay after the property is distributed. 4695

Sec. ~~1340.47~~ 5812.08. (A) Each beneficiary described in 4696
division (D) of section ~~1340.46~~ 5812.07 of the Revised Code is 4697
entitled to receive a portion of the net income equal to the 4698
beneficiary's fractional interest in undistributed principal 4699
assets, using values as of the distribution date. If a fiduciary 4700
makes more than one distribution of assets to beneficiaries to 4701
whom this section applies, each beneficiary, including one that 4702
does not receive part of the distribution, is entitled, as of each 4703
distribution date, to the net income the fiduciary has received 4704
after the date of the decedent's death or terminating event or 4705
earlier distribution date but has not distributed as of the 4706
current distribution date. 4707

(B) In determining a beneficiary's share of net income for 4708
the purpose of this section, all of the following apply: 4709

(1) The beneficiary is entitled to receive a portion of the 4710
net income equal to the beneficiary's fractional interest in the 4711
undistributed principal assets immediately before the distribution 4712
date, including assets that later may be sold to meet principal 4713
obligations. 4714

(2) The beneficiary's fractional interest in the 4715
undistributed principal assets must be calculated without regard 4716
to property specifically given to a beneficiary and property 4717
required to pay pecuniary amounts not in trust. 4718

(3) The beneficiary's fractional interest in the 4719
undistributed principal assets must be calculated on the basis of 4720
the aggregate value of those assets as of the distribution date 4721
without reducing the value by any unpaid principal obligation. 4722

(4) The distribution date for purposes of this section may be 4723
the date as of which the fiduciary calculates the value of the 4724
assets if that date is reasonably near the date on which assets 4725

are actually distributed. 4726

(C) If a fiduciary does not distribute all of the collected 4727
but undistributed net income described in divisions (A) and (B) of 4728
this section to each person as of a distribution date, the 4729
fiduciary shall maintain appropriate records showing the interest 4730
of each. 4731

(D) To the extent that a fiduciary considers it appropriate, 4732
the fiduciary may apply the provisions of divisions (A) to (C) of 4733
this section to any net gain or loss, realized after the date of 4734
the decedent's death or an income interest termination or earlier 4735
distribution date, from the disposition of a principal asset to 4736
which such provisions apply. 4737

Sec. ~~1340.51~~ 5812.12. (A) An income beneficiary is entitled 4738
to net income from the date on which the income interest begins. 4739
An income interest begins on the date specified in the terms of 4740
the trust or, if no date is specified, on the date an asset 4741
becomes subject to a trust or successive income interest. 4742

(B) An asset becomes subject to a trust on any of the 4743
following dates: 4744

(1) The date it is transferred to the trust, in the case of 4745
an asset that is transferred to a trust during the transferor's 4746
life; 4747

(2) The date of a testator's death, in the case of an asset 4748
that becomes subject to a trust by reason of a will, even if there 4749
is an intervening period of administration of the testator's 4750
estate; 4751

(3) The date of an individual's death, in the case of an 4752
asset that is transferred to a fiduciary by a third party because 4753
of the individual's death. 4754

(C) An asset becomes subject to a successive income interest 4755

on the day after the preceding income interest ends, as determined 4756
under division (D) of this section, even if there is an 4757
intervening period of administration to wind up the preceding 4758
income interest. 4759

(D) An income interest ends on the day before an income 4760
beneficiary dies or another terminating event occurs, or on the 4761
last day of a period during which there is no beneficiary to whom 4762
a trustee may distribute income. 4763

Sec. ~~1340.52~~ 5812.13. (A) A trustee shall allocate to 4764
principal an income receipt or disbursement other than one to 4765
which division (A) of section ~~1340.46~~ 5812.07 of the Revised Code 4766
applies, if its due date occurs before a decedent dies in the case 4767
of an estate or before an income interest begins in the case of a 4768
trust or successive income interest. 4769

(B) A trustee shall allocate an income receipt or 4770
disbursement to income if its due date occurs on or after the date 4771
on which a decedent dies or an income interest begins and if it is 4772
a periodic due date. An income receipt or disbursement shall be 4773
treated as accruing from day to day if its due date is not 4774
periodic or it has no due date. The portion of the receipt or 4775
disbursement accruing before the date on which a decedent dies or 4776
an income interest begins shall be allocated to principal, and the 4777
balance shall be allocated to income. 4778

(C) For the purposes of this section, an item of income or an 4779
obligation is due on the date the payer is required to make a 4780
payment. If a payment date is not stated, there is no due date. 4781
Distributions to shareholders or other owners from an entity to 4782
which section ~~1340.57~~ 5812.18 of the Revised Code applies are 4783
deemed to be due on the date fixed by the entity for determining 4784
who is entitled to receive the distribution or, if no date is 4785
fixed, on the declaration date for the distribution. A due date is 4786

periodic for receipts or disbursements that must be paid at 4787
regular intervals under a lease or an obligation to pay interest 4788
or if an entity customarily makes distributions at regular 4789
intervals. 4790

Sec. ~~1340.53~~ 5812.14. (A) As used in this section, 4791
"undistributed income" means net income received before the date 4792
on which an income interest ends. "Undistributed income" excludes 4793
an item of income or expense that is due or accrued or net income 4794
that has been added or is required to be added to principal under 4795
the terms of the trust. 4796

(B) When a mandatory income interest ends, the trustee shall 4797
pay to a mandatory income beneficiary that survives that date, or 4798
the estate of a deceased mandatory income beneficiary whose death 4799
causes the interest to end, the beneficiary's share of the 4800
undistributed income that is not disposed of under the terms of 4801
the trust, unless the beneficiary has an unqualified power to 4802
revoke more than five per cent of the trust immediately before the 4803
income interest ends. If the beneficiary has such power, the 4804
undistributed income from the portion of the trust that may be 4805
revoked shall be added to principal. 4806

(C) When a trustee's obligation to pay a fixed annuity or a 4807
fixed fraction of the value of the trust's assets ends, the 4808
trustee shall prorate the final payment if and to the extent 4809
required by applicable law to accomplish a purpose of the trust or 4810
its settlor relating to income, gift, estate, or other tax 4811
requirements. 4812

Sec. ~~1340.57~~ 5812.18. (A) As used in this section, "entity" 4813
means a corporation, partnership, limited liability company, 4814
regulated investment company, real estate investment trust, common 4815
trust fund, or any other organization in which a trustee has an 4816

interest other than a trust or estate to which section ~~1340.58~~ 4817
5812.19 of the Revised Code applies, a business or activity to 4818
which section ~~1340.59~~ 5812.20 of the Revised Code applies, or an 4819
asset-backed security to which section ~~1340.77~~ 5812.38 of the 4820
Revised Code applies. 4821

(B) Except as otherwise provided in this section, a trustee 4822
shall allocate to income money received from an entity. 4823

(C) A trustee shall allocate all of the following receipts 4824
from an entity to principal: 4825

(1) Property other than money; 4826

(2) Money received in one distribution or a series of related 4827
distributions in exchange for part or all of a trust's interest in 4828
the entity; 4829

(3) Money received in total or partial liquidation of the 4830
entity; 4831

(4) Money received from an entity that is a regulated 4832
investment company or a real estate investment trust if the money 4833
distributed is a capital gain dividend for federal income tax 4834
purposes. 4835

(D) Money is received in partial liquidation in either of the 4836
following circumstances: 4837

(1) To the extent that the entity, at or near the time of a 4838
distribution, indicates that it is a distribution in partial 4839
liquidation; 4840

(2) If the total amount of money and property received in a 4841
distribution or series of related distributions is greater than 4842
twenty per cent of the entity's gross assets, as shown by the 4843
entity's year-end financial statements immediately preceding the 4844
initial receipt. 4845

(E) Money is not received in partial liquidation, nor shall
it be taken into account under division (D)(2) of this section, to
the extent that it does not exceed the amount of income tax that a
trustee or beneficiary must pay on taxable income of the entity
that distributes the money.

(F) A trustee may rely upon a statement made by an entity
about the source or character of a distribution if the statement
is made at or near the time of distribution by the entity's board
of directors or other person or group of persons authorized to
exercise powers to pay money or transfer property comparable to
those of a corporation's board of directors.

Sec. ~~1340.58~~ 5812.19. A trustee shall allocate to income an
amount received as a distribution of income from a trust or an
estate in which the trust has an interest other than a purchased
interest, and shall allocate to principal an amount received as a
distribution of principal from such a trust or estate. If a
trustee purchases an interest in a trust that is an investment
entity, or a decedent or donor transfers an interest in such a
trust to a trustee, section ~~1340.57~~ 5812.18 or ~~1340.77~~ 5812.38 of
the Revised Code applies to a receipt from the trust.

Sec. ~~1340.59~~ 5812.20. (A) If a trust that conducts a business
or other activity determines that it is in the best interest of
all the beneficiaries to account separately for the business or
activity instead of accounting for it as part of the trust's
general accounting records, the trustee may maintain separate
accounting records for its transactions, whether or not its assets
are segregated from other trust assets.

(B) A trustee that accounts separately for a business or
other activity may determine the extent to which its net cash
receipts must be retained for working capital, the acquisition or

replacement of fixed assets, and other reasonably foreseeable 4876
needs of the business or activity, and the extent to which the 4877
remaining net cash receipts are accounted for as principal or 4878
income in the trust's general accounting records. If a trustee 4879
sells assets of the business or other activity, other than in the 4880
ordinary course of the business or activity, the trustee shall 4881
account for the net amount received as principal in the trust's 4882
general accounting records to the extent the trustee determines 4883
that the amount received is no longer required in the conduct of 4884
the business. 4885

(C) Activities for which a trustee may maintain separate 4886
accounting records under this section include all of the 4887
following: 4888

(1) Retail, manufacturing, service, and other traditional 4889
business activities; 4890

(2) Farming; 4891

(3) Raising and selling livestock and other animals; 4892

(4) Management of rental properties; 4893

(5) Extraction of minerals and other natural resources; 4894

(6) Timber operations; 4895

(7) Activities to which section ~~1340.76~~ 5812.37 of the 4896
Revised Code applies. 4897

Sec. ~~1340.63~~ 5812.24. A trustee shall allocate to principal 4898
all of the following: 4899

(A) To the extent not allocated to income under sections 4900
~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code, assets 4901
received from a transferor during the transferor's lifetime, a 4902
decedent's estate, a trust with a terminating income interest, or 4903
a payer under a contract naming the trust or its trustee as 4904

beneficiary;	4905
(B) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to sections 1340.57 <u>5812.18</u> to 1340.77 <u>5812.38</u> of the Revised Code;	4906 4907 4908 4909
(C) Amounts recovered from third parties to reimburse the trust because of disbursements described in division (A)(7) of section 1340.82 <u>5812.43</u> of the Revised Code or for other reasons to the extent not based on the loss of income;	4910 4911 4912 4913
(D) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;	4914 4915 4916 4917
(E) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income;	4918 4919 4920
(F) Other receipts as provided in sections 1340.70 <u>5812.31</u> to 1340.77 <u>5812.38</u> of the Revised Code.	4921 4922
Sec. 1340.64 <u>5812.25</u>. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and shall not be available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.	4923 4924 4925 4926 4927 4928 4929 4930 4931 4932 4933
Sec. 1340.65 <u>5812.26</u>. (A) An amount received as interest,	4934

whether determined at a fixed, variable, or floating rate, on an 4935
obligation to pay money to the trustee, including an amount 4936
received as consideration for prepaying principal, shall be 4937
allocated to income without any provision for amortization of 4938
premium. 4939

(B) A trustee shall allocate to principal an amount received 4940
from the sale, redemption, or other disposition of an obligation 4941
to pay money to the trustee more than one year after the date it 4942
is purchased or acquired by the trustee, including an obligation 4943
whose purchase price or value when it is acquired is less than its 4944
value at maturity. If the obligation matures within one year after 4945
the date it is purchased or acquired by the trustee, an amount 4946
received in excess of its purchase price or its value when 4947
acquired by the trust shall be allocated to income. 4948

(C) This section does not apply to an obligation to which 4949
section ~~1340.71~~ 5812.32, ~~1340.72~~ 5812.33, ~~1340.73~~ 5812.34, ~~1340.74~~ 4950
5812.35, ~~1340.76~~ 5812.37, or ~~1340.77~~ 5812.38 of the Revised Code 4951
applies. 4952

Sec. ~~1340.66~~ 5812.27. (A) Except as otherwise provided in 4953
division (B) of this section, a trustee shall allocate to 4954
principal the proceeds of a life insurance policy or other 4955
contract in which the trust or its trustee is named as 4956
beneficiary, including a contract that insures the trust or its 4957
trustee against loss for damage to, destruction of, or loss of 4958
title to a trust asset. The trustee shall allocate dividends on an 4959
insurance policy to income if the premiums on the policy are paid 4960
from income, and to principal if the premiums are paid from 4961
principal. 4962

(B) A trustee shall allocate to income proceeds of a contract 4963
that insures the trustee against loss of occupancy or other use by 4964

an income beneficiary, loss of income, or, subject to section 4965
~~1340.59~~ 5812.20 of the Revised Code, loss of profits from a 4966
business. 4967

(C) This section does not apply to a contract to which 4968
section ~~1340.71~~ 5812.32 of the Revised Code applies. 4969

Sec. ~~1340.70~~ 5812.31. If a trustee determines that an 4970
allocation between principal and income required by section 4971
~~1340.71~~ 5812.32, ~~1340.72~~ 5812.33, ~~1340.73~~ 5812.34, ~~1340.74~~ 4972
5812.35, or ~~1340.77~~ 5812.38 of the Revised Code is insubstantial, 4973
the trustee may allocate the entire amount to principal unless one 4974
of the circumstances described in division (C) of section ~~1340.42~~ 4975
5812.03 of the Revised Code applies to the allocation. This power 4976
may be exercised by a cotrustee in the circumstances described in 4977
division (D) of that section and may be released for the reasons 4978
and in the manner described in division (E) of the section. An 4979
allocation is presumed to be insubstantial if either of the 4980
following applies: 4981

(A) The amount of the allocation would increase or decrease 4982
net income in an accounting period, as determined before the 4983
allocation, by less than ten per cent. 4984

(B) The value of the asset producing the receipt for which 4985
the allocation would be made is less than ten per cent of the 4986
total value of the trust's assets at the beginning of the 4987
accounting period. 4988

Sec. ~~1340.71~~ 5812.32. (A) As used in this section, "payment" 4989
means a payment that a trustee may receive over a fixed number of 4990
years or during the life of one or more individuals because of 4991
services rendered or property transferred to the payer in exchange 4992
for future payments. "Payment" includes a payment made in money or 4993
property from the payer's general assets or from a separate fund 4994

created by the payer, including a private or commercial annuity, 4995
an individual retirement account, or a pension, profit-sharing, 4996
stock-bonus, or stock-ownership plan. 4997

(B) To the extent that a payment is characterized as interest 4998
or a dividend or a payment made in lieu of interest or a dividend, 4999
a trustee shall allocate it to income. The trustee shall allocate 5000
to principal the balance of the payment and any other payment 5001
received in the same accounting period that is not characterized 5002
as interest, a dividend, or an equivalent payment. 5003

(C) If no part of a payment is characterized as interest, a 5004
dividend, or an equivalent payment, and all or part of the payment 5005
is required to be made, a trustee shall allocate to income ten per 5006
cent of the part that is required to be made during the accounting 5007
period and the balance to principal. If no part of a payment is 5008
required to be made or the payment received is the entire amount 5009
to which the trustee is entitled, the trustee shall allocate the 5010
entire payment to principal. For purposes of this division, a 5011
payment is not "required to be made" to the extent that it is made 5012
because the trustee exercises a right of withdrawal. 5013

(D) If, to obtain an estate tax marital deduction for a 5014
trust, a trustee must allocate more of a payment to income than is 5015
provided for by this section, the trustee shall allocate to income 5016
the additional amount necessary to obtain the marital deduction. 5017

(E) This section does not apply to payments to which section 5018
~~1340.72~~ 5812.33 of the Revised Code applies. 5019

Sec. ~~1340.72~~ 5812.33. (A) As used in this section, 5020
"liquidating asset" means an asset whose value will diminish or 5021
terminate because the asset is expected to produce receipts for a 5022
period of limited duration. "Liquidating asset" includes a 5023
leasehold, patent, copyright, royalty right, and right to receive 5024

payments during a period of more than one year under an 5025
arrangement that does not provide for the payment of interest on 5026
the unpaid balance. "Liquidating asset" excludes a payment subject 5027
to section ~~1340.71~~ 5812.32 of the Revised Code, resources subject 5028
to section ~~1340.73~~ 5812.34 of the Revised Code, timber subject to 5029
section ~~1340.74~~ 5812.35 of the Revised Code, an activity subject 5030
to section ~~1340.76~~ 5812.37 of the Revised Code, an asset subject 5031
to section ~~1340.77~~ 5812.38 of the Revised Code, or any asset for 5032
which the trustee establishes a reserve for depreciation under 5033
section ~~1340.83~~ 5812.44 of the Revised Code. 5034

