

As Reported by the House Civil and Commercial Law Committee

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Sub. H. B. No. 416

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

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A B I L L

To amend sections 1111.13, 1111.15, 1151.191, 1
1161.24, 1319.12, 1339.01, 1339.02, 1339.03, 2
1339.04, 1339.08, 1339.09, 1339.10, 1339.11, 3
1339.12, 1339.13, 1339.15, 1339.151, 1339.16, 4
1339.17, 1339.31, 1339.32, 1339.33, 1339.34, 5
1339.35, 1339.36, 1339.37, 1339.38, 1339.39, 6
1339.42, 1339.44, 1339.52, 1339.53, 1339.54, 7
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1339.60, 1339.61, 1339.62, 1339.64, 1339.65, 9
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1339.77, 1339.78, 1340.31, 1340.32, 1340.33, 11
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1340.41, 1340.42, 1340.46, 1340.47, 1340.52, 13
1340.57, 1340.58, 1340.63, 1340.65, 1340.66, 14
1340.70, 1340.71, 1340.72, 1340.73, 1340.74, 15
1340.75, 1340.76, 1340.77, 1340.81, 1340.82, 16
1340.83, 1340.84, 1340.90, 1340.91, 1775.03, 17
1775.14, 1775.15, 1775.17, 1775.33, 1782.24, 18
2101.24, 2107.33, 2109.24, 2109.37, 2109.62, 19
2109.68, 2111.131, 2113.861, 2305.121, 2305.22, 20
5111.15, 5111.151, 5119.01, 5119.17, 5121.04, 21
5121.10, 5121.30, 5121.52, 5123.04, 5123.28, and 22
5123.40; to amend, for the purpose of adopting new 23
section numbers as indicated in parentheses, 24

sections 1339.01 (5815.02), 1339.02 (5815.03),	25
1339.03 (5815.04), 1339.031 (5815.01), 1339.04	26
(5815.05), 1339.08 (5815.06), 1339.09 (5815.07),	27
1339.10 (5815.08), 1339.11 (5815.09), 1339.12	28
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(5814.04), 1339.35 (5814.05), 1339.36 (5814.06),	33
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1339.51 (5815.28), 1339.52 (5809.01), 1339.53	38
(5809.02), 1339.54 (5809.03), 1339.55 (5808.03),	39
1339.56 (5809.04), 1339.57 (5808.05), 1339.58	40
(5809.05), 1339.59 (5808.07), 1339.60 (5809.07),	41
1339.61 (5809.08), 1339.62 (5815.31), 1339.621	42
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1339.65 (5815.35), 1339.68 (5815.36), 1339.71	44
(5815.41), 1339.72 (5815.42), 1339.73 (5815.43),	45
1339.74 (5815.44), 1339.75 (5815.45), 1339.76	46
(5815.46), 1339.77 (5815.47), 1339.78 (5815.48),	47
1340.31 (5813.01), 1340.32 (5813.02), 1340.33	48
(5813.03), 1340.34 (5813.04), 1340.35 (5813.05),	49
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(5812.01), 1340.41 (5812.02), 1340.42 (5812.03),	51
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(5812.12), 1340.52 (5812.13), 1340.53 (5812.14),	53
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(5812.36), 1340.76 (5812.37), 1340.77 (5812.38), 59
1340.81 (5812.42), 1340.82 (5812.43), 1340.83 60
(5812.44), 1340.84 (5812.45), 1340.85 (5812.46), 61
1340.86 (5812.47), 1340.90 (5812.51), 1340.91 62
(5812.52), and 2305.121 (5806.04); to enact 63
sections 2109.69, 5801.01, 5801.011, 5801.02 to 64
5801.10, 5802.01 to 5802.03, 5803.01 to 5803.05, 65
5804.01 to 5804.18, 5805.01 to 5805.07, 5806.01 to 66
5806.03, 5807.01 to 5807.09, 5808.01, 5808.02, 67
5808.04, 5808.06, 5808.08 to 5808.17, 5809.06, 68
5810.01 to 5810.13, and 5811.01 to 5811.03; and to 69
repeal sections 1335.01, 1339.14, 1339.66, 70
1339.67, 1339.69, 1340.21, 1340.22, and 1340.23 of 71
the Revised Code to adopt an Ohio trust code. 72

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

Section 1. That sections 1111.13, 1111.15, 1151.191, 1161.24, 73
1319.12, 1339.01, 1339.02, 1339.03, 1339.04, 1339.08, 1339.09, 74
1339.10, 1339.11, 1339.12, 1339.13, 1339.15, 1339.151, 1339.16, 75
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1339.54, 1339.55, 1339.56, 1339.57, 1339.58, 1339.59, 1339.60, 78
1339.61, 1339.62, 1339.64, 1339.65, 1339.71, 1339.72, 1339.73, 79
1339.74, 1339.76, 1339.77, 1339.78, 1340.31, 1340.32, 1340.33, 80
1340.34, 1340.35, 1340.36, 1340.37, 1340.40, 1340.41, 1340.42, 81
1340.46, 1340.47, 1340.52, 1340.57, 1340.58, 1340.63, 1340.65, 82
1340.66, 1340.70, 1340.71, 1340.72, 1340.73, 1340.74, 1340.75, 83
1340.76, 1340.77, 1340.81, 1340.82, 1340.83, 1340.84, 1340.90, 84
1340.91, 1775.03, 1775.14, 1775.15, 1775.17, 1775.33, 1782.24, 85
2101.24, 2107.33, 2109.24, 2109.37, 2109.62, 2109.68, 2111.131, 86