(B) A trustee shall allocate to income ten per cent of the 5035
receipts from a liquidating asset and the balance to principal. 5036

Sec. ~~1340.73~~ 5812.34. (A) To the extent that a trustee 5037
accounts for receipts from an interest in minerals or other 5038
natural resources pursuant to this section, the trustee shall 5039
allocate the receipts in accordance with all of the following: 5040

(1) If received as nominal delay rental or nominal annual 5041
rent on a lease, a receipt shall be allocated to income. 5042

(2) If received from a production payment, a receipt shall be 5043
allocated to income if and to the extent that the agreement 5044
creating the production payment provides a factor for interest or 5045
its equivalent. The balance shall be allocated to principal. 5046

(3) If an amount received as a royalty, shut-in-well payment, 5047
take-or-pay payment, bonus, or delay rental is more than nominal, 5048
ninety per cent shall be allocated to principal and the balance to 5049
income. 5050

(4) If an amount is received from a working interest or any 5051
other interest not provided for in division (A)(1), (2), or (3) of 5052
this section, ninety per cent of the net amount received shall be 5053
allocated to principal and the balance to income. 5054

(B) An amount received on account of an interest in water 5055
that is renewable shall be allocated to income. If the water is 5056
not renewable, ninety per cent of the amount shall be allocated to 5057
principal and the balance to income. 5058

(C) This section applies whether or not a decedent or donor 5059
was extracting minerals, water, or other natural resources before 5060
the interest became subject to the trust. 5061

(D) If a trust owns an interest in minerals, water, or other 5062
natural resources on ~~the effective date of this section~~ January 1, 5063
2003, the trustee may allocate receipts from the interest as 5064
provided in this section or in the manner used by the trustee 5065
before that date. If the trust acquires an interest in minerals, 5066
water, or other natural resources after ~~the effective date of this~~ 5067
~~section~~ January 1, 2003, the trustee shall allocate receipts from 5068
the interest as provided in this section. 5069

Sec. ~~1340.74~~ 5812.35. (A) To the extent that a trustee 5070
accounts for receipts from the sale of timber and related products 5071
pursuant to this section, the trustee shall allocate the net 5072
receipts in accordance with all of the following: 5073

(1) To income, to the extent that the amount of timber 5074
removed from the land does not exceed the rate of growth of the 5075
timber during the accounting periods in which a beneficiary has a 5076
mandatory income interest; 5077

(2) To principal, to the extent that the amount of timber 5078
removed from the land exceeds the rate of growth of the timber or 5079
the net receipts are from the sale of standing timber; 5080

(3) To or between income and principal, if the net receipts 5081
are from the lease of timberland or from a contract to cut timber 5082
from land owned by a trust, by determining the amount of timber 5083
removed from the land under the lease or contract and applying 5084

divisions (A)(1) and (2) of this section; 5085

(4) To principal, to the extent that advance payments, 5086
bonuses, and other payments are not allocated pursuant to division 5087
(A)(1), (2), or (3) of this section. 5088

(B) In determining net receipts to be allocated pursuant to 5089
division (A) of this section, a trustee shall deduct and transfer 5090
to principal a reasonable amount for depletion. 5091

(C) This section applies whether or not a decedent or 5092
transferor was harvesting timber from the property before it 5093
became subject to the trust. 5094

(D) If a trust owns an interest in timberland on ~~the~~ 5095
~~effective date of this section~~ January 1, 2003, the trustee may 5096
allocate net receipts from the sale of timber and related products 5097
as provided in this section or in the manner used by the trustee 5098
before that date. If the trust acquires an interest in timberland 5099
after ~~the effective date of this section~~ January 1, 2003, the 5100
trustee shall allocate net receipts from the sale of timber and 5101
related products as provided in this section. 5102

Sec. ~~1340.75~~ 5812.36. (A) If a marital deduction is allowed 5103
for all or part of a trust whose assets consist substantially of 5104
property that does not provide the spouse with sufficient income 5105
from or use of the trust assets, and if the amounts that the 5106
trustee transfers from principal to income under section ~~1340.42~~ 5107
5812.03 of the Revised Code and distributes to the spouse from 5108
principal pursuant to the terms of the trust are insufficient to 5109
provide the spouse with the beneficial enjoyment required to 5110
obtain the marital deduction, the spouse may require the trustee 5111
to make property productive of income, convert property within a 5112
reasonable time, or exercise the power conferred by division (A) 5113
of that section. The trustee may decide which action or 5114

combination of actions to take. 5115

(B) In cases not governed by division (A) of this section, 5116
proceeds from the sale or other disposition of an asset shall be 5117
principal without regard to the amount of income the asset 5118
produces during any accounting period. 5119

Sec. ~~1340.76~~ 5812.37. (A) As used in this section, 5120
"derivative" means a contract or financial instrument or a 5121
combination of contracts and financial instruments that gives a 5122
trust the right or obligation to participate in some or all 5123
changes in the price of a tangible or intangible asset or group of 5124
assets, or changes in a rate, an index of prices or rates, or 5125
other market indicator for an asset or a group of assets. 5126

(B) To the extent that a trustee does not account under 5127
section ~~1340.59~~ 5812.20 of the Revised Code for transactions in 5128
derivatives, the trustee shall allocate to principal receipts from 5129
and disbursements made in connection with those transactions. 5130

(C) If a trustee grants an option to buy property from the 5131
trust, whether or not the trust owns the property when the option 5132
is granted, grants an option that permits another person to sell 5133
property to the trust, or acquires an option to buy property for 5134
the trust or an option to sell an asset owned by the trust, and 5135
the trustee or other owner of the asset is required to deliver the 5136
asset if the option is exercised, an amount received for granting 5137
the option shall be allocated to principal. An amount paid to 5138
acquire the option shall be paid from principal. A gain or loss 5139
realized upon the exercise of an option, including an option 5140
granted to a settlor of the trust for services rendered, shall be 5141
allocated to principal. 5142

Sec. ~~1340.77~~ 5812.38. (A) As used in this section, 5143
"asset-backed security" means an asset whose value is based upon 5144

the right it gives the owner to receive distributions from the 5145
proceeds of financial assets that provide collateral for the 5146
security. "Asset-backed security" includes an asset that gives the 5147
owner the right to receive from the collateral financial assets 5148
only the interest or other current return or only the proceeds 5149
other than interest or current return. "Asset-backed security" 5150
excludes an asset to which section ~~1340.57~~ 5812.18 or ~~1340.71~~ 5151
5812.32 of the Revised Code applies. 5152

(B) If a trust receives a payment from interest or other 5153
current return and from other proceeds of the collateral financial 5154
assets, the trustee shall allocate to income the portion of the 5155
payment that the payer identifies as being from interest or other 5156
current return and shall allocate the balance of the payment to 5157
principal. 5158

(C) If a trust receives one or more payments in exchange for 5159
the trust's entire interest in an asset-backed security in one 5160
accounting period, the trustee shall allocate the payments to 5161
principal. If a payment is one of a series of payments that will 5162
result in the liquidation of the trust's interest in the security 5163
over more than one accounting period, the trustee shall allocate 5164
ten per cent of the payment to income and the balance to 5165
principal. 5166

Sec. ~~1340.81~~ 5812.42. A trustee shall make all of the 5167
following disbursements from income to the extent that they are 5168
not disbursements to which division (B)(2) or (3) of section 5169
~~1340.46~~ 5812.07 of the Revised Code applies: 5170

(A) One-half of the regular compensation of the trustee and 5171
of any person providing investment advisory or custodial services 5172
to the trustee; 5173

(B) One-half of all expenses for accountings, judicial 5174

proceedings, or other matters that involve both the income and remainder interests;	5175 5176
(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;	5177 5178 5179 5180 5181 5182
(D) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.	5183 5184
Sec. 1340.82 <u>5812.43</u>. (A) A trustee shall make all of the following disbursements from principal:	5185 5186
(1) The remaining one-half of the disbursements described in divisions (A) and (B) of section 1340.81 <u>5812.42</u> of the Revised Code;	5187 5188 5189
(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;	5190 5191 5192
(3) Payments on the principal of a trust debt;	5193
(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;	5194 5195 5196
(5) Premiums paid on a policy of insurance not described in division (D) of section 1340.81 <u>5812.42</u> of the Revised Code of which the trust is the owner and beneficiary;	5197 5198 5199
(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust;	5200 5201
(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and	5202 5203

removing environmental contamination, monitoring remedial 5204
activities and the release of substances, preventing future 5205
releases of substances, collecting amounts from persons liable or 5206
potentially liable for the costs of those activities, penalties 5207
imposed under environmental laws or regulations and other payments 5208
made to comply with those laws or regulations, statutory or common 5209
law claims by third parties, and defending claims based on 5210
environmental matters. 5211

(B) If a principal asset is encumbered with an obligation 5212
that requires income from that asset to be paid directly to the 5213
creditor, the trustee shall transfer from principal to income an 5214
amount equal to the income paid to the creditor in reduction of 5215
the principal balance of the obligation. 5216

Sec. ~~1340.83~~ 5812.44. (A) As used in this section, 5217
"depreciation" means a reduction in value due to wear, tear, 5218
decay, corrosion, or gradual obsolescence of a fixed asset having 5219
a useful life of more than one year. 5220

(B) A trustee may transfer to principal a reasonable amount 5221
of the net cash receipts from a principal asset that is subject to 5222
depreciation, but shall not transfer any amount for depreciation 5223
under any of the following circumstances: 5224

(1) Any amount for depreciation of that portion of real 5225
property used or available for use by a beneficiary as a residence 5226
or of tangible personal property held or made available for the 5227
personal use or enjoyment of a beneficiary; 5228

(2) Any amount for depreciation during the administration of 5229
a decedent's estate; 5230

(3) Any amount for depreciation under this section if the 5231
trustee is accounting under section ~~1340.59~~ 5812.20 of the Revised 5232
Code for the business or activity in which the asset is used. 5233

(C) An amount transferred to principal need not be held as a separate fund.

Sec. ~~1340.84~~ 5812.45. (A) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(B) Principal disbursements to which division (A) of this section applies include all of the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments;

(5) Disbursements described in division (A)(7) of section ~~1340.82~~ 5812.43 of the Revised Code.

(C) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in division (A) of this section.

Sec. ~~1340.85~~ 5812.46. (A) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(B) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(C) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately as follows:

(1) From income, to the extent that receipts from the entity are allocated to income;

(2) From principal, as follows:

(a) To the extent that receipts from the entity are allocated to principal; and

(b) To the extent that the trust's share of the entity's taxable income exceeds the total receipts described in divisions (C)(1) and (2)(a) of this section.

(D) For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

Sec. ~~1340.86~~ 5812.47. (A) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from any of the following:

(1) Elections and decisions, other than those described in division (B) of this section, that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the 5291
fiduciary or a beneficiary as a result of a transaction involving 5292
or a distribution from the estate or trust; 5293

(3) The ownership by an estate or trust of an interest in an 5294
entity whose taxable income, whether or not distributed, is 5295
includable in the taxable income of the estate, trust, or 5296
beneficiary. 5297

(B) If the amount of an estate tax marital deduction or 5298
charitable contribution deduction is reduced because a fiduciary 5299
deducts an amount paid from principal for income tax purposes 5300
instead of deducting it for estate tax purposes, and as a result 5301
estate taxes paid from principal are increased and income taxes 5302
paid by an estate, trust, or beneficiary are decreased, each 5303
estate, trust, or beneficiary that benefits from the decrease in 5304
income tax shall reimburse the principal from which the increase 5305
in estate tax is paid. The total reimbursement shall equal the 5306
increase in the estate tax to the extent that the principal used 5307
to pay the increase would have qualified for a marital deduction 5308
or charitable contribution deduction but for the payment. The 5309
proportionate share of the reimbursement for each estate, trust, 5310
or beneficiary whose income taxes are reduced shall be the same as 5311
its proportionate share of the total decrease in income tax. An 5312
estate or trust shall reimburse principal from income. 5313

Sec. ~~1340.90~~ 5812.51. (A) Sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5314
5812.52 of the Revised Code may be cited as the "uniform principal 5315
and income act (1997)." 5316

(B) In applying and construing the "uniform principal and 5317
income act (1997)", consideration shall be given to the need to 5318
promote uniformity of the law with respect to its subject matter 5319
among states that enact the "uniform principal and income act 5320
(1997)". 5321

Sec. ~~1340.91~~ 5812.52. Sections ~~1340.40~~ 5812.01 to ~~1340.90~~ 5812.51 of the Revised Code apply to every trust or decedent's estate existing on ~~the effective date of this section~~ January 1, 2003, except as otherwise expressly provided in the will or terms of the trust or in sections ~~1340.40~~ 5812.01 to ~~1340.90~~ 5812.51 of the Revised Code.

Sec. ~~1340.31~~ 5813.01. As used in sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the Revised Code:

(A) "Institution" means an incorporated or unincorporated organization that is organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes or a governmental organization to the extent that it holds funds exclusively for any of those purposes.

(B) "Governing board" means the body responsible for the management of an institution.

(C) "Institutional trust fund" means a trust fund, or a part of a trust fund, that is held by a trustee for the exclusive use, benefit, or purposes of one or more institutions and that is not wholly distributable to the institution or institutions on a current basis under the terms of the applicable trust instrument. "Institutional trust fund" does not include a fund in which a beneficiary that is not an institution has an interest other than a right that may arise upon a violation of a covenant under the terms of the applicable trust instrument or upon a violation of or the failure of the purposes of the fund.

(D) "Applicable fund value" means for any particular fiscal year the sum of the month-end values of the net assets of an institutional trust fund for the prior fiscal year for those months in which the institutional trust fund has been in existence during such prior fiscal year divided by the number of those

months. The month-end values shall be determined by the trustee in 5352
accordance with the trustee's records, and any such determination 5353
made by a trustee in good faith is conclusive. 5354

(E) "Trust instrument" means a testamentary or inter vivos 5355
trust under which the trustee of the trust holds an institutional 5356
trust fund. 5357

(F) "Trustee" means an individual, corporation, institution, 5358
or organization, including, but not limited to, a bank, trust 5359
company, or other financial institution, serving as a trustee or 5360
as sole trustee under a trust instrument. "Trustee" includes an 5361
original trustee and any successor or added trustee. 5362

Sec. ~~1340.32~~ 5813.02. (A) Subject to division (D) of this 5363
section and section ~~1340.33~~ 5813.03 of the Revised Code, during 5364
any fiscal year in which income may be or is required to be 5365
distributed to an institution from an institutional trust fund, 5366
income means the greater of the following: 5367

(1) The income from the assets of the institutional trust 5368
fund for the fiscal year as determined in accordance with the 5369
applicable trust instrument and applicable law without regard to 5370
sections ~~1340.34~~ 5813.01 to ~~1340.37~~ 5813.07 of the Revised Code; 5371

(2) The amount requested by the institution's governing board 5372
for the fiscal year pursuant to division (B) of this section. 5373

(B) An institution's governing board may request that an 5374
amount be distributed to the institution for the fiscal year, and 5375
that amount shall not exceed the sum of both of the following: 5376

(1) Five per cent of the applicable fund value for the 5377
institutional trust fund for the fiscal year; 5378

(2) If, in any prior fiscal year that is after ~~the effective~~ 5379
~~date of this section~~ September 15, 1999, the governing board 5380
requested less than five per cent of the applicable fund value for 5381

~~such~~ that prior fiscal year and if the amount the institution 5382
actually received from the institutional trust fund pursuant to 5383
division (A) of this section was less than five per cent for ~~such~~ 5384
that prior fiscal year, the aggregate difference between five per 5385
cent of the applicable fund value with respect to each such prior 5386
fiscal year and the amount the institution actually received 5387
pursuant to division (A) of this section for ~~such~~ each prior 5388
fiscal year. 5389

(C) If, under a trust instrument, more than one institution 5390
is a beneficiary of an institutional trust fund, the trustee shall 5391
take such actions that the trustee determines appropriate or 5392
necessary to allow for the distributions of income as contemplated 5393
by division (A) of this section, which actions may include 5394
dividing the institutional trust fund into separate shares 5395
according to the interest that each institution has in the total 5396
institutional trust fund held under the trust instrument. 5397

(D) This section does not limit the authority or obligation 5398
of a trustee to distribute, or the authority of a governing board 5399
to request, funds as permitted or required under the terms of the 5400
applicable trust instrument. 5401

Sec. ~~1340.33~~ 5813.03. (A) Division (A) of section ~~1340.32~~ 5402
5813.02 of the Revised Code does not apply if the applicable trust 5403
instrument expressly indicates the settlor's intention that income 5404
is to be otherwise than as defined in division (A) of section 5405
~~1340.32~~ 5813.02 of the Revised Code. 5406

(B) A restriction upon the definition of income in division 5407
(A) of section ~~1340.32~~ 5813.02 of the Revised Code may not be 5408
inferred from a designation of an institutional trust fund as an 5409
endowment; a direction or authorization in the applicable trust 5410
instrument to use only "income," "interest," "dividends," or 5411
"rents, issues, or profits," or "to preserve the principal" 5412

intact," or a direction that contains other words of a similar 5413
import; a direction in a trust instrument that income and 5414
principal are to be determined by reference to certain statutory 5415
provisions; or, subject to division (A) of this section, the 5416
inclusion of specified provisions in a trust instrument setting 5417
forth the way in which income and principal are to be determined. 5418

(C) The rule of construction set forth in division (B) of 5419
this section applies to trust instruments executed or in effect 5420
before, on, or after ~~the effective date of this section~~ September 5421
15, 1999. 5422

Sec. ~~1340.34~~ 5813.04. (A) In administering the powers to 5423
request amounts from a trustee of an institutional trust fund in 5424
accordance with divisions (A) and (B) of section ~~1340.32~~ 5813.02 5425
of the Revised Code, members of a governing board of an 5426
institution shall exercise ordinary business care and prudence 5427
under the facts and circumstances prevailing at the time of the 5428
action or decision and shall make requests for amounts under 5429
divisions (A) and (B) of section ~~1340.32~~ 5813.02 of the Revised 5430
Code only as is prudent under this standard. In so doing, the 5431
governing board shall consider the long- and short-term needs of 5432
the institution in carrying out its educational, religious, 5433
charitable, or other eleemosynary purposes; the institution's 5434
present and anticipated financial requirements; the expected total 5435
return on the investments held by the institution and held by the 5436
trustee under the applicable trust instrument; price level trends; 5437
and general economic conditions. 5438

(B) In determining the expected total return on the 5439
investments held by a trustee of an institutional trust fund under 5440
the applicable trust instrument, the members of the governing 5441
board of an institution may follow, and are not required to 5442
examine independently, the determination of the trustee regarding 5443

the expected total return on the investments held by the trustee. 5444

(C) A trustee of an institutional trust fund has no duty to 5445
inquire or ascertain whether the governing board of an institution 5446
has satisfied the standards set forth in divisions (A) and (B) of 5447
this section, and the trustee does not have any liability for the 5448
failure of the governing board to satisfy those standards. 5449

Sec. ~~1340.35~~ 5813.05. Nothing in sections ~~1340.40~~ 5812.01 to 5450
~~1340.91~~ 5812.52, or any other section of the Revised Code limits 5451
or restricts the definition of income in division (A) of section 5452
~~1340.32~~ 5813.02 of the Revised Code or limits or restricts a 5453
governing board of an institution from requesting, or a trustee 5454
from making, distributions from an institutional trust fund in 5455
accordance with sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the 5456
Revised Code. 5457

Sec. ~~1340.36~~ 5813.06. (A) Nothing in sections ~~1340.31~~ 5813.01 5458
to ~~1340.35~~ 5813.05 of the Revised Code affects the construction or 5459
interpretation of sections 1715.51 to 1715.59 of the Revised Code 5460
relating to the uniform management of institutional funds act. 5461
Specifically, neither the percentage set forth in division (B) of 5462
section 1340.32 of the Revised Code nor the amount actually 5463
requested by a governing board pursuant to section ~~1340.32~~ 5813.02 5464
of the Revised Code shall be construed or interpreted to limit or 5465
expand what is a prudent amount that can be expended by a 5466
governing board of an institution under sections 1715.51 to 5467
1715.59 of the Revised Code. 5468

(B) If an institutional trust fund is also an institutional 5469
fund as defined in division (B) of section 1715.51 of the Revised 5470
Code with the result that sections 1715.51 to 1715.59 of the 5471
Revised Code also are applicable to the institutional trust fund, 5472
then sections 1715.51 to 1715.59 of the Revised Code apply to the 5473

institutional trust fund, and sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5474
5813.07 of the Revised Code do not apply to the institutional 5475
trust fund. 5476

Sec. ~~1340.37~~ 5813.07. Sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5477
5813.07 of the Revised Code may be cited as the "institutional 5478
trust funds act." 5479

Sec. ~~1339.31~~ 5814.01. As used in sections ~~1339.31~~ 5814.01 to 5480
~~1339.39~~ 5814.09 of the Revised Code, unless the context otherwise 5481
requires: 5482

(A) "Benefit plan" means any plan of an employer for the 5483
benefit of any employee, any plan for the benefit of any partner, 5484
or any plan for the benefit of a proprietor, and includes, but is 5485
not limited to, any pension, retirement, death benefit, deferred 5486
compensation, employment agency, stock bonus, option, or 5487
profit-sharing contract, plan, system, account, or trust. 5488

(B) "Broker" means a person that is lawfully engaged in the 5489
business of effecting transactions in securities for the account 5490
of others. A "broker" includes a financial institution that 5491
effects such transactions and a person who is lawfully engaged in 5492
buying and selling securities for ~~his~~ the person's own account, 5493
through a broker or otherwise, as a part of a regular business. 5494

(C) "Court" means the probate court. 5495

(D) "The custodial property" includes: 5496

(1) All securities, money, life or endowment insurance 5497
policies, annuity contracts, benefit plans, real estate, tangible 5498
and intangible personal property, proceeds of a life or endowment 5499
insurance policy, an annuity contract, or a benefit plan, and 5500
other types of property under the supervision of the same 5501
custodian for the same minor as a consequence of a transfer or 5502

transfers made to the minor, a gift or gifts made to the minor, or
a purchase made by the custodian for the minor, in a manner
prescribed in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the
Revised Code;

(2) The income from the custodial property;

(3) The proceeds, immediate and remote, from the sale,
exchange, conversion, investment, reinvestment, or other
disposition of the securities, money, life or endowment insurance
policies, annuity contracts, benefit plans, real estate, tangible
and intangible personal property, proceeds of a life or endowment
insurance policy, an annuity contract, or a benefit plan, other
types of property, and income.

(E) "Custodian" or "successor custodian" means a person so
designated in a manner prescribed in sections ~~1339.31~~ 5814.01 to
~~1339.39~~ 5814.09 of the Revised Code.

(F) "Financial institution" means any bank, as defined in
section 1101.01, any building and loan association, as defined in
section 1151.01, any credit union as defined in section 1733.01 of
the Revised Code, and any federal credit union, as defined in the
"Federal Credit Union Act," 73 Stat. 628 (1959), 12 U.S.C.A. 1752,
as amended.

(G) "Guardian of the minor" includes the general guardian,
guardian, tutor, or curator of the property, estate, or person of
a minor.

(H) "Issuer" means a person who places or authorizes the
placing of ~~his~~ the person's name on a security, other than as a
transfer agent, to evidence that it represents a share,
participation, or other interest in ~~his~~ the person's property or
in an enterprise, or to evidence ~~his~~ the person's duty or
undertaking to perform an obligation that is evidenced by the
security, or who becomes responsible for or in place of any such

person. 5534

(I) "Legal representative" of a person means the executor, 5535
administrator, general guardian, guardian, committee, conservator, 5536
tutor, or curator of ~~his~~ the person's property or estate. 5537

(J) "Member of the minor's family" means a parent, 5538
stepparent, spouse, grandparent, brother, sister, uncle, or aunt 5539
of the minor, whether of the whole or half blood, or by adoption. 5540

(K) "Minor" means a person who has not attained the age of 5541
twenty-one years. 5542

(L) "Security" includes any note, stock, treasury stock, 5543
common trust fund, bond, debenture, evidence of indebtedness, 5544
certificate of interest or participation in an oil, gas, or mining 5545
title or lease or in payments out of production under an oil, gas, 5546
or mining title or lease, collateral trust certificate, 5547
transferable share, voting trust certificate, or, in general, any 5548
interest or instrument commonly known as a security, or any 5549
certificate of interest or participation in, any temporary or 5550
interim certificate, receipt or certificate of deposit for, or any 5551
warrant or right to subscribe to or purchase, any of the 5552
foregoing. A "security" does not include a security of which the 5553
donor or transferor is the issuer. A security is in "registered 5554
form" when it specifies a person who is entitled to it or to the 5555
rights that it evidences and its transfer may be registered upon 5556
books maintained for that purpose by or on behalf of the issuer. 5557

(M) "Transfer" means a disposition, other than a gift, by a 5558
person who is eighteen years of age or older that creates 5559
custodial property under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5560
5814.09 of the Revised Code. 5561

(N) "Transfer agent" means a person who acts as 5562
authenticating trustee, transfer agent, registrar, or other agent 5563
for an issuer in the registration of transfers of its securities, 5564

in the issue of new securities, or in the cancellation of 5565
surrendered securities. 5566

(O) "Transferor" means a person who is eighteen years of age 5567
or older, who makes a transfer. 5568

(P) "Trust company" means a financial institution that is 5569
authorized to exercise trust powers. 5570

(Q) "Administrator" includes an "administrator with the will 5571
annexed." 5572

Sec. ~~1339.32~~ 5814.02. (A) A person who is eighteen years of 5573
age or older may, during ~~his~~ the person's lifetime, make a gift or 5574
transfer of a security, money, a life or endowment insurance 5575
policy, an annuity contract, a benefit plan, real estate, tangible 5576
or intangible personal property, or any other property to, may 5577
designate as beneficiary of a life or endowment insurance policy, 5578
an annuity contract, or a benefit plan, or make a transfer by the 5579
irrevocable exercise of a power of appointment in favor of, a 5580
person who is a minor on the date of the gift or transfer: 5581

(1) If the subject of the gift or transfer is a security in 5582
registered form, by registering it in the name of the donor or 5583
transferor, another person who is eighteen years of age or older, 5584
or a trust company, followed, in substance, by the words: "as 5585
custodian for (name of minor) under the Ohio 5586
Transfers to Minors Act"; 5587

(2) If the subject of the gift or transfer is a security not 5588
in registered form, by delivering it to the donor or transferor, 5589
another person who is eighteen years of age or older, or a trust 5590
company, accompanied by a statement of a gift or transfer in the 5591
following form, in substance, signed by the donor or transferor 5592
and the person or trust company designated as custodian: 5593

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT 5594

I, (name of donor or transferor), hereby 5595
deliver to (name of custodian) as custodian for 5596
..... (name of minor) under the Ohio Transfers to 5597
Minors Act, the following security (ies): (insert an appropriate 5598
description of the security or securities delivered, sufficient to 5599
identify it or them). 5600

..... 5601
(signature of donor or transferor) 5602

..... (name of custodian) hereby acknowledges 5603
receipt of the above described security (ies) as custodian for the 5604
above minor under the Ohio Transfers to Minors Act. 5605

Dated: 5606
(signature of custodian)" 5607

(3) If the subject of the gift or transfer is money, by 5608
paying or delivering it to a broker, or a financial institution 5609
for credit to an account in the name of the donor or transferor, 5610
another person who is eighteen years of age or older, or a trust 5611
company, followed, in substance, by the words: "as custodian for 5612
..... (name of minor) under the Ohio Transfers to 5613
Minors Act." 5614

(4) If the subject of the gift or transfer is a life or 5615
endowment insurance policy, an annuity contract, or a benefit 5616
plan, by assigning the policy, contract, or plan to the donor or 5617
transferor, another person who is eighteen years of age or older, 5618
or a trust company, followed, in substance by the words: "as 5619
custodian for (name of minor) under the Ohio 5620
Transfers to Minors Act." 5621

(5) If the subject of the gift or transfer is an interest in 5622
real estate, by executing and delivering in the appropriate manner 5623
a deed, assignment, or similar instrument in the name of the donor 5624
or transferor, another person who is eighteen years of age or 5625

older, or a trust company, followed, in substance, by the words: 5626
"as custodian for (name of minor) under the Ohio 5627
Transfers to Minors Act." 5628

(6) If the subject of the gift or transfer is tangible 5629
personal property, by delivering it to the donor or transferor, 5630
another person who is eighteen years of age or older, or a trust 5631
company, accompanied by a statement of a gift or transfer in the 5632
following form, in substance, signed by the donor or transferor 5633
and the person or trust company designated as custodian: 5634

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT 5635

I, (name of donor or transferor), hereby 5636
deliver to (name of custodian) as custodian for 5637
..... (name of minor) under the Ohio Transfers to 5638
Minors Act, the following property: (insert an appropriate 5639
description of the property delivered, sufficient to identify it). 5640

..... 5641

(signature of donor or transferor) 5642

..... (name of custodian) hereby acknowledges 5643
receipt of the above described property as custodian for the above 5644
minor under the Ohio Transfers to Minors Act. 5645

Dated: 5646

(signature of custodian)" 5647

(7) If the subject of the gift or transfer is tangible 5648
personal property, title to which is evidenced by a certificate of 5649
title issued by a department or agency of a state or of the United 5650
States, by issuing title to the donor or transferor, another 5651
person who is eighteen years of age or older, or a trust company, 5652
accompanied by a statement of a gift or transfer in the following 5653
form, in substance: "as custodian for 5654
(name of minor) under the Ohio Transfers to Minors Act"; or by 5655
delivering the title to another person who is eighteen years of 5656

age or older or a trust company, endorsed to that person followed 5657
in substance by the following words: "as custodian for 5658
..... under the Ohio Transfers to Minors Act." 5659

(8) If the subject of the gift or transfer is the designation 5660
of a minor as beneficiary of a life or endowment insurance policy, 5661
an annuity contract, or a benefit plan, by designating as 5662
beneficiary of the policy, contract, or plan the donor or 5663
transferor, another person who is eighteen years of age or older, 5664
or a trust company, followed, in substance, by the words: "as 5665
custodian for (name of minor) under the Ohio 5666
Transfers to Minors Act." 5667

(9) If the subject of the gift or transfer is an irrevocable 5668
exercise of a power of appointment in favor of a minor or is an 5669
interest in any property that is not described in divisions (A)(1) 5670
to (8) of this section, by causing the ownership of the property 5671
to be transferred by any written document in the name of the donor 5672
or transferor, another person who is eighteen years of age or 5673
older, or a trust company, followed, in substance, by the words: 5674
"as custodian for (name of minor) under the 5675
Ohio Transfers to Minors Act." 5676

(B) Trustees, inter vivos or testamentary, executors, and 5677
administrators having authority to distribute or pay any trust or 5678
estate property to or for the benefit of a minor, or having 5679
authority to distribute or pay any trust or estate property to any 5680
other person for the benefit of a minor may, if authorized by a 5681
will or trust instrument, distribute or pay trust or estate 5682
property of any type mentioned in division (A) of this section in 5683
the manner and form provided in that division, and may name the 5684
custodian or successor custodian of the property if the will or 5685
trust instrument does not name an eligible custodian, or if the 5686
will or trust does not name an eligible successor custodian and 5687
the naming of a successor custodian is necessary. A person who is 5688

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 5721
division (A) of this section to ~~himself~~ self, another person who 5722
is eighteen years of age or older, or a trust company, as 5723
custodian, if all of the following apply: 5724

(1) Irrespective of the value of the property, the trustee, 5725
executor, or administrator considers the transfer to be in the 5726
best interest of the minor; 5727

(2) Irrespective of the value of the property, the transfer 5728
is not prohibited by or inconsistent with the applicable will, 5729
trust agreement, or other governing instrument; 5730

(3) If the value of the property exceeds ten thousand 5731
dollars, the transfer is authorized by the appropriate court. 5732

Sec. ~~1339.33~~ 5814.03. (A) A gift or transfer made in a manner 5733
prescribed in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 5734
Revised Code, is irrevocable and conveys to the minor indefeasibly 5735
vested legal title to the security, money, life or endowment 5736
insurance policy, annuity contract, benefit plan, real estate, 5737
tangible or intangible personal property, or other property given 5738
or, subject to the right of the owner of the policy, contract, or 5739
benefit plan to change the beneficiary if the custodian is not the 5740
owner, to the proceeds of a life or endowment insurance policy, an 5741
annuity contract, or a benefit plan given, but no guardian of the 5742
minor has any right, power, duty, or authority with respect to the 5743
custodial property except as provided in sections ~~1339.31~~ 5814.01 5744
to ~~1339.39~~ 5814.09 of the Revised Code. 5745

(B) By making a gift or transfer in a manner prescribed in 5747
sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, 5748
the donor or transferor incorporates in ~~his~~ the gift or transfer 5749
all the provisions of these sections and grants to the custodian, 5750

and to any issuer, transfer agent, financial institution, broker, 5751
or third person dealing with a person or trust company designated 5752
as custodian, the respective powers, rights, and immunities 5753
provided in these sections. 5754

Sec. ~~1339.34~~ 5814.04. (A) The custodian shall collect, hold, 5755
manage, invest, and reinvest the custodial property. 5756