2113.861, 2305.121, 2305.22, 5111.15, 5111.151, 5119.01, 5119.17, 87
5121.04, 5121.10, 5121.30, 5121.52, 5123.04, 5123.28, and 5123.40 88
be amended; that sections 1339.01 (5815.02), 1339.02 (5815.03), 89
1339.03 (5815.04), 1339.031 (5815.01), 1339.04 (5815.05), 1339.08 90
(5815.06), 1339.09 (5815.07), 1339.10 (5815.08), 1339.11 91
(5815.09), 1339.12 (5815.10), 1339.13 (5815.11), 1339.15 92
(5815.12), 1339.151 (5815.13), 1339.16 (5815.14), 1339.17 93
(5815.15), 1339.18 (5815.16), 1339.31 (5814.01), 1339.32 94
(5814.02), 1339.33 (5814.03), 1339.34 (5814.04), 1339.35 95
(5814.05), 1339.36 (5814.06), 1339.37 (5814.07), 1339.38 96
(5814.08), 1339.39 (5814.09), 1339.41 (5815.21), 1339.411 97
(5815.22), 1339.412 (5815.23), 1339.42 (5815.24), 1339.43 98
(5815.25), 1339.44 (5815.26), 1339.45 (5815.27), 1339.51 99
(5815.28), 1339.52 (5809.01), 1339.53 (5809.02), 1339.54 100
(5809.03), 1339.55 (5808.03), 1339.56 (5809.04), 1339.57 101
(5808.05), 1339.58 (5809.05), 1339.59 (5808.07), 1339.60 102
(5809.07), 1339.61 (5809.08), 1339.62 (5815.31), 1339.621 103
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(5815.35), 1339.68 (5815.36), 1339.71 (5815.41), 1339.72 105
(5815.42), 1339.73 (5815.43), 1339.74 (5815.44), 1339.75 106
(5815.45), 1339.76 (5815.46), 1339.77 (5815.47), 1339.78 107
(5815.48), 1340.31 (5813.01), 1340.32 (5813.02), 1340.33 108
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(5813.06), 1340.37 (5813.07), 1340.40 (5812.01), 1340.41 110
(5812.02), 1340.42 (5812.03), 1340.46 (5812.07), 1340.47 111
(5812.08), 1340.51 (5812.12), 1340.52 (5812.13), 1340.53 112
(5812.14), 1340.57 (5812.18), 1340.58 (5812.19), 1340.59 113
(5812.20), 1340.63 (5812.24), 1340.64 (5812.25), 1340.65 114
(5812.26), 1340.66 (5812.27), 1340.70 (5812.31), 1340.71 115
(5812.32), 1340.72 (5812.33), 1340.73 (5812.34), 1340.74 116
(5812.35), 1340.75 (5812.36), 1340.76 (5812.37), 1340.77 117
(5812.38), 1340.81 (5812.42), 1340.82 (5812.43), 1340.83 118
(5812.44), 1340.84 (5812.45), 1340.85 (5812.46), 1340.86 119

(5812.47), 1340.90 (5812.51), 1340.91 (5812.52), and 2305.121 120
(5806.04) be amended for the purpose of adopting new section 121
numbers as indicated in parentheses; and that sections 2109.69, 122
5801.01, 5801.011, 5801.02, 5801.03, 5801.04, 5801.05, 5801.06, 123
5801.07, 5801.08, 5801.09, 5801.10, 5802.01, 5802.02, 5802.03, 124
5803.01, 5803.02, 5803.03, 5803.04, 5803.05, 5804.01, 5804.02, 125
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5805.06, 5805.07, 5806.01, 5806.02, 5806.03, 5807.01, 5807.02, 129
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5809.06, 5810.01, 5810.02, 5810.03, 5810.04, 5810.05, 5810.06, 133
5810.07, 5810.08, 5810.09, 5810.10, 5810.11, 5810.12, 5810.13, 134
5811.01, 5811.02, and 5811.03 of the Revised Code be enacted to 135
read as follows: 136

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) As used in this section: 243

(1) "Affiliated investment company" means any investment	244
company that is any of the following:	245
(a) Sponsored by the trust company that is acting as	246
fiduciary or by a trust company, bank, bank subsidiary	247
corporation, or other corporation owned or controlled by the bank	248
holding company that owns or controls the trust company that is	249
acting as fiduciary;	250
(b) The result of any agreement with a trust company, bank,	251
bank subsidiary corporation, or other corporation owned or	252
controlled by the bank holding company that owns or controls the	253
trust company that is acting as fiduciary;	254
(c) Established exclusively for the customers or accounts of	255
the trust company that is acting as fiduciary or of a trust	256
company, bank, bank subsidiary corporation, or other corporation	257
owned or controlled by the bank holding company that owns or	258
controls the trust company that is acting as fiduciary;	259
(d) Provided with investment advisory, brokerage, transfer	260
agency, registrar, management, shareholder servicing, custodian,	261
or any related services by the trust company that is acting as	262
fiduciary or by a trust company, bank, bank subsidiary	263
corporation, or other corporation owned or controlled by the bank	264
holding company that owns or controls the trust company that is	265
acting as fiduciary.	266
(2) "Cofiduciary" includes, but is not limited to, a	267
cotrustee, coexecutor, coadministrator, coguardian, co-agent, and	268
any person who, under the terms of the instrument creating the	269
fiduciary relationship, has the right or power to direct, approve	270
or consent to, or be consulted with respect to, the making,	271
retention, or sale of investments under the instrument.	272
(3) "Instrument" includes, but is not limited to, any will,	273
declaration of trust, agreement of trust, agency, or	274

custodianship, or court order creating a fiduciary relationship. 275

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Any public utility; 425

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

representation. 580

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) To grant marriage licenses; 663