(B) The custodian shall pay over to the minor for expenditure 5757
by the minor, or expend for the use or benefit of the minor, as 5758
much of or all the custodial property as the custodian considers 5759
advisable for the use and benefit of the minor in the manner, at 5760
the time or times, and to the extent that the custodian in ~~his~~ the 5761
custodian's discretion considers suitable and proper, with or 5762
without court order, with or without regard to the duty or ability 5763
of the custodian or of any other person to support the minor or 5764
~~his~~ the minor's ability to do so, and with or without regard to 5765
any other income or property of the minor that may be applicable 5766
or available for any purpose. Any payment or expenditure that is 5767
made under this division is in addition to, is not a substitute 5768
for, and does not affect the obligation of any person to support 5769
the minor for whom the payment or expenditure is made. 5770

(C) The court, on the petition of a parent or guardian of the 5771
minor or of the minor, if ~~he~~ the minor has attained the age of 5772
fourteen years, may order the custodian to pay over to the minor 5773
for expenditure by ~~him~~ the minor or to expend as much of or all 5774
the custodial property as is necessary for the use and benefit of 5775
the minor. 5776

(D)(1) Except as provided in division (D)(2) of this section, 5777
to the extent that the custodial property is not so expended, the 5778
custodian shall deliver or pay the custodial property over to the 5779
minor on ~~his~~ the minor's attaining the age of twenty-one years or, 5780
if the minor dies before attaining the age of twenty-one years, 5781

shall, upon the minor's death, deliver or pay the custodial 5782
property over to the estate of the minor. 5783

(2) If the donor or transferor, in the written instrument 5784
that makes or provides for the gift or transfer, directs the 5785
custodian to deliver or pay over the custodial property to the 5786
minor on ~~his~~ the minor's attaining any age between eighteen and 5787
twenty-one, the custodian shall deliver or pay over the custodial 5788
property to the minor on ~~his~~ the minor's attaining that age, or, 5789
if the minor dies before attaining that age, the custodian shall, 5790
upon the minor's death, deliver or pay the custodial property over 5791
to the estate of the minor. 5792

(E) The custodian, notwithstanding statutes restricting 5793
investments by fiduciaries, shall invest and reinvest the 5794
custodial property as would a prudent person of discretion and 5795
intelligence dealing with the property of another, except that the 5796
custodian may, in the discretion of the custodian and without 5797
liability to the minor or the estate of the minor, retain any 5798
custodial property received in a manner prescribed in sections 5799
~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code. If a 5800
custodian has special skills or is named custodian on the basis of 5801
representations of special skills or expertise, the custodian is 5802
under a duty to use those skills or that expertise. 5803

(F) The custodian may sell, exchange, convert, or otherwise 5804
dispose of custodial property in the manner, at the time or times, 5805
for the price or prices, and upon the terms ~~he~~ the custodian 5806
considers advisable. ~~He~~ The custodian may vote in person or by 5807
general or limited proxy a security that is custodial property. ~~He~~ 5808
The custodian may consent, directly or through a committee or 5809
other agent, to the reorganization, consolidation, merger, 5810
dissolution, or liquidation of an issuer of a security that is 5811
custodial property, and to the sale, lease, pledge, or mortgage of 5812
any property by or to such an issuer, and to any other action by 5813

such an issuer. ~~He~~ The custodian may purchase any life or 5814
endowment insurance policy or annuity contract on the life of the 5815
minor or any member of the family of the minor and pay, from funds 5816
in ~~his~~ the custodian's custody, any premiums on any life or 5817
endowment insurance policy or annuity contract held by ~~him~~ the 5818
custodian as custodial property. ~~He~~ The custodian may execute and 5819
deliver any and all instruments in writing that ~~he~~ the custodian 5820
considers advisable to carry out any of ~~his~~ the custodian's powers 5821
as custodian. 5822

(G) The custodian shall register each security that is 5823
custodial property and in registered form in the name of the 5824
custodian, followed, in substance, by the words: "as custodian for 5825
..... (name of minor) under the Ohio Transfers to Minors 5826
Act," or shall maintain each security that is custodial property 5827
and in registered form in an account with a broker or in a 5828
financial institution in the name of the custodian, followed, in 5829
substance, by the words: "as custodian for (name of 5830
minor) under the Ohio Transfers to Minors Act." A security held in 5831
account with a broker or in a financial institution in the name of 5832
the custodian may be held in the name of the broker or financial 5833
institution. A security that is custodial property and in 5834
registered form and that is held by a broker or in a financial 5835
institution in which the broker or financial institution does not 5836
have a lien for indebtedness due to it from a custodial account 5837
may not be pledged, lent, hypothecated, or disposed of except upon 5838
the specific instructions of the custodian. The custodian shall 5839
hold all money that is custodial property in an account with a 5840
broker or in a financial institution in the name of the custodian, 5841
followed, in substance, by the words: "as custodian for 5842
..... (name of minor) under the Ohio Transfers to Minors 5843
Act." The custodian shall hold all life or endowment insurance 5844
policies, annuity contracts, or benefit plans that are custodial 5845
property in the name of the custodian, followed, in substance, by 5846

the words "as custodian for (name of minor) under
the Ohio Transfers to Minors Act." The custodian shall take title
to all real estate that is custodial property in the name of the
custodian, followed, in substance, by the words: "as custodian for
..... (name of minor) under the Ohio Transfers to Minors
Act." The custodian shall keep all other custodial property
separate and distinct from ~~his~~ the custodian's own property in a
manner to identify it clearly as custodial property.

(H) The custodian shall keep records of all transactions with
respect to the custodial property and make the records available
for inspection at reasonable intervals by a parent or legal
representative of the minor or by the minor, if ~~he~~ the minor has
attained the age of fourteen years.

(I) A custodian has, with respect to the custodial property,
in addition to the rights and powers provided in sections ~~1339.31~~
5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, all the rights and
powers that a guardian has with respect to property not held as
custodial property.

(J) The custodian may invest in or pay premiums on any life
or endowment insurance policy or annuity contract on either of the
following:

(1) The life of the minor, if the minor or the estate of the
minor is the sole beneficiary under the policy or contract;

(2) The life of any person in whom the minor has an insurable
interest, if the minor, ~~his~~ the minor's estate, or the custodian
in ~~his~~ the custodian's capacity as custodian is the sole
beneficiary.

(K) All of the rights, powers, and authority of the custodian
over custodial property, including all of the incidents of
ownership in any life or endowment insurance policy, annuity
contract, or benefit plan, are held only in the capacity of the

custodian as custodian.	5878
Sec. 1339.35 <u>5814.05</u>. (A) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his <u>the custodian's</u> duties.	5879 5880 5881 5882
(B) A custodian may act without compensation for his <u>the custodian's</u> services.	5883 5884
(C) Unless he <u>the custodian</u> is a donor or transferor, a <u>the</u> custodian may receive from custodial property reasonable compensation for his <u>the custodian's</u> services determined by one of the following standards in the order stated:	5885 5886 5887 5888
(1) A direction by the donor or transferor when the gift or transfer is made;	5889 5890
(2) A statute of this state applicable to custodians;	5891
(3) The statute of this state applicable to guardians;	5892
(4) An order of the court.	5893
(D) Except as otherwise provided in sections 1339.31 <u>5814.01</u> to 1339.39 <u>5814.09</u> of the Revised Code, a custodian shall not be required to give a bond for the performance of his <u>the custodian's</u> duties.	5894 5895 5896 5897
(E) A custodian not compensated for his <u>the custodian's</u> services is not liable for losses to the custodial property unless they result from his <u>the custodian's</u> bad faith, intentional wrongdoing, or gross negligence or from his <u>the custodian's</u> failure to maintain the standard of prudence in investing the custodial property provided in sections 1339.31 <u>5814.01</u> to 1339.39 <u>5814.09</u> of the Revised Code.	5898 5899 5900 5901 5902 5903 5904
Sec. 1339.36 <u>5814.06</u>. An issuer, transfer agent, financial	5905

institution, broker, life insurance company, or other person 5906
acting on the instructions of or otherwise dealing with any person 5907
purporting to act as a donor or transferor or dealing with any 5908
person or trust company purporting to act as a custodian is not 5909
required to do any of the following: 5910

(A) Determine either of the following: 5911

(1) Whether the person or trust company designated by the 5912
purported donor or transferor, or the person or trust company 5913
purporting to act as a custodian, has been duly designated; 5914

(2) Whether any purchase, sale, or transfer to or by, or any 5915
other act of, any person or trust company purporting to act as a 5916
custodian is in accordance with or authorized by sections ~~1339.31~~ 5917
5814.01 to ~~1339.39~~ 5814.09 of the Revised Code. 5918

(B) Inquire into the validity or propriety under sections 5919
~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code of any 5920
instrument or instructions executed or given by a person 5921
purporting to act as a donor or transferor or by a person or trust 5922
company purporting to act as a custodian; 5923

(C) See to the application by any person or trust company 5924
purporting to act as a custodian of any money or other property 5925
paid or delivered to the person or trust company. 5926

Sec. ~~1339.37~~ 5814.07. (A) Any person who is eighteen years of 5927
age or older or a trust company is eligible to become a successor 5928
custodian. A successor custodian has all the rights, powers, 5929
duties, and immunities of a custodian designated in a manner 5930
prescribed by sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 5931
Revised Code. 5932

(B) A custodian may resign and designate ~~his~~ the custodian's 5933
successor by doing all of the following: 5934

(1) Executing an instrument of resignation that designates 5935

the successor custodian; 5936

(2) Causing each security that is custodial property and in 5937
registered form to be registered in the name of the successor 5938
custodian followed, in substance, by the words: "as custodian for 5939
..... under the Ohio Transfers 5940
(name of minor) 5941
to Minors Act;" 5942

(3) Executing in the appropriate manner a deed, assignment, 5943
or similar instrument for all interest in real estate that is 5944
custodial property in the name of the successor custodian, 5945
followed, in substance, by the words: "as custodian for 5946
..... under the Ohio Transfers to 5947
(name of minor) 5948
Minors Act"; 5949

(4) Delivering to the successor custodian the instrument of 5950
resignation, each security registered in the name of the successor 5951
custodian, each deed, assignment, or similar instrument for all 5952
interest in real estate that is in the name of the successor 5953
custodian, and all other custodial property, together with any 5954
additional instruments that are required for the transfer of the 5955
custodial property. 5956

(C) A custodian may petition the court for permission to 5957
resign and for the designation of a successor custodian. 5958

(D) A custodian may designate by ~~his~~ the custodian's will a 5959
successor custodian, which designation is effective at the 5960
custodian's death. Upon the custodian's death, the custodian's 5961
legal representative shall do each of the following: 5962

(1) Cause each security that is custodial property and in 5963
registered form to be registered in the name of the successor 5964
custodian, followed, in substance, by the words: "as custodian for 5965

..... under the Ohio Transfers to 5966
(name of minor) 5967
Minors Act"; 5968
(2) Execute in the appropriate manner a deed, assignment, or 5969
similar instrument for all interest in real estate that is 5970
custodial property in the name of the successor custodian, 5971
followed, in substance, by the words: "as custodian for 5972
..... under the Ohio Transfers to Minors 5973
(name of minor) 5974
Act"; 5975
(3) Deliver to the successor custodian each security 5976
registered in the name of the successor custodian, each deed, 5977
assignment, or similar instrument for all interest in real estate 5978
that is in the name of the successor custodian, and all other 5979
custodial property, together with any additional instruments that 5980
are required for the transfer of the custodial property. 5981
(E) If no eligible successor custodian is designated by the 5982
donor or transferor in ~~his~~ the donor's or transferor's will or 5983
trust or by the custodian in ~~his~~ the custodian's will, or if the 5984
custodian dies intestate or is adjudged to be an incompetent by a 5985
court, the legal representative of the custodian may designate a 5986
successor custodian. If the court in which the estate or 5987
guardianship proceedings relative to the custodian are pending 5988
approves the designation, the designation shall be regarded as 5989
having been effective as of the date of the death of the custodian 5990
or as of the date ~~he~~ the custodian was adjudged to be an 5991
incompetent. Upon the approval of the court, the legal 5992
representative of the custodian shall cause the custodial property 5993
to be transferred or registered in the name of the successor 5994
custodian as provided in divisions (D)(1) to (3) of this section. 5995

(F) If a person or entity designated as successor custodian 5996
is not eligible, or renounces or dies before the minor attains the 5997
age of twenty-one years, or if the custodian dies without 5998
designating a successor custodian and division (E) of this section 5999
does not apply because the custodian does not have a legal 6000
representative, the guardian of the minor shall be the successor 6001
custodian. If the minor does not have a guardian, a donor or 6002
transferor, the legal representative of the donor or transferor, 6003
the legal representative of the custodian, a member of the minor's 6004
family who is eighteen years of age or older, or the minor, if ~~he~~ 6005
the minor has attained the age of fourteen years, may petition the 6006
court for the designation of a successor custodian. 6007

(G) A donor or transferor, the legal representative of a 6008
donor or transferor, a member of the minor's family who is 6009
eighteen years of age or older, a guardian of the minor, or the 6010
minor, if ~~he~~ the minor has attained the age of fourteen years, may 6011
petition the court that, for cause shown in the petition, the 6012
custodian be removed and a successor custodian be designated or, 6013
in the alternative, that the custodian be required to give bond 6014
for the performance of ~~his~~ the custodian's duties. 6015

(H) Upon the filing of a petition as provided in this 6016
section, the court shall grant an order, directed to the persons 6017
and returnable on any notice that the court may require, to show 6018
cause why the relief prayed for in the petition should not be 6019
granted and, in due course, grant any relief that the court finds 6020
to be in the best interests of the minor. 6021

Sec. ~~1339.38~~ 5814.08. (A) The minor, if ~~he~~ the minor has 6022
attained the age of fourteen years, or the legal representative of 6023
the minor, a member of the minor's family who is eighteen years of 6024
age or older, or a donor or transferor or ~~his~~ the donor's or 6025
transferor's legal representative may petition the court for an 6026

accounting by the custodian or ~~his~~ the custodian's legal 6027
representative. A successor custodian may petition the court for 6028
an accounting by the custodian that ~~he~~ the successor custodian 6029
succeeded. 6030

(B) The court, in a proceeding under sections ~~1339.31~~ 5814.01 6031
to ~~1339.39~~ 5814.09 of the Revised Code, or otherwise, may require 6032
or permit the custodian or ~~his~~ the custodian's legal 6033
representative to account and, if the custodian is removed, shall 6034
so require and order delivery of all custodial property to the 6035
successor custodian and the execution of all instruments required 6036
for the transfer of the custodial property. 6037

Sec. ~~1339.39~~ 5814.09. (A) Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 6038
5814.09 of the Revised Code shall be ~~so~~ construed ~~as~~ to effectuate 6039
their general purpose to make uniform the law of those states 6040
~~which~~ that enact similar provisions. 6041

(B) Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 6042
Revised Code shall not be construed as providing an exclusive 6043
method for making gifts or transfers to minors. 6044

(C) Nothing in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of 6045
the Revised Code, shall affect gifts made under former sections 6046
1339.19 to 1339.28 of the Revised Code, nor the powers, duties, 6047
and immunities conferred by gifts in such manner upon custodians 6048
and persons dealing with custodians. Sections ~~1339.31~~ 5814.01 to 6049
~~1339.39~~ 5814.09 of the Revised Code henceforth apply, however, to 6050
all gifts made in a manner and form prescribed in former sections 6051
1339.19 to 1339.28 of the Revised Code, except insofar as ~~such~~ the 6052
application impairs constitutionally vested rights. Sections 6053
~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code shall be 6054
construed as a continuation of the provisions of former sections 6055
1339.19 to 1339.28 of the Revised Code, according to the language 6056
employed, and not as a new enactment. 6057

(D) Nothing in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of 6058
the Revised Code, as of ~~the effective date of this amendment~~ May 6059
7, 1986, shall affect gifts made under those sections as they 6060
existed prior to ~~the effective date of this amendment~~ May 7, 1986, 6061
or the powers, duties, and immunities conferred by the gifts in 6062
any manner upon custodians and persons dealing with custodians. 6063
Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, 6064
as of ~~the effective date of this amendment~~ May 7, 1986, hereafter 6065
apply to all gifts made in a manner and form prescribed in those 6066
sections as they existed prior to ~~the effective date of this~~ 6067
~~amendment~~ May 7, 1986, except to the extent that the application 6068
of those sections, as of ~~the effective date of this amendment~~ May 6069
7, 1986, would impair constitutionally vested rights. 6070

Sec. ~~1339.031~~ 5815.01. Except when the intent of the settlor 6071
clearly is to the contrary, the following rules of construction 6072
shall apply in interpreting the terms "inheritance" and "bequest": 6073

(A) The term "inheritance," in addition to its meaning at 6074
common law or under any other section or sections of the Revised 6075
Code, includes any change of title to real property by reason of 6076
the death of the owner of that real property, regardless of 6077
whether the owner died testate or intestate. 6078

(B) The term "bequest," in addition to its meaning at common 6079
law or under any other section or sections of the Revised Code, 6080
includes any disposition of real property that occurs as a result 6081
of the death of the settlor. 6082

Sec. ~~1339.01~~ 5815.02. As used in sections ~~1339.01~~ 5815.02 and 6083
~~1339.02~~ 5815.03 of the Revised Code: 6084

(A) "Fiduciary" includes a trustee under any trust, 6085
expressed, implied, resulting, or constructive; an executor, 6086
administrator, public administrator, guardian, committee, 6087

conservator, curator, receiver, trustee in bankruptcy, assignee 6088
for the benefit of creditors, partner, agent, officer of a public 6089
or private corporation, or public officer; or any other person 6090
acting in a fiduciary capacity for any person, trust, or estate. 6091

(B) "Good faith" includes an act done honestly, whether it is 6092
done negligently or not. 6093

(C) "Issuer" includes domestic corporations, companies, 6094
associations, and trusts; foreign corporations, companies, 6095
associations, and trusts, to the extent that securities issued by 6096
them are held of record by persons in this state or are held on 6097
deposit in this state, and to the extent that such foreign 6098
corporation, company, association, or trust is a holder of record 6099
of, or otherwise interested in, securities of domestic 6100
corporations, companies, associations, or trusts; and also the 6101
transfer agents and registrars of the issuer and the depositories 6102
for its securities. 6103

(D) "Person" includes a corporation, partnership, 6104
association, or two or more persons having a joint or common 6105
interest. 6106

(E) "Securities" includes the items in the following 6107
enumeration, which, however, is not exclusive: 6108

(1) Shares, share certificates, and other certificates and 6109
evidences of ownership or participation in property, assets, or 6110
trust estate; bonds, notes, debentures, certificates, or evidences 6111
of indebtedness, certificates of interest or participation, 6112
collateral trust certificates, equipment-trust certificates, 6113
preorganization or subscription certificates or receipts, and 6114
voting-trust certificates; passbooks or certificates of deposit of 6115
money, securities, or other property; scrip certificates, 6116
fractional interests certificates, and, in general, interests or 6117
instruments commonly known as securities, and certificates of 6118

interest or participation in, temporary or interim certificates or
receipts for, or warrants or rights to subscribe to, purchase, or
receive, any of the foregoing, whether such securities were issued
by the issuer in its corporate capacity, in its individual
capacity, or in a fiduciary capacity;

(2) Securities ~~which~~ that were issued originally by other
corporations, companies, associations, or trusts, but have become
the securities of the present issuer, individually or as a
fiduciary.

Sec. ~~1339.02~~ 5815.03. Unless there has been delivered to an
issuer a certified copy of an order, judgment, or decree of a
court, judge, or administrative body or official, the legal effect
of which is to restrict, suspend, or remove such capacity or
authority, ~~such~~ the issuer may treat all persons in whose names
its securities are of record on its records as being of full age
and competent and as having capacity and authority to exercise all
rights of ownership in respect of ~~such~~ the securities, including
the right to receive and to give receipts for payments and
distributions, the right to transfer ~~said~~ the securities, and the
right to vote or to give consent in person or by proxy,
notwithstanding any description, limitation, or qualification
appearing on ~~such~~ the securities or on ~~such~~ the records, any
reference thereon to another instrument or to any fiduciary or
pledgee or other relationship, or any knowledge or notice, actual
or constructive, of the right, interest, or claim of any other
person or of the infancy or lack of capacity or authority of the
persons in whose names ~~such~~ the securities are of record.

~~Such~~ The issuer may treat a fiduciary as having capacity and
authority to exercise all ~~said~~ rights of ownership in respect of
~~such~~ the securities that are of record in the name of a decedent
holder, of a person in conservation, receivership, or bankruptcy,

or of a minor, incompetent person, or person under disability, and 6150
~~such the~~ issuer shall be protected in any action taken or suffered 6151
by it in reliance upon any instrument showing the appointment of 6152
~~such the~~ fiduciary. 6153

~~Such The~~ issuer is not liable for loss caused by any act done 6154
or omitted by it under this section. ~~Such The~~ issuer need not see 6155
to the execution of any trust, or to the observance or performance 6156
of any obligation of a holder of record, a fiduciary, or a pledgee 6157
of ~~such the~~ securities, and it need not inquire or inform itself 6158
concerning ~~the same~~ those matters. 6159

This section does not enlarge the capacity, right, or 6160
authority of any holder of record of ~~such the~~ securities as 6161
against any person other than ~~such the~~ issuer, nor prevent any 6162
court of competent jurisdiction from enforcing or protecting any 6163
right, title, or interest in ~~such the~~ securities in any person who 6164
is not a holder of record ~~thereof~~ the securities. 6165

This section does not protect any ~~such~~ issuer who 6166
participates with a fiduciary in a breach of ~~his~~ the fiduciary's 6167
trust with knowledge of such facts that the action of ~~such the~~ 6168
issuer amounts to bad faith. 6169

Sec. ~~1339.03~~ 5815.04. As used in sections ~~1339.03~~ 5815.04 to 6170
~~1339.13, inclusive,~~ 5815.11 of the Revised Code: 6171

(A) "Bank" includes any person, carrying on the business of 6172
banking and any financial institution defined in section 5725.01 6173
of the Revised Code. 6174

(B) "Fiduciary" includes a trustee under any trust, 6175
expressed, implied, resulting, or constructive, an executor, 6176
~~administrator~~ administrator, guardian, conservator, curator, 6177
receiver, trustee in bankruptcy, assignee for the benefit of 6178
creditors, partner, agent, officer of a corporation, public or 6179

private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate. 6180
6181

(C) "Person" includes a corporation, partnership, association, or two or more persons having a joint or common interest. 6182
6183
6184

(D) "Principal" includes any person to whom a fiduciary as such owes an obligation. 6185
6186

(E) "Good faith" includes an act when it is in fact done honestly. 6187
6188

Sec. ~~1339.04~~ 5815.05. A person who in good faith pays or transfers to a fiduciary any money or other property ~~which that~~ the fiduciary as such is authorized to receive is not responsible for the proper application ~~thereof~~ of the money or other property by the fiduciary. Any right or title acquired from the fiduciary in consideration of ~~such the~~ payment or transfer is not invalid because of a misapplication by the fiduciary. 6189
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Sec. ~~1339.08~~ 5815.06. If a deposit is made in a bank to the credit of a fiduciary as such, the bank may pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which ~~such the~~ deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of ~~his~~ the obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. 6196
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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. 6205
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Sec. ~~1339.09~~ 5815.07. If a check is drawn upon ~~his~~ the 6210
principal's account by a fiduciary who is empowered to do so, the 6211
bank may pay ~~such~~ the check without being liable to the principal, 6212
unless the bank pays the check with actual knowledge that the 6213
fiduciary is committing a breach of ~~his~~ the obligation as 6214
fiduciary in drawing ~~such~~ the check or with knowledge of such 6215
facts that its action in paying the check amounts to bad faith. 6216

If such a check is payable to the drawee bank and is 6217
delivered to it in payment of or as security for a personal debt 6218
of the fiduciary to it, the bank is liable to the principal if the 6219
fiduciary in fact commits a breach of ~~his~~ the obligation as 6220
fiduciary in drawing or delivering the check. 6221

Sec. ~~1339.10~~ 5815.08. If a fiduciary makes a deposit in a 6222
bank to ~~his~~ the fiduciary's personal credit of checks drawn by ~~him~~ 6223
the fiduciary upon an account in ~~his~~ the fiduciary's own name as 6224
fiduciary, checks payable to ~~him~~ the fiduciary as fiduciary, 6225
checks drawn by ~~him~~ the fiduciary upon an account in the name of 6226
~~his~~ the principal if ~~he~~ the fiduciary is empowered to draw checks 6227
thereon, checks payable to ~~his~~ the principal and indorsed by ~~him~~ 6228
the fiduciary if ~~he~~ the fiduciary is empowered to indorse ~~such~~ the 6229
checks, or if ~~he~~ the fiduciary otherwise makes a deposit of funds 6230
held by ~~him~~ the fiduciary as fiduciary, the bank receiving ~~such~~ 6231
the deposit is not bound to inquire whether the fiduciary is 6232
committing a breach of ~~his~~ the obligation as fiduciary. 6233

~~Such~~ The bank may pay the amount of the deposit or any part 6234
thereof upon the personal check of the fiduciary without being 6235
liable to the principal, unless the bank receives the deposit or 6236
pays the check with actual knowledge that the fiduciary is 6237
committing a breach of ~~his~~ the obligation as fiduciary in making 6238
~~such~~ the deposit or in drawing ~~such~~ the check, or with knowledge 6239

of such facts that the action of ~~such~~ the bank in receiving the 6240
deposit or paying the check amounts to bad faith. 6241

Sec. ~~1339.11~~ 5815.09. When a deposit is made in a bank in the 6242
name of two or more persons as trustees and a check is drawn upon 6243
the trust account by any trustee authorized to do so by the other, 6244
neither the payee or other holder nor the bank is bound to inquire 6245
whether it is a breach of trust to authorize ~~such~~ the trustee to 6246
draw checks upon the trust account and neither is liable unless 6247
the circumstances are such that the action of the payee or other 6248
holder or the bank amounts to bad faith. 6249

Sec. ~~1339.12~~ 5815.10. Sections ~~1339.03~~ 5815.04 to ~~1339.13,~~ 6250
~~inclusive,~~ 5815.11 of the Revised Code shall be ~~so~~ construed ~~so as~~ 6251
to effectuate their general purpose ~~which is to make~~ of making the 6252
law of this state uniform with the law of those states ~~which~~ that 6253
enact similar legislation. 6254

Sec. ~~1339.13~~ 5815.11. In any case not provided for in 6255
sections ~~1339.03~~ 5815.04 to ~~1339.13,~~ ~~inclusive,~~ 5815.11 of the 6256
Revised Code, the rules of law and equity, including the law 6257
merchant and those rules of law and equity relating to trusts, 6258
agency, negotiable instruments, and banking apply. 6259

Sec. ~~1339.15~~ 5815.12. As used in sections ~~1339.151~~ 5815.13, 6260
~~1339.16~~ 5815.14, and ~~1339.17~~ 5815.15 of the Revised Code, "power 6261
of appointment" means any power ~~which~~ that is in effect a power to 6262
appoint, however created, regardless of the nomenclature used in 6263
creating the power and regardless of connotations under the law of 6264
property, trusts, or wills. ~~Such~~ The power includes but is not 6265
limited to powers which are special, general, limited, absolute, 6266
in gross, appendant, appurtenant, or collateral. 6267

Sec. ~~1339.151~~ 5815.13. Any power of appointment ~~which that~~ is 6268
not subject to an express condition that it may be exercised only 6269
by a donee or holder of a greater age may be exercised by any 6270
donee or holder of the age of eighteen years~~7~~ or over. 6271

Sec. ~~1339.16~~ 5815.14. Any power of appointment may be 6272
released in whole or in part by the donee or holder of the power 6273
by an instrument in writing, signed and acknowledged in the manner 6274
prescribed for the execution of deeds. No such release is 6275
ineffective because it was given either for or without 6276
consideration, because it was signed and acknowledged before June 6277
3, 1943, or because no delivery is made of a copy of the release 6278
as provided for in section ~~1339.17~~ 5815.15 of the Revised Code. 6279

Sections ~~1339.16~~ 5815.14 and ~~1339.17~~ 5815.15 of the Revised 6280
Code do not affect the validity of a release of a power of 6281
appointment effected in any other form or manner. 6282

A donee or holder of a power of appointment may disclaim the 6283
same at any time, wholly or in part, in the same manner and to the 6284
same extent as ~~he~~ the donee or holder of the power might release 6285
it. 6286

Sec. ~~1339.17~~ 5815.15. No fiduciary or other person having the 6287
possession or control of any property subject to a power of 6288
appointment, other than the donee or holder of such power, has 6289
notice of a release of the power until a copy of the release is 6290
delivered to ~~him~~ the fiduciary or other person having possession
or control. 6291
6292

No purchaser or mortgagee of real property subject to a power 6293
of appointment has notice of a release of the power until a copy 6294
of the release is delivered to the officer charged by law with the 6295
recording of deeds in the county in which the property is 6296
situated. If the property is in this state the county recorder to 6297

whom a release is delivered shall record ~~such~~ the release in the 6298
record of powers of attorney and shall charge a fee computed in 6299
the same manner as the fee charged for recording deeds. 6300

Sec. ~~1339.18~~ 5815.16. (A) Absent an express agreement to the 6301
contrary, an attorney who performs legal services for a fiduciary, 6302
by reason of the attorney performing those legal services for the 6303
fiduciary, has no duty or obligation in contract, tort, or 6304
otherwise to any third party to whom the fiduciary owes fiduciary 6305
obligations. 6306

(B) As used in this section, "fiduciary" means a trustee 6307
under an express trust or an executor or administrator of a 6308
decedent's estate. 6309

Sec. ~~1339.41~~ 5815.21. Whenever the executor of a will or the 6310
trustee of a testamentary or inter vivos trust is permitted or 6311
required to select assets in kind to satisfy a gift, devise, or 6312
bequest, whether outright or in trust, intended to qualify for the 6313
federal estate tax marital deduction prescribed by the United 6314
States "Internal Revenue Code of 1954," 68A Stat. 392, 26 U.S.C.A. 6315
2056, or any comparable federal statute enacted after July 20, 6316
1965, and the will or trust instrument empowers or requires the 6317
fiduciary to satisfy such gift, devise, or bequest by allocating 6318
assets thereto at any values other than market values at the date 6319
of satisfaction of such gift, devise, or bequest, the executor or 6320
trustee shall satisfy such gift, devise, or bequest by 6321
distribution of assets having a value fairly representative in the 6322
aggregate of appreciation or depreciation in the value of all 6323
property, including cash, available for distribution in 6324
satisfaction of such gift, devise, or bequest, unless the will or 6325
trust instrument expressly requires that distribution be made in a 6326
manner so as not to be fairly representative of such appreciation 6327

or depreciation. 6328

Sec. ~~1339.411~~ 5815.22. (A)(1) Except as provided in divisions 6329
(A)(2), (3), and (4) of this section, a spendthrift provision in 6330
an instrument that creates an inter vivos or testamentary trust 6331
shall not cause any forfeiture or postponement of any interest in 6332
property that satisfies both of the following: 6333

(a) It is granted to a surviving spouse of the testator or 6334
other settlor. 6335

(b) It qualifies for the federal estate tax marital deduction 6336
allowed by Subtitle B, Chapter 11, of the "Internal Revenue Code 6337
of 1986," 26 U.S.C.A. 2056, as amended, the estate tax marital 6338
deduction allowed by division (A) of section 5731.15 of the 6339
Revised Code, or the qualified terminable interest property 6340
deduction allowed by division (B) of section 5731.15 of the 6341
Revised Code. 6342

(2) Division (A)(1) of this section does not apply if an 6343
instrument that creates an inter vivos or testamentary trust 6344
expressly states the intention of the testator or other settlor 6345
that obtaining a marital deduction or a qualified terminable 6346
interest property deduction as described in division (A)(1)(b) of 6347
this section is less important than enforcing the forfeiture or 6348
postponement of the interest in property in accordance with the 6349
spendthrift provision in the instrument. 6350

(3) Division (A)(1) of this section applies only to the 6351
forfeiture or postponement portions of a spendthrift provision and 6352
does not apply to any portion of a spendthrift provision that 6353
prohibits a beneficiary from assigning, alienating, or otherwise 6354
disposing of any beneficial interest in a trust or prohibits a 6355
creditor of a beneficiary from attaching or otherwise encumbering 6356
the trust estate. 6357

(4) Division (A)(1) of this section does not apply to any beneficiary of an inter vivos or testamentary trust other than the surviving spouse of the testator or other settlor or to any inter vivos or testamentary trust of which the surviving spouse of the testator or other settlor is a beneficiary if an interest in property does not qualify for a marital deduction or a qualified terminable interest property deduction as described in division (A)(1)(b) of this section.

(B)(1) Except as provided in divisions (B)(2) and (3) of this section, if an instrument creating an inter vivos or testamentary trust includes a spendthrift provision and the trust holds shares in an S corporation, the spendthrift provision shall not cause any forfeiture or postponement of any beneficial interest, income, principal, or other interest in the shares of the S corporation held by the trust. For purposes of division (B)(1) of this section, "S corporation" has the same meaning as in section 1361 of the "Internal Revenue Code of 1986," 26 U.S.C. 1361.

(2) Division (B)(1) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that maintenance of the corporation's status as an S corporation is less important than enforcing the forfeiture or postponement of any beneficial interest, income, principal, or other interest in the S corporation shares in accordance with the spendthrift provision in the instrument.

(3) Division (B)(1) of this section applies only to the forfeiture or postponement portions of a spendthrift provision and does not apply to any portion of a spendthrift provision that prohibits a beneficiary from assigning, alienating, or otherwise disposing of any beneficial interest in a trust or prohibits a creditor of a beneficiary from attaching or otherwise encumbering the trust estate.

(C)(1) Except as provided in divisions (C)(2) and (3) of this section, a spendthrift provision in an instrument that creates an inter vivos or testamentary trust shall not cause any forfeiture or postponement of any interest in property that satisfies both of the following:

(a) It is granted to a person who is a skip person under the federal generation-skipping transfer tax imposed by Subtitle B, Chapter 13, of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2601-2663, as amended.