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

(h) To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts;	669 670 671
(i) To authorize the sale of lands, equitable estates, or interests in lands or equitable estates, and the assignments of inchoate dower in such cases of sale, on petition by executors, administrators, and guardians;	672 673 674 675
(j) To authorize the completion of real estate contracts on petition of executors and administrators;	676 677
(k) To construe wills;	678
(l) To render declaratory judgments, including, but not limited to, those rendered pursuant to section 2107.084 of the Revised Code;	679 680 681
(m) To direct and control the conduct of fiduciaries and settle their accounts;	682 683
(n) To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee;	684 685
(o) To terminate a testamentary trust in any case in which a court of equity may do so;	686 687
(p) To hear and determine actions to contest the validity of wills;	688 689
(q) To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption;	690 691 692
(r) To hear and determine an action commenced pursuant to section 3107.41 of the Revised Code to obtain the release of information pertaining to the birth name of the adopted person and the identity of the adopted person's biological parents and biological siblings;	693 694 695 696 697

(s) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;	698 699
(t) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;	700 701
(u) To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;	702 703 704
(v) To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337.16 of the Revised Code;	705 706 707
(w) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;	708 709 710
(x) To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with certain patients allegedly in a terminal condition or in a permanently unconscious state pursuant to division (E) of section 2133.08 of the Revised Code, in accordance with that division;	711 712 713 714 715 716
(y) To hear and determine applications that pertain to the withholding or withdrawal of nutrition and hydration from certain patients allegedly in a permanently unconscious state pursuant to section 2133.09 of the Revised Code, in accordance with that section;	717 718 719 720 721
(z) To hear and determine applications of attending physicians in accordance with division (B) of section 2133.15 of the Revised Code;	722 723 724
(aa) To hear and determine actions relative to the use or continuation of comfort care in connection with certain principals under durable powers of attorney for health care, declarants under	725 726 727

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(H) As used in this section: 826

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

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

Sec. 2109.24. The probate court at any time may accept the 838
resignation of any fiduciary upon the fiduciary's proper 839
accounting, if the fiduciary was appointed by, is under the 840
control of, or is accountable to the court. 841

If a fiduciary fails to make and file an inventory as 842
required by sections 2109.58, 2111.14, and 2115.02 of the Revised 843
Code or to render a just and true account of the fiduciary's 844
administration at the times required by section 2109.301, 845
2109.302, or 2109.303 of the Revised Code, and if the failure 846
continues for thirty days after the fiduciary has been notified by 847
the court of the expiration of the relevant time, the fiduciary 848

forthwith may be removed by the court and shall receive no 849
allowance for the fiduciary's services unless the court enters 850
upon its journal its findings that the delay was necessary and 851
reasonable. 852

The court may remove any ~~such~~ fiduciary, after giving the 853
fiduciary not less than ten days' notice, for habitual 854
drunkenness, neglect of duty, incompetency, or fraudulent conduct, 855
because the interest of the property, testamentary trust, or 856
estate that the fiduciary is responsible for administering demands 857
it, or for any other cause authorized by law. 858

The court may remove a testamentary trustee upon the written 859
application of more than one-half of the persons having an 860
interest in the estate controlled by the testamentary trustee, but 861
the testamentary trustee is not to be considered as a person 862
having an interest in the estate under the proceedings; except 863
that no testamentary trustee appointed under a will shall be 864
removed upon such written application unless for a good cause. 865

Sec. 2109.37. (A) Except as otherwise provided by law, 866
including division (D) of this section, or by the instrument 867
creating the trust, a fiduciary having funds belonging to a trust 868
which are to be invested may invest them in the following: 869

(1) Bonds or other obligations of the United States or of 870
this state; 871

(2) Bonds or other interest-bearing obligations of any 872
county, municipal corporation, school district, or other legally 873
constituted political taxing subdivision within the state, 874
provided that such county, municipal corporation, school district, 875
or other subdivision has not defaulted in the payment of the 876
interest on any of its bonds or interest-bearing obligations, for 877
more than one hundred twenty days during the ten years immediately 878

preceding the investment by the fiduciary in the bonds or other obligations, and provided that such county, municipal corporation, school district, or other subdivision, is not, at the time of the investment, in default in the payment of principal or interest on any of its bonds or other interest-bearing obligations;