(b) It qualifies as a nontaxable gift under section 2642(c) of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2642(c).

(2) Division (C)(1) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that qualifying as a nontaxable trust gift as described in division (C)(1)(b) of this section is less important than enforcing the forfeiture or postponement of the interest in property in accordance with the spendthrift provision in the instrument.

(3) Division (C)(1) of this section applies only to the forfeiture or postponement portions of a spendthrift provision and does not apply to any portion of a spendthrift provision that prohibits a beneficiary from assigning, alienating, or otherwise disposing of any beneficial interest in a trust or prohibits a creditor of a beneficiary from attaching or otherwise encumbering the trust estate.

(D) Divisions (A), (B), and (C) of this section are intended to codify certain fiduciary and trust law principles relating to the interpretation of a testator's or other settlor's intent with respect to the provisions of a trust. Divisions (A), (B), and (C) of this section apply to trust instruments executed prior to and

existing on August 29, 2000, and to trust instruments executed on 6421
or after August 29, 2000. 6422

Sec. ~~1339.412~~ 5815.23. (A) Except as provided in division (B) 6423
of this section, an instrument that creates an inter vivos or 6424
testamentary trust shall not require or permit the accumulation 6425
for more than one year of any income of property that satisfies 6426
both of the following: 6427

(1) The property is granted to a surviving spouse of the 6428
testator or other settlor. 6429

(2) The property qualifies for the federal estate tax marital 6430
deduction allowed by subtitle B, Chapter 11 of the "Internal 6431
Revenue Code of 1986," 26 U.S.C. 2056, as amended, the estate tax 6432
marital deduction allowed by division (A) of section 5731.15 of 6433
the Revised Code, or the qualified terminable interest property 6434
deduction allowed by division (B) of section 5731.15 of the 6435
Revised Code. 6436

(B)(1) Division (A) of this section does not apply if an 6437
instrument that creates an inter vivos or testamentary trust 6438
expressly states the intention of the testator or other settlor 6439
that obtaining a marital deduction or a qualified terminable 6440
interest property deduction as described in division (A)(2) of 6441
this section is less important than requiring or permitting the 6442
accumulation of income of property in accordance with a provision 6443
in the instrument that requires or permits the accumulation for 6444
more than one year of any income of property. 6445

(2) Division (A) of this section does not apply to any 6446
beneficiary of an inter vivos or testamentary trust other than the 6447
surviving spouse of the testator or other settlor or to any inter 6448
vivos or testamentary trust of which the surviving spouse of the 6449
testator or other settlor is a beneficiary if an interest in 6450

property does not qualify for a marital deduction or a qualified 6451
terminable interest property deduction as described in division 6452
(A)(2) of this section. 6453

(C)(1) The trustee of a trust that qualifies for an estate 6454
tax marital deduction for federal or Ohio estate tax purposes and 6455
that is the beneficiary of an individual retirement account has a 6456
fiduciary duty, in regard to the income distribution provision of 6457
the trust, to withdraw and distribute the income of the individual 6458
retirement account, at least annually, to the surviving spouse of 6459
the testator or other settlor. 6460

(2) A trustee's fiduciary duty as described in division 6461
(C)(1) of this section is satisfied if the terms of the trust 6462
instrument expressly provide the surviving spouse a right to 6463
withdraw all of the assets from the trust or a right to compel the 6464
trustee to withdraw and distribute the income of the individual 6465
retirement account to the surviving spouse. 6466

(D) Divisions (A), (B), and (C)(1) of this section are 6467
intended to codify existing fiduciary and trust law principles 6468
relating to the interpretation of a testator's or other settlor's 6469
intent with respect to the income provisions of a trust. Divisions 6470
(A), (B), and (C) of this section apply to trust instruments 6471
executed prior to and existing on October 1, 1996, or executed 6472
thereafter. The trustee of a trust described in division (A) or 6473
(B) of this section, in a written trust amendment, may elect to 6474
not apply divisions (A) and (B) of this section to the trust. Any 6475
election of that nature, when made, is irrevocable. 6476

Sec. ~~1339.42~~ 5815.24. (A) As used in this section, 6477
"fiduciary" means a trustee under any expressed, implied, 6478
resulting, or constructive trust; an executor, administrator, 6479
public administrator, committee, guardian, conservator, curator, 6480
receiver, trustee in bankruptcy, or assignee for the benefit of 6481

creditors; a partner, agent, officer of a public or private 6482
corporation, or public officer; or any other person acting in a 6483
fiduciary capacity for any person, trust, or estate. 6484

(B) A fiduciary, or a custodian, who is a transferee of real 6485
or personal property that is held by a fiduciary other than the 6486
person or entity serving as the transferee, is not required to 6487
inquire into any act, or audit any account, of the transferor 6488
fiduciary, unless the transferee is specifically directed to do so 6489
in the instrument governing ~~him~~ the transferee or unless the 6490
transferee has actual knowledge of conduct of the transferor that 6491
would constitute a breach of the transferor's fiduciary 6492
responsibilities. 6493

(C) If a trustee is authorized or directed in a trust 6494
instrument to pay or advance all or any part of the trust property 6495
to the personal representative of a decedent's estate for the 6496
payment of the decedent's legal obligations, death taxes, 6497
bequests, or expenses of administration, the trustee is not liable 6498
for the application of the trust property paid or advanced to the 6499
personal representative and is not liable for any act or omission 6500
of the personal representative with respect to the trust property, 6501
unless the trustee has actual knowledge, prior to the payment or 6502
advancement of the trust property, that the personal 6503
representative does not intend to use the trust property for such 6504
purposes. 6505

Sec. ~~1339.43~~ 5815.25. (A) As used in this section, 6506
"fiduciary" means a trustee under any testamentary, inter vivos, 6507
or other trust, an executor or administrator, or any other person 6508
who is acting in a fiduciary capacity for any person, trust, or 6509
estate. 6510

(B) When an instrument under which a fiduciary acts reserves 6511
to the grantor, or vests in an advisory or investment committee or 6512

in one or more other persons, including one or more fiduciaries, 6513
to the exclusion of the fiduciary or of one or more of several 6514
fiduciaries, any power, including, but not limited to, the 6515
authority to direct the acquisition, disposition, or retention of 6516
any investment or the power to authorize any act that an excluded 6517
fiduciary may propose, any excluded fiduciary is not liable, 6518
either individually or as a fiduciary, for either of the 6519
following: 6520

(1) Any loss that results from compliance with an authorized 6521
direction of the grantor, committee, person, or persons; 6522

(2) Any loss that results from a failure to take any action 6523
proposed by an excluded fiduciary that requires a prior 6524
authorization of the grantor, committee, person, or persons if 6525
that excluded fiduciary timely sought but failed to obtain that 6526
authorization. 6527

(C) Any excluded fiduciary as described in division (B) of 6528
this section is relieved from any obligation to perform investment 6529
reviews and make recommendations with respect to any investments 6530
to the extent the grantor, an advisory or investment committee, or 6531
one or more other persons have authority to direct the 6532
acquisition, disposition, or retention of any investment. 6533

(D) This section does not apply to the extent that the 6534
instrument under which an excluded fiduciary as described in 6535
division (B) of this section acts contains provisions that are 6536
inconsistent with this section. 6537

Sec. ~~1339.44~~ 5815.26. (A) As used in this section: 6538

(1) "Fiduciary" means a trustee under any testamentary, inter 6539
vivos, or other trust, an executor or administrator, or any other 6540
person who is acting in a fiduciary capacity for a person, trust, 6541
or estate. 6542

- (2) "Short term trust-quality investment fund" means a short term investment fund that meets both of the following conditions:
- (a) The fund may be either a collective investment fund established pursuant to section 1111.14 of the Revised Code or a registered investment company, including any affiliated investment company whether or not the fiduciary has invested other funds held by it in an agency or other nonfiduciary capacity in the securities of the same registered investment company or affiliated investment company.
 - (b) The fund is invested in any one or more of the following manners:
 - (i) In obligations of the United States or of its agencies;
 - (ii) In obligations of one or more of the states of the United States or their political subdivisions;
 - (iii) In variable demand notes, corporate money market instruments including, but not limited to, commercial paper rated at the time of purchase in either of the two highest classifications established by at least one nationally recognized standard rating service;
 - (iv) In deposits in banks or savings and loan associations whose deposits are insured by the federal deposit insurance corporation, if the rate of interest paid on such deposits is at least equal to the rate of interest generally paid by such banks or savings and loan associations on deposits of similar terms or amounts;
 - (v) In fully collateralized repurchase agreements or other evidences of indebtedness that are of trust quality and are payable on demand or have a maturity date consistent with the purpose of the fund and the duty of fiduciary prudence.
- (3) "Registered investment company" means any investment

company that is defined in and registered under sections 3 and 8 6573
of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 6574
80a-3 and 80a-8. 6575

(4) "Affiliated investment company" has the same meaning as 6576
in division (E)(1) of section 1111.10 of the Revised Code. 6577

(B) A fiduciary is not required to invest cash that belongs 6578
to the trust and may hold that cash for the period prior to 6579
distribution if either of the following applies: 6580

(1) The fiduciary reasonably expects to do either of the 6581
following: 6582

(a) Distribute the cash to beneficiaries of the trust on a 6583
quarterly or more frequent basis; 6584

(b) Use the cash for the payment of debts, taxes, or expenses 6585
of administration within the ninety-day period following the 6586
receipt of the cash by the fiduciary. 6587

(2) Determined on the basis of the facilities available to 6588
the fiduciary and the amount of the income that reasonably could 6589
be earned by the investment of the cash, the amount of the cash 6590
does not justify the administrative burden or expense associated 6591
with its investment. 6592

(C) If a fiduciary wishes to hold funds that belong to the 6593
trust in liquid form and division (B) of this section does not 6594
apply, the fiduciary may so hold the funds as long as they are 6595
temporarily invested as described in division (D) of this section. 6596

(D)(1) A fiduciary may make a temporary investment of cash 6597
that ~~he may hold~~ be held uninvested in accordance with division 6598
(B) of this section, and shall make a temporary investment of 6599
funds held in liquid form pursuant to division (C) of this 6600
section, in any of the following investments, unless the governing 6601
instrument provides for other investments in which the temporary 6602

investment of cash or funds is permitted: 6603

(a) A short term trust-quality investment fund; 6604

(b) Direct obligations of the United States or of its 6605
agencies; 6606

(c) A deposit with a bank or savings and loan association, 6607
including a deposit with the fiduciary itself or any bank 6608
subsidiary corporation owned or controlled by the bank holding 6609
company that owns or controls the fiduciary, whose deposits are 6610
insured by the federal deposit insurance corporation, if the rate 6611
of interest paid on that deposit is at least equal to the rate of 6612
interest generally paid by that bank or savings and loan 6613
association on deposits of similar terms or amounts. 6614

(2) A fiduciary that makes a temporary investment of cash or 6615
funds pursuant to division (D)(1) of this section may charge a 6616
reasonable fee for the services associated with that investment. 6617
The fee shall be in addition to the compensation to which the 6618
fiduciary is entitled for his ordinary fiduciary services. 6619

(3) Fiduciaries that make one or more temporary investments 6620
of cash or funds pursuant to division (D)(1) of this section shall 6621
provide to the beneficiaries of the trusts involved, that are 6622
currently receiving income or have a right to receive income, a 6623
written disclosure of their temporary investment practices and, if 6624
applicable, the method of computing reasonable fees for their 6625
temporary investment services pursuant to division (D)(2) of this 6626
section. Fiduciaries may comply with this requirement in any 6627
appropriate written document, including, but not limited to, any 6628
periodic statement or account. 6629

(4) A fiduciary that makes a temporary investment of cash or 6630
funds in an affiliated investment company pursuant to division 6631
(D)(1)(a) of this section shall, when providing any periodic 6632
account statements of its temporary investment practices, report 6633

the net asset value of the shares comprising the investment in the 6634
affiliated investment company. 6635

(5) If a fiduciary that makes a temporary investment of cash 6636
or funds in an affiliated investment company pursuant to division 6637
(D)(1)(a) of this section invests in any mutual fund, the 6638
fiduciary shall provide to the beneficiaries of the trust 6639
involved, that are currently receiving income or have a right to 6640
receive income, a written disclosure, in at least ten-point 6641
boldface type, that the mutual fund is not insured or guaranteed 6642
by the federal deposit insurance corporation or by any other 6643
government agency or government-sponsored agency of the federal 6644
government or of this state. 6645

Sec. ~~1339.45~~ 5815.27. (A) A provision in a will or trust 6646
agreement, which provision pertains to the payment of any taxes 6647
that are imposed by reason of the testator's or trust creator's 6648
death, does not include the payment of any portion of any tax that 6649
is imposed on any transfer under any other will or trust agreement 6650
by Chapter 13 of subtitle B of the "Internal Revenue Code of 6651
1986," 100 Stat. 2718, 26 U.S.C. 2601-2624, as amended, unless the 6652
provision of the will or trust agreement specifically states, 6653
using the words "generation-skipping transfer tax," that the 6654
payment of the tax imposed under that chapter is included within 6655
the provision of the will or trust agreement. 6656

(B) This section applies to wills and trust agreements that 6657
are executed before or after March 14, 1979. 6658

Sec. ~~1339.51~~ 5815.28. (A) As used in this section: 6659

(1) "Ascertainable standard" includes a standard in a trust 6660
instrument requiring the trustee to provide for the care, comfort, 6661
maintenance, welfare, education, or general well-being of the 6662
beneficiary. 6663

(2) "Disability" means any substantial, medically determinable impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least twelve months, except that "disability" does not include an impairment that is the result of abuse of alcohol or drugs.

(3) "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.

(4) "Supplemental services" means services specified by rule of the department of mental health under section 5119.01 of the Revised Code or the department of mental retardation and developmental disabilities under section 5123.04 of the Revised Code that are provided to an individual with a disability in addition to services the individual is eligible to receive under programs authorized by federal or state law.

(B) Any person may create a trust under this section to provide funding for supplemental services for the benefit of another individual who meets either of the following conditions:

(1) The individual has a physical or mental disability and is eligible to receive services through the department of mental retardation and developmental disabilities or a county board of mental retardation and developmental disabilities;

(2) The individual has a mental disability and is eligible to receive services through the department of mental health or a board of alcohol, drug addiction, and mental health services.

The trust may confer discretion upon the trustee and may contain specific instructions or conditions governing the exercise of the discretion.

(C) The general division of the court of common pleas and the probate court of the county in which the beneficiary of a trust

authorized by division (B) of this section resides or is confined 6694
have concurrent original jurisdiction to hear and determine 6695
actions pertaining to the trust. In any action pertaining to the 6696
trust in a court of common pleas or probate court and in any 6697
appeal of the action, all of the following apply to the trial or 6698
appellate court: 6699

(1) The court shall render determinations consistent with the 6700
testator's or other settlor's intent in creating the trust, as 6701
evidenced by the terms of the trust instrument. 6702

(2) The court may order the trustee to exercise discretion 6703
that the trust instrument confers upon the trustee only if the 6704
instrument contains specific instructions or conditions governing 6705
the exercise of that discretion and the trustee has failed to 6706
comply with the instructions or conditions. In issuing an order 6707
pursuant to this division, the court shall require the trustee to 6708
exercise the trustee's discretion only in accordance with the 6709
instructions or conditions. 6710

(3) The court may order the trustee to maintain the trust and 6711
distribute assets in accordance with rules adopted by the director 6712
of mental health under section 5119.01 of the Revised Code or the 6713
director of mental retardation and developmental disabilities 6714
under section 5123.04 of the Revised Code if the trustee has 6715
failed to comply with such rules. 6716

(D) To the extent permitted by federal law and subject to the 6717
provisions of division (C)(2) of this section pertaining to the 6718
enforcement of specific instructions or conditions governing a 6719
trustee's discretion, a trust authorized by division (B) of this 6720
section that confers discretion upon the trustee shall not be 6721
considered an asset or resource of the beneficiary, the 6722
beneficiary's estate, the settlor, or the settlor's estate and 6723
shall be exempt from the claims of creditors, political 6724

subdivisions, the state, other governmental entities, and other
claimants against the beneficiary, the beneficiary's estate, the
settlor, or the settlor's estate, including claims based on
provisions of Chapters 5111., 5121., or 5123. of the Revised Code
and claims sought to be satisfied by way of a civil action,
subrogation, execution, garnishment, attachment, judicial sale, or
other legal process, if all of the following apply:

(1) At the time the trust is created, the trust principal
does not exceed the maximum amount determined under division (E)
of this section;

(2) The trust instrument contains a statement of the
settlor's intent, or otherwise clearly evidences the settlor's
intent, that the beneficiary does not have authority to compel the
trustee under any circumstances to furnish the beneficiary with
minimal or other maintenance or support, to make payments from the
principal of the trust or from the income derived from the
principal, or to convert any portion of the principal into cash,
whether pursuant to an ascertainable standard specified in the
instrument or otherwise;

(3) The trust instrument provides that trust assets can be
used only to provide supplemental services, as defined by rule of
the director of mental health under section 5119.01 of the Revised
Code or the director of mental retardation and developmental
disabilities under section 5123.04 of the Revised Code, to the
beneficiary;

(4) The trust is maintained and assets are distributed in
accordance with rules adopted by the director of mental health
under section 5119.01 of the Revised Code or the director of
mental retardation and developmental disabilities under section
5123.04 of the Revised Code;

(5) The trust instrument provides that on the death of the

beneficiary, a portion of the remaining assets of the trust, which 6756
shall be not less than fifty per cent of such assets, will be 6757
deposited to the credit of the services fund for individuals with 6758
mental illness created by section 5119.17 of the Revised Code or 6759
the services fund for individuals with mental retardation and 6760
developmental disabilities created by section 5123.40 of the 6761
Revised Code. 6762

(E) In 1994, the trust principal maximum amount for a trust 6763
created under this section shall be two hundred thousand dollars. 6764
The maximum amount for a trust created under this section prior to 6765
November 11, 1994, may be increased to two hundred thousand 6766
dollars. 6767

In 1995, the maximum amount for a trust created under this 6768
section shall be two hundred two thousand dollars. Each year 6769
thereafter, the maximum amount shall be the prior year's amount 6770
plus two thousand dollars. 6771

(F) This section does not limit or otherwise affect the 6772
creation, validity, interpretation, or effect of any trust that is 6773
not created under this section. 6774

(G) Once a trustee takes action on a trust created by a 6775
settlor under this section and disburses trust funds on behalf of 6776
the beneficiary of the trust, then the trust may not be terminated 6777
or otherwise revoked by a particular event or otherwise without 6778
payment into the services fund created pursuant to section 5119.17 6779
or 5123.40 of the Revised Code of an amount that is equal to the 6780
disbursements made on behalf of the beneficiary for medical care 6781
by the state from the date the trust vests but that is not more 6782
than fifty per cent of the trust corpus. 6783

Sec. ~~1339.62~~ 5815.31. Unless the trust or separation 6784
agreement provides otherwise, if, after executing a trust in which 6785

he the grantor reserves to ~~himself~~ self a power to alter, amend, 6786
revoke, or terminate the provisions of the trust, a grantor is 6787
divorced, obtains a dissolution of marriage, has ~~his~~ the grantor's 6788
marriage annulled, or, upon actual separation from ~~his~~ the 6789
grantor's spouse, enters into a separation agreement pursuant to 6790
which the parties intend to fully and finally settle their 6791
prospective property rights in the property of the other, whether 6792
by expected inheritance or otherwise, the spouse or former spouse 6793
of the grantor shall be deemed to have predeceased the grantor and 6794
any provision in the trust conferring a general or special power 6795
of appointment on the spouse or former spouse or nominating the 6796
spouse or former spouse as trustee or trust advisor shall be 6797
revoked. If the grantor remarries ~~his~~ the grantor's former spouse 6798
or if the separation agreement is terminated, the spouse shall not 6799
be deemed to have predeceased the grantor and any provision in the 6800
trust conferring a general or special power of appointment on the 6801
spouse or former spouse or nominating the spouse or former spouse 6802
as trustee or trust advisor shall not be revoked. 6803

Sec. ~~1339.621~~ 5815.32. If a principal executes a power of 6804
attorney designating the principal's spouse as the attorney in 6805
fact for the principal and if after executing the power of 6806
attorney, the principal and the principal's spouse are divorced, 6807
obtain a dissolution or annulment of their marriage, or enter into 6808
a separation agreement pursuant to which they intend to fully and 6809
finally settle each spouse's prospective property rights in the 6810
property of the other, the designation in the power of attorney of 6811
the spouse or former spouse of the principal to act as attorney in 6812
fact for the principal is revoked, unless the power of attorney 6813
provides otherwise. The subsequent remarriage of the principal to 6814
the principal's former spouse, or the termination of a separation 6815
agreement between the principal and the principal's spouse, does 6816
not revive a power of attorney that is revoked under this section. 6817

Sec. ~~1339.63~~ 5815.33. (A) As used in this section: 6818

(1) "Beneficiary" means a beneficiary of a life insurance 6819
policy, an annuity, a payable on death account, an individual 6820
retirement plan, an employer death benefit plan, or another right 6821
to death benefits arising under a contract. 6822

(2) "Employer death benefit plan" means any funded or 6823
unfunded plan or program, or any fund, that is established to 6824
provide the beneficiaries of an employee participating in the 6825
plan, program, or fund with benefits that may be payable upon the 6826
death of that employee. 6827

(3) "Individual retirement plan" means an individual 6828
retirement account or individual retirement annuity as defined in 6829
section 408 of the "Internal Revenue Code of 1986," 100 Stat. 6830
2085, 26 U.S.C.A. 408, as amended. 6831

(B)(1) Unless the designation of beneficiary or the judgment 6832
or decree granting the divorce, dissolution of marriage, or 6833
annulment specifically provides otherwise, and subject to division 6834
(B)(2) of this section, if a spouse designates the other spouse as 6835
a beneficiary or if another person having the right to designate a 6836
beneficiary on behalf of the spouse designates the other spouse as 6837
a beneficiary, and if, after either type of designation, the 6838
spouse who made the designation or on whose behalf the designation 6839
was made, is divorced from the other spouse, obtains a dissolution 6840
of marriage, or has the marriage to the other spouse annulled, 6841
then the other spouse shall be deemed to have predeceased the 6842
spouse who made the designation or on whose behalf the designation 6843
was made, and the designation of the other spouse as a beneficiary 6844
is revoked as a result of the divorce, dissolution of marriage, or 6845
annulment. 6846

(2) If the spouse who made the designation or on whose behalf 6847

the designation was made remarries the other spouse, then, unless
the designation no longer can be made, the other spouse shall not
be deemed to have predeceased the spouse who made the designation
or on whose behalf the designation was made, and the designation
of the other spouse as a beneficiary is not revoked because of the
previous divorce, dissolution of marriage, or annulment.

(C) An agent, bank, broker, custodian, issuer, life insurance
company, plan administrator, savings and loan association,
transfer agent, trustee, or other person is not liable in damages
or otherwise in a civil or criminal action or proceeding for
distributing or disposing of property in reliance on and in
accordance with a designation of beneficiary as described in
division (B)(1) of this section, if both of the following apply:

(1) The distribution or disposition otherwise is proper;

(2) The agent, bank, broker, custodian, issuer, life
insurance company, plan administrator, savings and loan
association, transfer agent, trustee, or other person did not have
any notice of the facts that resulted in the revocation of the
beneficiary designation by operation of division (B)(1) of this
section.

Sec. ~~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
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 6879
property. 6880

(2) If the spouses described in division (A)(1) of this 6881
section remarry each other and the title to the personal property 6882
continues to be held by them in accordance with that division, 6883
then the survivorship rights of the spouses are not terminated, 6884
and the spouses again hold title in the personal property for 6885
their joint lives and then to the survivor of them. 6886

(B)(1) Unless the judgment or decree granting the divorce, 6887
dissolution of marriage, or annulment specifically provides 6888
otherwise, and subject to division (B)(2) of this section, if the 6889
title to any personal property is held by more than two persons 6890
and at least two of the persons are married to each other, if the 6891
title is so held for the joint lives of the titleholders and then 6892
to the survivor or survivors of them, and if the marriage of any 6893
of the titleholders who are married to each other subsequently is 6894
terminated by a judgment or decree granting a divorce, dissolution 6895
of marriage, or annulment, then the survivorship rights of the 6896
titleholders who were married to each other terminate, the 6897
survivorship rights of the other titleholders are not affected, 6898
and each of the titleholders who were married to each other shall 6899
be deemed to be the owner of an undivided interest in common in 6900
the personal property, that is in proportion to ~~his~~ the net 6901
contributions of the titleholders who were married to each other 6902
to the personal property. 6903

(2) If the titleholders who were married to each other as 6904
described in division (B)(1) of this section remarry each other, 6905
and if the title to the personal property continues to be held by 6906
them, and the other titleholders whose survivorship rights 6907
continued unaffected, in accordance with that division, then the 6908
survivorship rights of the remarried titleholders are not 6909
terminated, and the remarried and other titleholders again hold 6910

title in the personal property for their joint lives and then to 6911
the survivor or survivors of them. 6912

(C) An agent, bank, broker, custodian, issuer, life insurance 6913
company, plan administrator, savings and loan association, 6914
transfer agent, trustee, or other person is not liable in damages 6915
or otherwise in a civil or criminal action or proceeding for 6916
distributing or disposing of personal property in reliance on and 6917
in accordance with a registration in the form of a joint ownership 6918
for life, with rights of survivorship, as described in division 6919
(A)(1) or (B)(1) of this section, if both of the following apply: 6920

(1) The distribution or disposition otherwise is proper; 6921

(2) The agent, bank, broker, custodian, issuer, life 6922
insurance company, plan administrator, savings and loan 6923
association, transfer agent, trustee, or other person did not have 6924
any notice of the facts that resulted in the termination of the 6925
rights of survivorship by operation of division (A)(1) or (B)(1) 6926
of this section. 6927

Sec. ~~1339.65~~ 5815.35. (A)(1) As used in this division: 6928

~~(a) "Fiduciary, fiduciary"~~ means any person, association, or 6929
corporation, other than a trustee of a testamentary trust, an 6930
assignee or trustee for an insolvent debtor, or a guardian under 6931
Chapter 5905. of the Revised Code, that is appointed by and 6932
accountable to the probate court, and that is acting in a 6933
fiduciary capacity for another or charged with duties in relation 6934
to any property, interest, ~~trust~~, or estate for another's benefit. 6935
A fiduciary also includes an agency under contract with the 6936
department of mental retardation and developmental disabilities 6937
for the provision of protective service under sections 5123.55 to 6938
5123.59 of the Revised Code, when appointed by ~~an~~ and accountable 6939
to the probate court as a guardian or trustee for a mentally 6940

retarded or developmentally disabled person. 6941

~~(b) "Trustee" means a trustee of an inter vivos trust. 6942~~

(2) A ~~trustee or~~ fiduciary who enters a contract as ~~trustee~~ 6943
~~or~~ fiduciary on or after March 22, 1984, is not personally liable 6944
on that contract, unless the contract otherwise specifies, if the 6945
contract is within the ~~trustee's or~~ fiduciary's authority and the 6946
~~trustee or~~ fiduciary discloses that the contract is being entered 6947
into in ~~his trustee or~~ a fiduciary capacity. In a contract, the 6948
words "~~trustee,~~" "~~as trustee,~~" "fiduciary," or "as fiduciary," or 6949
other words that indicate one's ~~trustee or~~ fiduciary capacity, 6950
following the name or signature of a ~~trustee or~~ fiduciary ~~shall be~~ 6951
are sufficient disclosure for purposes of this division. 6952

(B)(1) As used in this division+ 6953

~~(a) "Partnership," "partnership" includes a partnership 6954~~
composed of only general partners and a partnership composed of 6955
general and limited partners. 6956

~~(b) "Revocable trust" means only a revocable trust that, by 6957~~
~~its terms, becomes irrevocable upon the death of the settlor of 6958~~
~~the trust. 6959~~

(2) Subject to division (D) of this section, an executor, or 6960
administrator, ~~or trustee~~ who acquires, in ~~his a~~ a fiduciary 6961
capacity, a general partnership interest upon the death of a 6962
general partner of a partnership, ~~or a trustee of a revocable~~ 6963
~~trust who, in his fiduciary capacity, is a general partner of a~~ 6964
~~partnership,~~ is not personally liable for any debt, obligation, or 6965
liability of the partnership that arises from ~~his~~ the executor's 6966
or administrator's actions, except as provided in this division, 6967
as a general partner, or for any debt, obligation, or liability of 6968
the partnership for which ~~he~~ the executor or administrator 6969
otherwise would be personally liable because ~~he~~ the executor or 6970
administrator holds the general partnership interest, if ~~he~~ the 6971

executor or administrator discloses that the general partnership 6972
interest is held by ~~him~~ the executor or administrator in a 6973
fiduciary capacity. This immunity does not apply if an executor, 6974
or administrator, ~~or trustee~~ causes loss or injury to a person who 6975
is not a partner in the partnership, by a wrongful act or 6976
omission. This immunity is not available to an executor, or 6977
administrator, ~~or trustee~~ who holds a general partnership interest 6978
in ~~his~~ a fiduciary capacity if ~~his~~ the spouse or any ~~of his~~ lineal 6979
descendants of the executor or administrator, or the executor, or 6980
administrator, ~~or trustee himself~~ other than in ~~his~~ a fiduciary 6981
capacity, holds any interest in the partnership. 6982

A partnership certificate that is filed pursuant to Chapter 6983
1777. or another chapter of the Revised Code and that indicates 6984
that an executor, or administrator, ~~or trustee~~ holds a general 6985
partnership interest in a fiduciary capacity by the use following 6986
the name or signature of the executor, or administrator, ~~or~~ 6987
~~trustee~~ of the words "executor under the will of (name of 6988
decedent)," or "administrator of the estate of (name of 6989
decedent)," ~~or "trustee under the (will or trust) of (name of~~ 6990
~~decedent or settlor),"~~ or other words that indicate the 6991
executor's, or administrator's, ~~or trustee's~~ fiduciary capacity, 6992
constitutes a sufficient disclosure for purposes of this division. 6993

If a partnership certificate is not required to be filed 6994
pursuant to Chapter 1777. or another chapter of the Revised Code, 6995
a sufficient disclosure for purposes of this division can be made 6996
by an executor, or administrator, ~~or trustee~~ if a certificate that 6997
satisfies the following requirements is filed with the recorder of 6998
the county in which the partnership's principal office or place of 6999
business is situated and with the recorder of each county in which 7000
the partnership owns real estate: 7001

(a) The certificate shall state in full the names of all 7002
persons holding interests in the partnership and their places of 7003

residence;

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(b) The certificate shall be signed by all persons who are
general partners in the partnership, and shall be acknowledged by
a person authorized to take acknowledgements of deeds;

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(c) The certificate shall use the words "executor under the
will of (name of decedent)," or "administrator of the estate of
(name of decedent)," ~~or "trustee under the (will or trust) of
(name of decedent or settlor),"~~ or other words that indicate the
executor's, or administrator's, ~~or trustee's~~ fiduciary capacity,
following ~~his~~ the name or signature of the executor or
administrator.

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A contract or other written instrument delivered to a party
that contracts with the partnership in which an executor, or
administrator, ~~or trustee~~ holds a general partnership interest in
a fiduciary capacity, which indicates that the executor, or
administrator, ~~or trustee~~ so holds the interest, constitutes a
disclosure for purposes of this division with respect to
transactions between the party and the partnership. If a
disclosure has been made by a certificate in accordance with this
division, a disclosure for purposes of this division with respect
to such transactions exists regardless of whether a contract or
other instrument indicates the executor, or administrator, ~~or~~
~~trustee~~ holds the general partnership interest in a fiduciary
capacity.