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

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

(5) Notes which are: (a) secured by a first mortgage on real estate held in fee and located in the state, improved by a unit designed principally for residential use for not more than four families or by a combination of such dwelling unit and business property, the area designed or used for nonresidential purposes not to exceed fifty per cent of the total floor area; (b) secured by a first mortgage on real estate held in fee and located in the state, improved with a building designed for residential use for more than four families or with a building used primarily for business purposes, if the unpaid principal of the notes secured by such mortgage does not exceed ten per cent of the value of the estate or trust or does not exceed five thousand dollars, whichever is greater; or (c) secured by a first mortgage on an improved farm held in fee and located in the state, provided that such mortgage requires that the buildings on the mortgaged property shall be well insured against loss by fire, and so kept,

for the benefit of the mortgagee, until the debt is paid, and
provided that the unpaid principal of the notes secured by the
mortgage shall not exceed fifty per cent of the fair value of the
mortgaged real estate at the time the investment is made, and the
notes shall be payable not more than five years after the date on
which the investment in them is made; except that the unpaid
principal of the notes may equal sixty per cent of the fair value
of the mortgaged real estate at the time the investment is made,
and may be payable over a period of fifteen years following the
date of the investment by the fiduciary if regular installment
payments are required sufficient to amortize four per cent or more
of the principal of the outstanding notes per annum and if the
unpaid principal and interest become due and payable at the option
of the holder upon any default in the payment of any installment
of interest or principal upon the notes, or of taxes, assessments,
or insurance premiums upon the mortgaged premises or upon the
failure to cure any such default within any grace period provided
therein not exceeding ninety days in duration;

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

(7) Notes or bonds secured by mortgages and insured by the federal housing administrator or debentures issued by such administrator;	943 944 945
(8) Obligations issued by a federal home loan bank created under the "Federal Home Loan Bank Act of 1932," 47 Stat. 725, 12 U.S.C.A. 1421, as amended;	946 947 948
(9) Shares and certificates or other evidences of deposits issued by a federal savings and loan association organized and incorporated under the "Home Owners' Loan Act of 1933," 48 Stat. 128, 12 U.S.C.A. 1461, as amended, to the extent and only to the extent that those shares or certificates or other evidences of deposits are insured pursuant to the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as amended;	949 950 951 952 953 954 955 956
(10) Bonds issued by the home owners' loan corporation created under the "Home Owners' Act of 1933," 48 Stat. 128, 12 U.S.C.A. 1461, as amended;	957 958 959
(11) Obligations issued by the national mortgage association created under the "National Housing Act," 48 Stat. 1246 (1934), 12 U.S.C.A. 1701, as amended;	960 961 962
(12) Shares and certificates or other evidences of deposits issued by a domestic savings and loan association organized under the laws of the state, which association has obtained insurance of accounts pursuant to the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as amended, or as may be otherwise provided by law, only to the extent that such evidences of deposits are insured under that act, as amended;	963 964 965 966 967 968 969 970
(13) Shares and certificates or other evidences of deposits issued by a domestic savings and loan association organized under the laws of the state, provided that no fiduciary may invest such	971 972 973

deposits except with the approval of the probate court, and then 974
in an amount not to exceed the amount which the fiduciary is 975
permitted to invest under division (A)(12) of this section; 976

(14) In savings accounts in, or certificates or other 977
evidences of deposits issued by, a national bank located in the 978
state or a state bank located in and organized under the laws of 979
the state by depositing the funds in the bank, and such national 980
or state bank when itself acting in a fiduciary capacity may 981
deposit the funds in savings accounts in, or certificates or other 982
evidences of deposits issued by, its own savings department or any 983
bank subsidiary corporation owned or controlled by the bank 984
holding company that owns or controls such national or state bank; 985
provided that no deposit shall be made by any fiduciary, 986
individual, or corporate, unless the deposits of the depository 987
bank are insured by the federal deposit insurance corporation 988
created under the "Federal Deposit Insurance Corporation Act of 989
1933," 48 Stat. 162, 12 U.S.C. 264, as amended, and provided that 990
the deposit of the funds of any one trust in any such savings 991
accounts in, or certificates or other evidences of deposits issued 992
by, any one bank shall not exceed the sum insured under that act, 993
as amended; 994

(15) Obligations consisting of notes, bonds, debentures, or 995
equipment trust certificates issued under an indenture, which are 996
the direct obligations, or in the case of equipment trust 997
certificates are secured by direct obligations, of a railroad or 998
industrial corporation, or a corporation engaged directly and 999
primarily in the production, transportation, distribution, or sale 1000
of electricity or gas, or the operation of telephone or telegraph 1001
systems or waterworks, or in some combination of them; provided 1002
that the obligor corporation is one which is incorporated under 1003
the laws of the United States, any state, or the District of 1004
Columbia, and the obligations are rated at the time of purchase in 1005

the highest or next highest classification established by at least
two standard rating services selected from a list of the standard
rating services which shall be prescribed by the superintendent of
financial institutions; provided that every such list shall be
certified by the superintendent to the clerk of each probate court
in the state, and shall continue in effect until a different list
is prescribed and certified as provided in this division;

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

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

(B) No administrator or executor may invest funds belonging
to an estate in any asset other than a direct obligation of the
United States that has a maturity date not exceeding one year from
the date of investment, or other than in a short-term investment

fund that is invested exclusively in obligations of the United States or of its agencies, or primarily in such obligations and otherwise only in variable demand notes, corporate money market instruments including, but not limited to, commercial paper, or fully collateralized repurchase agreements or other evidences of indebtedness that are payable on demand or generally have a maturity date not exceeding ninety-one days from the date of investment, except with the approval of the probate court or with the permission of the instruments creating the trust.

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

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

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

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

trust, in whole or in part, if it determines that all of the 1069
following apply: 1070

(a) It is no longer economically feasible to continue the 1071
trust. 1072

(b) The termination of the trust is for the benefit of the 1073
beneficiaries. 1074

(c) The termination of the trust is equitable and practical. 1075

(d) The current value of the trust is less than one hundred 1076
thousand dollars. 1077

(2) The existence of a spendthrift or similar provision in a 1078
trust instrument or will does not preclude the termination of a 1079
trust pursuant to this section. 1080

(B) If property is to be distributed from an estate being 1081
probated to a trust and the termination of the trust pursuant to 1082
this section does not clearly defeat the intent of the testator, 1083
the probate court has jurisdiction to order the outright 1084
distribution of the property or to make the property custodial 1085
property under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 1086
Revised Code. A probate court may so order whether the application 1087
for the order is made by an inter vivos trustee named in the will 1088
of the decedent or by a testamentary trustee. 1089

(C) Upon the termination of a trust pursuant to this section, 1090
the probate court shall order the distribution of the trust estate 1091
in accordance with any provision specified in the trust instrument 1092
for the premature termination of the trust. If there is no 1093
provision of that nature in the trust instrument, the probate 1094
court shall order the distribution of the trust estate among the 1095
beneficiaries of the trust in accordance with their respective 1096
beneficial interests and in a manner that the court determines to 1097
be equitable. For purposes of ordering the distribution of the 1098
trust estate among the beneficiaries of the trust under this 1099

division, the court shall consider all of the following: 1100

(1) The existence of any agreement among the beneficiaries 1101
with respect to their beneficial interests; 1102

(2) The actuarial values of the separate beneficial interests 1103
of the beneficiaries; 1104

(3) Any expression of preference of the beneficiaries that is 1105
contained in the trust instrument. 1106

~~(D) Unless otherwise represented or bound, a minor, an 1107
incapacitated or unborn person, or a person whose identity or 1108
location is unknown and is not reasonably ascertainable may be 1109
represented by or bound by another person who has a substantially 1110
identical interest in the trust as that minor, incapacitated or 1111
unborn person, or person whose identity or location is unknown and 1112
is not reasonably ascertainable, but only to the extent that there 1113
is no conflict of interest between the person who is represented 1114
or bound and the person who represents or binds that person. As 1115
used in this division, "minor" means a person who is under 1116
eighteen years of age. 1117~~

Sec. 2109.68. Allocation of receipts and expenditures between 1118
principal and income by an executor, administrator, or 1119
testamentary trustee shall be as prescribed in sections ~~1340.40~~ 1120
5812.01 to ~~1340.91~~ 5812.52 of the Revised Code. 1121

Sec. 2109.69. (A) Subject to division (B) of this section, 1122
the provisions of Chapters 5801. to 5811. of the Revised Code 1123
apply to testamentary trusts except to the extent that any 1124
provision of those chapters conflicts with any provision of 1125
Chapter 2109. of the Revised Code, or with any other provision of 1126
the Revised Code, that applies specifically to testamentary trusts 1127
and except to the extent that any provision of Chapters 5801. to 1128
5811. of the Revised Code is clearly inapplicable to testamentary 1129

trusts. 1130

(B) Section 5808.13 of the Revised Code applies to 1131
testamentary trusts whether or not that section conflicts with any 1132
provision of Chapter 2109. of the Revised Code or any other 1133
provision of the Revised Code that applies specifically to 1134
testamentary trusts. 1135

Sec. 2111.131. (A) The probate court may enter an order that 1136
authorizes a person under a duty to pay or deliver money or 1137
personal property to a minor who does not have a guardian of the 1138
person and estate or a guardian of the estate, to perform that 1139
duty in amounts not exceeding five thousand dollars annually, by 1140
paying or delivering the money or property to any of the 1141
following: 1142

(1) The guardian of the person only of the minor; 1143

(2) The minor's natural guardians, if any, as determined 1144
pursuant to section 2111.08 of the Revised Code; 1145

(3) The ~~minor himself~~ minor's own self; 1146

(4) Any person who has the care and custody of the minor and 1147
with whom the minor resides, other than a guardian of the person 1148
only or a natural guardian; 1149

(5) A financial institution incident to a deposit in a 1150
federally insured savings account in the sole name of the minor; 1151

(6) A custodian designated by the court in its order, for the 1152
minor under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 1153
Revised Code. 1154

(B) An order entered pursuant to division (A) of this section 1155
authorizes the person or entity specified in it, to receive the 1156
money or personal property on behalf of the minor from the person 1157
under the duty to pay or deliver it, in amounts not exceeding five 1158

thousand dollars annually. Money or personal property so received 1159
by guardians of the person only, natural guardians, and custodians 1160
as described in division (A)(4) of this section may be used by 1161
them only for the support, maintenance, or education of the minor 1162
involved. The order of the court is prima-facie evidence that a 1163
guardian of the person only, a natural guardian, or a custodian as 1164
described in division (A)(4) of this section has the authority to 1165
use the money or personal property received. 1166

(C) A person who pays or delivers moneys or personal property 1167
in accordance with a court order entered pursuant to division (A) 1168
of this section is not responsible for the proper application of 1169
the moneys or property by the recipient. 1170

Sec. 2113.861. Except as provided in section ~~1339.45~~ 5815.27 1171
of the Revised Code, the generation-skipping transfer tax imposed 1172
by Chapter 13 of subtitle B of the Internal Revenue Code of 1986, 1173
100 Stat. 2718, 26 U.S.C. 2601-2624, as amended, and the 1174
generation-skipping tax levied by division (B) of section 5731.181 1175
of the Revised Code shall be apportioned in the manner described 1176
in section 2113.86 of the Revised Code. 1177