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~~If a trustee of a revocable trust, in his fiduciary capacity,
is a general partner in a partnership, the settlor of the trust is
personally liable for any debt, obligation, or liability of the
partnership as if he were the general partner.~~ If an executor, or
administrator, ~~or trustee~~ acquires, in ~~his~~ a fiduciary capacity, a
general partnership interest, the decedent's estate ~~or the trust~~
is liable for debts, obligations, or liabilities of the

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partnership. 7035

(C) An estate ~~or trust~~ that includes a general partnership 7036
interest is not liable for the debts, obligations, or liabilities 7037
of a partnership in which another estate ~~or trust~~ has a general 7038
partnership interest, merely because the executor, or 7039
administrator, ~~or trustee~~ of the estates ~~or trusts~~ holds a general 7040
partnership interest in both of the partnerships in ~~his~~ the 7041
executor's or administrator's fiduciary capacities. 7042

(D) Divisions (B) and (C) of this section apply to general 7043
partnership interests held by executors, or administrators, ~~or~~ 7044
~~trustees~~ in their fiduciary capacities prior to and on or after 7045
the effective date of this section. If an appropriate disclosure 7046
is made pursuant to division (B) of this section, the immunity 7047
acquired under that division extends only to debts, obligations, 7048
and liabilities of the partnership arising on and after the date 7049
of the disclosure and to debts, obligations, and liabilities of 7050
the partnership that arose prior to the acquisition of the general 7051
partnership interest by the executor, or administrator, ~~or trustee~~ 7052
~~or prior to the trustee of a revocable trust~~ becoming a general 7053
partner. 7054

Sec. ~~1339.68~~ 5815.36. (A) As used in this section: 7055

(1) "Disclaimant" means any person, any guardian or personal 7056
representative of a person or estate of a person, or any 7057
attorney-in-fact or agent of a person having a general or specific 7058
authority to act granted in a written instrument, who is any of 7059
the following: 7060

(a) With respect to testamentary instruments and intestate 7061
succession, an heir, next of kin, devisee, legatee, donee, person 7062
succeeding to a disclaimed interest, surviving joint tenant, 7063
surviving tenant by the entirety, surviving tenant of a tenancy 7064
with a right of survivorship, beneficiary under a testamentary 7065

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 7096
following: 7097

(a) A reference to the donative instrument; 7098

(b) A description of the property, part of property, or 7099
interest disclaimed, and of any fiduciary right, power, privilege, 7100
or immunity disclaimed; 7101

(c) A declaration of the disclaimer and its extent. 7102

(4) The guardian of the estate of a minor or an incompetent, 7103
or the personal representative of a deceased person, with the 7104
consent of the probate division of the court of common pleas, may 7105
disclaim, in whole or in part, the succession to any property, or 7106
interest in property, that the ward, if an adult and competent, or 7107
the deceased, if living, might have disclaimed. The guardian or 7108
personal representative, or any interested person may file an 7109
application with the probate division of the court of common pleas 7110
that has jurisdiction of the estate, asking that the court order 7111
the guardian or personal representative to execute and deliver, 7112
file, or record the disclaimer on behalf of the ward or estate. 7113
The court shall order the guardian or personal representative to 7114
execute and deliver, file, or record the disclaimer if the court 7115
finds, upon hearing after notice to interested parties and such 7116
other persons as the court shall direct, that: 7117

(a) It is in the best interests of those interested in the 7118
estate of the person and of those who will take the disclaimed 7119
interest; 7120

(b) It would not materially, adversely affect the minor or 7121
incompetent, or the beneficiaries of the estate of the decedent, 7122
taking into consideration other available resources and the age, 7123
probable life expectancy, physical and mental condition, and 7124
present and reasonably anticipated future needs of the minor or 7125
incompetent or the beneficiaries of the estate of the decedent. 7126

A written instrument of disclaimer ordered by the court under 7127
this division shall be executed and be delivered, filed, or 7128
recorded within the time and in the manner in which the person 7129
could have disclaimed if the person were living, an adult, and 7130
competent. 7131

(C) A partial disclaimer of property that is subject to a 7132
burdensome interest created by the donative instrument is not 7133
effective unless the disclaimed property constitutes a gift that 7134
is separate and distinct from undisclaimed gifts. 7135

(D) The disclaimant shall deliver, file, or record the 7136
disclaimer, or cause the same to be done, not later than nine 7137
months after the latest of the following dates: 7138

(1) The effective date of the donative instrument if both the 7139
taker and the taker's interest in the property are finally 7140
ascertained on that date; 7141

(2) The date of the occurrence of the event upon which both 7142
the taker and the taker's interest in the property become finally 7143
ascertainable; 7144

(3) The date on which the disclaimant attains twenty-one 7145
years of age or is no longer an incompetent, without tendering or 7146
repaying any benefit received while the disclaimant was under 7147
twenty-one years of age or an incompetent, and even if a guardian 7148
of a minor or incompetent had filed an application pursuant to 7149
division (B)(4) of this section and the probate division of the 7150
court of common pleas involved did not consent to the guardian 7151
executing a disclaimer. 7152

(E) No disclaimer instrument is effective under this section 7153
if either of the following applies under the terms of the 7154
disclaimer instrument: 7155

(1) The disclaimant has power to revoke the disclaimer. 7156

(2) The disclaimant may transfer, or direct to be transferred, to self the entire legal and equitable ownership of the property subject to the disclaimer instrument.

(F)(1) Subject to division (F)(2) of this section, if the interest disclaimed is created by a nontestamentary instrument, the disclaimer instrument shall be delivered personally or by certified mail to the trustee or other person who has legal title to, or possession of, the property disclaimed.

(2) If the interest disclaimed is created by a testamentary instrument, by intestate succession, by a transfer on death deed pursuant to section 5302.22 of the Revised Code, or by a certificate of title to a motor vehicle, watercraft, or outboard motor that evidences ownership of the motor vehicle, watercraft, or outboard motor that is transferable on death pursuant to section 2131.13 of the Revised Code, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate have been commenced, and an executed copy of the disclaimer instrument shall be delivered personally or by certified mail to the personal representative of the decedent's estate.

(3) If no proceedings for the administration of the decedent's estate have been commenced, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate might be commenced according to law. The disclaimer instrument shall be filed and indexed, and fees charged, in the same manner as provided by law for an application to be appointed as personal representative to administer the decedent's estate. The disclaimer is effective whether or not proceedings thereafter are commenced to administer the decedent's estate. If proceedings thereafter are commenced for the

administration of the decedent's estate, they shall be filed 7189
under, or consolidated with, the case number assigned to the 7190
disclaimer instrument. 7191

(4) If an interest in real estate is disclaimed, an executed 7192
copy of the disclaimer instrument also shall be recorded in the 7193
office of the recorder of the county in which the real estate is 7194
located. The disclaimer instrument shall include a description of 7195
the real estate with sufficient certainty to identify it, and 7196
shall contain a reference to the record of the instrument that 7197
created the interest disclaimed. If title to the real estate is 7198
registered under Chapters 5309. and 5310. of the Revised Code, the 7199
disclaimer interest shall be entered as a memorial on the last 7200
certificate of title. A spouse of a disclaimant has no dower or 7201
other interest in the real estate disclaimed. 7202

(G) Unless the donative instrument expressly provides that, 7203
if there is a disclaimer, there shall not be any acceleration of 7204
remainders or other interests, the property, part of property, or 7205
interest in property disclaimed, and any future interest that is 7206
to take effect in possession or enjoyment at or after the 7207
termination of the interest disclaimed, shall descend, be 7208
distributed, or otherwise be disposed of, and shall be 7209
accelerated, in the following manner: 7210

(1) If intestate or testate succession is disclaimed, as if 7211
the disclaimant had predeceased the decedent; 7212

(2) If the disclaimant is one designated to take pursuant to 7213
a power of appointment exercised by a testamentary instrument, as 7214
if the disclaimant had predeceased the donee of the power; 7215

(3) If the donative instrument is a nontestamentary 7216
instrument, as if the disclaimant had died before the effective 7217
date of the nontestamentary instrument; 7218

(4) If the disclaimer is of a fiduciary right, power, 7219

privilege, or immunity, as if the right, power, privilege, or 7220
immunity was never in the donative instrument. 7221

(H) A disclaimer pursuant to this section is effective as of, 7222
and relates back for all purposes to, the date upon which the 7223
taker and the taker's interest have been finally ascertained. 7224

(I) A disclaimant who has a present and future interest in 7225
property, and disclaims the disclaimant's present interest in 7226
whole or in part, is considered to have disclaimed the 7227
disclaimant's future interest to the same extent, unless a 7228
contrary intention appears in the disclaimer instrument or the 7229
donative instrument. A disclaimant is not precluded from 7230
receiving, as an alternative taker, a beneficial interest in the 7231
property disclaimed, unless a contrary intention appears in the 7232
disclaimer instrument or in the donative instrument. 7233

(J) The disclaimant's right to disclaim under this section is 7234
barred if, before the expiration of the period within which the 7235
disclaimant may disclaim the interest, the disclaimant does any of 7236
the following: 7237

(1) Assigns, conveys, encumbers, pledges, or transfers, or 7238
contracts to assign, convey, encumber, pledge, or transfer, the 7239
property or any interest in it; 7240

(2) Waives in writing the disclaimant's right to disclaim and 7241
executes and delivers, files, or records the waiver in the manner 7242
provided in this section for a disclaimer instrument; 7243

(3) Accepts the property or an interest in it; 7244

(4) Permits or suffers a sale or other disposition of the 7245
property pursuant to judicial action against the disclaimant. 7246

(K) A fiduciary's application for appointment or assumption 7247
of duties as a fiduciary does not waive or bar the disclaimant's 7248
right to disclaim a right, power, privilege, or immunity. 7249

(L) The right to disclaim under this section exists 7250
irrespective of any limitation on the interest of the disclaimant 7251
in the nature of a spendthrift provision or similar restriction. 7252

(M) A disclaimer instrument or written waiver of the right to 7253
disclaim that has been executed and delivered, filed, or recorded 7254
as required by this section is final and binding upon all persons. 7255

(N) The right to disclaim and the procedures for disclaimer 7256
established by this section are in addition to, and do not exclude 7257
or abridge, any other rights or procedures existing under any 7258
other section of the Revised Code or at common law to assign, 7259
convey, release, refuse to accept, renounce, waive, or disclaim 7260
property. 7261

(O)(1) No person is liable for distributing or disposing of 7262
property in a manner inconsistent with the terms of a valid 7263
disclaimer if the distribution or disposition is otherwise proper 7264
and the person has no actual knowledge of the disclaimer. 7265

(2) No person is liable for distributing or disposing of 7266
property in reliance upon the terms of a disclaimer that is 7267
invalid because the right of disclaimer has been waived or barred 7268
if the distribution or disposition is otherwise proper and the 7269
person has no actual knowledge of the facts that constitute a 7270
waiver or bar to the right to disclaim. 7271

(P)(1) A disclaimant may disclaim pursuant to this section 7272
any interest in property that is in existence on September 27, 7273
1976, if either the interest in the property or the taker of the 7274
interest in the property is not finally ascertained on that date. 7275

(2) No disclaimer executed pursuant to this section destroys 7276
or diminishes an interest in property that exists on September 27, 7277
1976, in any person other than the disclaimant. 7278

Sec. ~~1339.71~~ 5815.41. As used in sections ~~1339.71~~ 5815.41 to 7279

1339.78 <u>5815.48</u> of the Revised Code:	7280
(A) "Art dealer" means a person engaged in the business of selling works of art, other than a person exclusively engaged in the business of selling goods at public auction.	7281 7282 7283
(B) "Artist" means the creator of a work of art.	7284
(C) "On consignment" means delivered to an art dealer for the purpose of sale or exhibition, or both, to the public by the art dealer other than at a public auction.	7285 7286 7287
(D) "Work of art" means an original art work that is any of the following:	7288 7289
(1) A visual rendition including, but not limited to, a painting, drawing, sculpture, mosaic, or photograph;	7290 7291
(2) A work of calligraphy;	7292
(3) A work of graphic art, including, but not limited to, an etching, lithograph, offset print, or silk screen;	7293 7294
(4) A craft work in materials, including, but not limited to, clay, textile, fiber, wood, metal, plastic, or glass;	7295 7296
(5) A work in mixed media, including, but not limited to, a collage or a work consisting of any combination of the items listed in divisions (D)(1) to (4) of this section.	7297 7298 7299
Sec. 1339.72 <u>5815.42</u>. If an art dealer accepts a work of art, on a fee, commission, or other compensation basis, on consignment from the artist who created the work of art, the following consequences attach:	7300 7301 7302 7303
(A) The art dealer is, with respect to that work of art, the agent of the artist.	7304 7305
(B) The work of art is trust property and the art dealer is a trustee for the benefit of the artist until the work of art is sold to a bona fide third party or returned to the artist.	7306 7307 7308

(C) The proceeds of the sale of the work of art are trust 7309
property and the art dealer is a trustee for the benefit of the 7310
artist until the amount due the artist from the sale is paid. 7311

(D) The art dealer is strictly liable for the loss of, or 7312
damage to, the work of art while it is in the art dealer's 7313
possession or control. The value of the work of art is, for the 7314
purpose of this division, the value established in the written 7315
contract between the artist and art dealer entered into pursuant 7316
to section ~~1339.75~~ 5815.45 of the Revised Code. 7317

Sec. ~~1339.73~~ 5815.43. (A) If a work of art is trust property 7318
under section ~~1339.72~~ 5815.42 of the Revised Code when it is 7319
initially received by the art dealer, it remains trust property, 7320
notwithstanding the subsequent purchase of the work of art by the 7321
art dealer directly or indirectly for the art dealer's own 7322
account, until the purchase price specified pursuant to division 7323
(A)(3) of section ~~1339.75~~ 5815.45 of the Revised Code is paid in 7324
full to the artist. 7325

(B) If an art dealer resells a work of art that ~~he~~ the art 7326
dealer purchased for ~~his~~ the art dealer's own account to a bona 7327
fide third party before the artist has been paid in full, the work 7328
of art ceases to be trust property and the proceeds of the resale 7329
are trust funds in the possession or control of the art dealer for 7330
the benefit of the artist to the extent necessary to pay any 7331
balance still due to the artist. The trusteeship of the proceeds 7332
continues until the artist is paid in full under the contract 7333
entered into pursuant to section ~~1339.75~~ 5815.45 of the Revised 7334
Code. 7335

Sec. ~~1339.74~~ 5815.44. A work of art that is trust property 7336
under section ~~1339.72~~ 5815.42 or ~~1339.73~~ 5815.43 of the Revised 7337
Code is not subject to the claims, liens, or security interests of 7338

the creditors of the art dealer, notwithstanding Chapters 1301. to 7339
1310. of the Revised Code. 7340

Sec. ~~1339.75~~ 5815.45. (A) An art dealer shall not accept a 7341
work of art, on a fee, commission, or other compensation basis, on 7342
consignment from the artist who created the work of art unless, 7343
prior to or at the time of acceptance, the art dealer enters into 7344
a written contract with the artist that contains all of the 7345
following: 7346

(1) The value of the work of art and whether it may be sold; 7347

(2) The time within which the proceeds of the sale are to be 7348
paid to the artist, if the work of art is sold; 7349

(3) The minimum price for the sale of the work of art; 7350

(4) The fee or percentage of the sale price that is to be 7351
paid to the art dealer for displaying or selling the work of art. 7352

(B) If an art dealer violates this section, a court, at the 7353
request of the artist, may void the obligation of the artist to 7354
that art dealer or to a person to whom the obligation is 7355
transferred, other than a holder in due course. 7356

Sec. ~~1339.76~~ 5815.46. An art dealer who accepts a work of 7357
art, on a fee, commission, or other compensation basis, on 7358
consignment from the artist who created the work of art shall not 7359
use or display the work of art or a photograph of the work of art, 7360
or permit the use or display of the work of art or a photograph of 7361
the work of art, unless both of the following occur: 7362

~~(1)~~(A) Notice is given to users or viewers that the work of 7363
art is the work of the artist; 7364

~~(2)~~(B) The artist gives prior written consent to the 7365
particular use or display. 7366

Sec. ~~1339.77~~ 5815.47. Any portion of an agreement that waives 7367
any provision of sections ~~1339.71~~ 5815.41 to ~~1339.78~~ 5815.48 of 7368
the Revised Code is void. 7369

Sec. ~~1339.78~~ 5815.48. Any art dealer who violates section 7370
~~1339.75~~ 5815.45 or ~~1339.76~~ 5815.46 of the Revised Code is liable 7371
to the artist for ~~his~~ the artist's reasonable attorney's fees and 7372
in an amount equal to the greater of either of the following: 7373

(A) Fifty dollars; 7374

(B) The actual damages, if any, including the incidental and 7375
consequential damages, sustained by the artist by reason of the 7376
violation. 7377

Section 2. That existing sections 1111.13, 1111.14, 1111.15, 7378
1151.191, 1161.24, 1319.12, 1339.01, 1339.02, 1339.03, 1339.031, 7379
1339.04, 1339.08, 1339.09, 1339.10, 1339.11, 1339.12, 1339.13, 7380
1339.15, 1339.151, 1339.16, 1339.17, 1339.18, 1339.31, 1339.32, 7381
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5121.10, 5121.30, 5121.52, 5123.04, 5123.28, and 5123.40 and 7396

sections 1335.01, 1339.14, 1339.66, 1339.67, 1339.69, 1340.21, 7397
1340.22, and 1340.23 of the Revised Code are hereby repealed. 7398

Section 3. Sections 1 and 2 of this act shall take effect on 7399
January 1, 2007. 7400

Section 4. In enacting divisions (B) to (D) of section 7401
5808.14 of the Revised Code in Section 1 of this act, the General 7402
Assembly hereby declares its intent to codify certain fiduciary 7403
and trust law principles, previously codified in sections 1340.21 7404
to 1340.23 of the Revised Code, relating to a fiduciary's conflict 7405
of interests and, in general, to provide for the exercise of 7406
certain discretionary powers to distribute either principal or 7407
income to a beneficiary by a beneficially interested fiduciary for 7408
the beneficially interested fiduciary's own benefit to the extent 7409
of an ascertainable standard. 7410

Section 5. Section 5123.04 of the Revised Code is presented 7411
in this act as a composite of the section as amended by both Sub. 7412
H.B. 670 and Am. Sub. S.B. 285 of the 121st General Assembly. The 7413
General Assembly, applying the principle stated in division (B) of 7414
section 1.52 of the Revised Code that amendments are to be 7415
harmonized if reasonably capable of simultaneous operation, finds 7416
that the composite is the resulting version of the section in 7417
effect prior to the effective date of the section as presented in 7418
this act. 7419