Sec. 2305.22. Sections 2305.03 to 2305.21, 1302.98, and 1178
1304.35 of the Revised Code, respecting lapse of time as a bar to 1179
suit, do not apply in the case of ~~a continuing and subsisting~~ 1180
~~trust, nor to an action by a vendee of real property, in~~ 1181
possession thereof, to obtain a conveyance of ~~it~~ the real 1182
property. 1183

Sec. 5111.15. If a recipient of medical assistance is the 1184
beneficiary of a trust created pursuant to section ~~1339.51~~ 5815.28 1185
of the Revised Code, then, notwithstanding any contrary provision 1186
of this chapter or of a rule adopted pursuant to this chapter, 1187
divisions (C) and (D) of that section shall apply in determining 1188

the assets or resources of the recipient, the recipient's estate, 1189
the settlor, or the settlor's estate and to claims arising under 1190
this chapter against the recipient, the recipient's estate, the 1191
settlor, or the settlor's estate. 1192

Sec. 5111.151. (A) This section applies to eligibility 1193
determinations for all cases involving medical assistance provided 1194
pursuant to this chapter, qualified medicare beneficiaries, 1195
specified low-income medicare beneficiaries, qualifying 1196
individuals-1, qualifying individuals-2, and medical assistance 1197
for covered families and children. 1198

(B) As used in this section: 1199

(1) "Trust" means any arrangement in which a grantor 1200
transfers real or personal property to a trust with the intention 1201
that it be held, managed, or administered by at least one trustee 1202
for the benefit of the grantor or beneficiaries. "Trust" includes 1203
any legal instrument or device similar to a trust. 1204

(2) "Legal instrument or device similar to a trust" includes, 1205
but is not limited to, escrow accounts, investment accounts, 1206
partnerships, contracts, and other similar arrangements that are 1207
not called trusts under state law but are similar to a trust and 1208
to which all of the following apply: 1209

(a) The property in the trust is held, managed, retained, or 1210
administered by a trustee. 1211

(b) The trustee has an equitable, legal, or fiduciary duty to 1212
hold, manage, retain, or administer the property for the benefit 1213
of the beneficiary. 1214

(c) The trustee holds identifiable property for the 1215
beneficiary. 1216

(3) "Grantor" is a person who creates a trust, including all 1217
of the following: 1218

(a) An individual;	1219
(b) An individual's spouse;	1220
(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;	1221 1222 1223
(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.	1224 1225 1226
(4) "Beneficiary" is a person or persons, including a grantor, who benefits in some way from a trust.	1227 1228
(5) "Trustee" is a person who manages a trust's principal and income for the benefit of the beneficiaries.	1229 1230
(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.	1231 1232 1233
(7) "Applicant" is an individual who applies for medical assistance benefits or the individual's spouse.	1234 1235
(8) "Recipient" is an individual who receives medical assistance benefits or the individual's spouse.	1236 1237
(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:	1238 1239 1240
(a) A trust that provides that the trust can be terminated only by a court;	1241 1242
(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.	1243 1244 1245
(10) "Irrevocable trust" is a trust that cannot be revoked by the grantor or terminated by a court and that terminates only on	1246 1247

the occurrence of an event outside of the control or direction of 1248
the beneficiary or grantor. 1249

(11) "Payment" is any disbursement from the principal or income 1250
of the trust, including actual cash, noncash or property 1251
disbursements, or the right to use and occupy real property. 1252

(12) "Payments to or for the benefit of the applicant or 1253
recipient" is a payment to any person resulting in a direct or 1254
indirect benefit to the applicant or recipient. 1255

(13) "Testamentary trust" is a trust that is established by a 1256
will and does not take effect until after the death of the person 1257
who created the trust. 1258

(C) If an applicant or recipient is a beneficiary of a trust, 1259
the county department of job and family services shall determine 1260
what type of trust it is and shall treat the trust in accordance 1261
with the appropriate provisions of this section and rules adopted 1262
by the department of job and family services governing trusts. The 1263
county department of job and family services may determine that 1264
the trust or portion of the trust is one of the following: 1265

(1) A countable resource; 1266

(2) Countable income; 1267

(3) A countable resource and countable income; 1268

(4) Not a countable resource or countable income. 1269

(D)(1) A trust or legal instrument or device similar to a 1270
trust shall be considered a medicaid qualifying trust if all of 1271
the following apply: 1272

(a) The trust was established on or prior to August 10, 1993. 1273

(b) The trust was not established by a will. 1274

(c) The trust was established by an applicant or recipient. 1275

(d) The applicant or recipient is or may become the 1276

beneficiary of all or part of the trust.	1277
(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.	1278 1279 1280
(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.	1281 1282 1283 1284 1285 1286 1287 1288 1289 1290
(3) Amounts that are actually distributed from a Medicaid <u>medicaid</u> qualifying trust to a beneficiary for any purpose shall be treated in accordance with rules adopted by the department of job and family services governing income.	1291 1292 1293 1294
(4) Availability of a medicaid qualifying trust shall be considered without regard to any of the following:	1295 1296
(a) Whether or not the trust is irrevocable or was established for purposes other than to enable a grantor to qualify for medicaid, medical assistance for covered families and children, or as a qualified medicare beneficiary, specified low-income medicare beneficiary, qualifying individual-1, or qualifying individual-2;	1297 1298 1299 1300 1301 1302
(b) Whether or not the trustee actually exercises discretion.	1303
(5) If any real or personal property is transferred to a medicaid qualifying trust that is not distributable to the applicant or recipient, the transfer shall be considered an	1304 1305 1306

improper transfer of resources and shall be subject to rules 1307
adopted by the department of job and family services governing 1308
improper transfers of resources. 1309

(6) The baseline date for the look-back period for transfers 1310
of assets involving a medicaid qualifying trust shall be the date 1311
on which the applicant or recipient is both institutionalized and 1312
first applies for medical assistance. The following conditions 1313
also apply to look-back periods for transfers of assets involving 1314
medicaid qualifying trusts: 1315

(a) If a medicaid qualifying trust is a revocable trust and a 1316
portion of the trust is distributed to someone other than the 1317
applicant or recipient for the benefit of someone other than the 1318
applicant or recipient, the distribution shall be considered an 1319
improper transfer of resources. The look-back period shall be 1320
sixty months from the baseline date. The transfer shall be 1321
considered to have taken place on the date on which the payment to 1322
someone other than the applicant or recipient was made. 1323

(b) If a medicaid qualifying trust is an irrevocable trust 1324
and a portion of the trust is not distributable to the applicant 1325
or recipient, the trust shall be treated as an improper transfer 1326
of resources. The look-back period shall be sixty months from the 1327
baseline date. The transfer is considered to have been made as of 1328
the later of the date the trust was established or the date on 1329
which payment to the applicant or recipient was foreclosed. The 1330
value of the assets shall not be reduced by any payments from the 1331
trust that may be made from these unavailable assets at a later 1332
date. 1333

(c) If a medicaid qualifying trust is an irrevocable trust 1334
and a portion or all of the trust may be disbursed to or for the 1335
benefit of the applicant or recipient, any payment that is made to 1336
another person other than the applicant or recipient shall be 1337

considered an improper transfer of resources. The look-back period 1338
shall be thirty-six months from the baseline date. The transfer 1339
shall be considered to have been made as of the date of payment to 1340
the other person. 1341

(E)(1) A trust or legal instrument or device similar to a 1342
trust shall be considered a self-settled trust if all of the 1343
following apply: 1344

(a) The trust was established on or after August 11, 1993. 1345

(b) The trust was not established by a will. 1346

(c) The trust was established by an applicant or recipient, 1347
spouse of an applicant or recipient, or a person, including a 1348
court or administrative body, with legal authority to act in place 1349
of or on behalf of an applicant, recipient, or spouse, or acting 1350
at the direction or on request of an applicant, recipient, or 1351
spouse. 1352

(2) A trust that meets the requirements of division (E)(1) of 1353
this section and is a revocable trust shall be treated by the 1354
county department of job and family services as follows: 1355

(a) The corpus of the trust shall be considered a resource 1356
available to the applicant or recipient. 1357

(b) Payments from the trust to or for the benefit of the 1358
applicant or recipient shall be considered unearned income of the 1359
applicant or recipient. 1360

(c) Any other payments from the trust shall be considered an 1361
improper transfer of resources and shall be subject to rules 1362
adopted by the department of job and family services governing 1363
improper transfers of resources. 1364

(3) A trust that meets the requirements of division (E)(1) of 1365
this section and is an irrevocable trust shall be treated by the 1366
county department of job and family services as follows: 1367

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

(d) The date of the transfer 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 transferred resource under this provision, the value of the trust shall be its value on the date payment to the applicant or recipient was foreclosed.

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

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

(h) Any addition of resources after the foreclosure date

shall be considered a separate transfer. 1398

(4) If a trust is funded with assets of another person or 1399
persons in addition to assets of the applicant or recipient, the 1400
applicable provisions of this section and rules adopted by the 1401
department of job and family services governing trusts shall apply 1402
only to the portion of the trust attributable to the applicant or 1403
recipient. 1404

(5) The availability of a self-settled trust shall be 1405
considered without regard to any of the following: 1406

(a) The purpose for which the trust is established; 1407

(b) Whether the trustees have exercised or may exercise 1408
discretion under the trust; 1409

(c) Any restrictions on when or whether distributions may be 1410
made from the trust; 1411

(d) Any restrictions on the use of distributions from the 1412
trust. 1413

(6) The baseline date for the look-back period for transfers 1414
of assets involving a self-settled trust shall be the date on 1415
which the applicant or recipient is both institutionalized and 1416
first applies for medical assistance. The following conditions 1417
also apply to look-back periods for transfers of assets involving 1418
self-settled trusts: 1419

(a) If a self-settled trust is a revocable trust and a 1420
portion of the trust is distributed to someone other than the 1421
applicant or recipient for the benefit of someone other than the 1422
applicant or recipient, the distribution shall be considered an 1423
improper transfer of resources. The look-back period shall be 1424
sixty months from the baseline date. The transfer shall be 1425
considered to have taken place on the date on which the payment to 1426
someone other than the applicant or recipient was made. 1427

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

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

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

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

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

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

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

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

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

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

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

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

(i) The trust is composed only of pension, social security, 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	1490
to receive the income is not assigned or transferred to the trust.	1491
(iii) The trust requires that on the death of the applicant	1492
or recipient the state will receive all amounts remaining in the	1493
trust up to an amount equal to the total amount of medical	1494
assistance paid on behalf of the applicant or recipient.	1495
(b) No resources shall be used to establish or augment the	1496
trust.	1497
(c) If an applicant or recipient has irrevocably transferred	1498
or assigned the applicant's or recipient's right to receive income	1499
to the trust, the trust shall not be considered a qualifying	1500
income trust by the county department of job and family services.	1501
(d) Income placed in a qualifying income trust shall not be	1502
counted in determining an applicant's or recipient's eligibility	1503
for medical assistance. The recipient of the funds may place any	1504
income directly into a qualifying income trust without those funds	1505
adversely affecting the applicant's or recipient's eligibility for	1506
medical assistance. Income generated by the trust that remains in	1507
the trust shall not be considered as income to the applicant or	1508
recipient.	1509
(e) All income placed in a qualifying income trust shall be	1510
combined with any countable income not placed in the trust to	1511
arrive at a base income figure to be used for spend down	1512
calculations.	1513
(f) The base income figure shall be used for post-eligibility	1514
deductions, including personal needs allowance, monthly income	1515
allowance, family allowance, and medical expenses not subject to	1516
third party payment. Any income remaining shall be used toward	1517
payment of patient liability. Payments made from a qualifying	1518
income trust shall not be combined with the base income figure for	1519
post-eligibility calculations.	1520

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

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

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

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

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

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

(v) The trust requires that, to the extent that any amounts remaining in the beneficiary's account on the death of the beneficiary are not retained by the trust, the trust pay to the state the amounts remaining in the trust up to an amount equal to the total amount of medical assistance 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 1551
treated as an improper transfer of resources. Assets held prior to 1552
the transfer to the trust shall be considered as countable assets, 1553
countable income, or countable assets and income. 1554

(4) A supplemental services trust that meets the requirements 1555
of section ~~1339.51~~ 5815.28 of the Revised Code and to which all of 1556
the following apply: 1557

(a) A person may establish a supplemental services trust 1558
pursuant to section ~~1339.51~~ 5815.28 of the Revised Code only for 1559
another person who is eligible to receive services through one of 1560
the following agencies: 1561

(i) The department of mental retardation and developmental 1562
disabilities; 1563

(ii) A county board of mental retardation and developmental 1564
disabilities; 1565

(iii) The department of mental health; 1566

(iv) A board of alcohol, drug addiction, and mental health 1567
services. 1568

(b) A county department of job and family services shall not 1569
determine eligibility for another agency's program. An applicant 1570
or recipient shall do one of the following: 1571

(i) Provide documentation from one of the agencies listed in 1572
division (F)(4)(a) of this section that establishes that the 1573
applicant or recipient was determined to be eligible for services 1574
from the agency at the time of the creation of the trust; 1575

(ii) Provide an order from a court of competent jurisdiction 1576
that states that the applicant or recipient was eligible for 1577
services from one of the agencies listed in division (F)(4)(a) of 1578
this section at the time of the creation of the trust. 1579

(c) At the time the trust is created, the trust principal 1580

does not exceed the maximum amount permitted. The maximum amount 1581
permitted in calendar year 2002 is two hundred fourteen thousand 1582
dollars. Each year thereafter, the maximum amount permitted is the 1583
prior year's amount plus two thousand dollars. 1584

(d) A county department of job and family services shall 1585
review the trust to determine whether it complies with the 1586
provisions of section ~~1339.51~~ 5815.28 of the Revised Code. 1587

(e) Payments from supplemental services trusts shall be 1588
exempt as long as the payments are for supplemental services as 1589
defined in rules adopted by the department of job and family 1590
services. All supplemental services shall be purchased by the 1591
trustee and shall not be purchased through direct cash payments to 1592
the beneficiary. 1593

(f) If a trust is represented as a supplemental services 1594
trust and a county department of job and family services 1595
determines that the trust does not meet the requirements provided 1596
in division (F)(4) of this section and section ~~1339.51~~ 5815.28 of 1597
the Revised Code, the county department of job and family services 1598
shall not consider it an exempt trust. 1599

(G)(1) A trust or legal instrument or device similar to a 1600
trust shall be considered a trust established by an individual for 1601
the benefit of the applicant or recipient if all of the following 1602
apply: 1603

(a) The trust is created by a person other than the applicant 1604
or recipient. 1605

(b) The trust names the applicant or recipient as a 1606
beneficiary. 1607

(c) The trust is funded with assets or property in which the 1608
applicant or recipient has never held an ownership interest prior 1609
to the establishment of the trust. 1610

(2) Any portion of a trust that meets the requirements of 1611
division (G)(1) of this section shall be an available resource 1612
only if the trust permits the trustee to expend principal, corpus, 1613
or assets of the trust for the applicant's or recipient's medical 1614
care, care, comfort, maintenance, health, welfare, general well 1615
being, or any combination of these purposes. 1616

(3) A trust that meets the requirements of division (G)(1) of 1617
this section shall be considered an available resource even if the 1618
trust contains any of the following types of provisions: 1619

(a) A provision that prohibits the trustee from making 1620
payments that would supplant or replace medical assistance or 1621
other public assistance; 1622

(b) A provision that prohibits the trustee from making 1623
payments that would impact or have an effect on the applicant's or 1624
recipient's right, ability, or opportunity to receive medical 1625
assistance or other public assistance; 1626

(c) A provision that attempts to prevent the trust or its 1627
corpus or principal from being counted as an available resource. 1628

(4) A trust that meets the requirements of division (G)(1) of 1629
this section shall not be counted as an available resource if at 1630
least one of the following circumstances applies: 1631

(a) If a trust contains a clear statement requiring the 1632
trustee to preserve a portion of the trust for another beneficiary 1633
or remainderman, that portion of the trust shall not be counted as 1634
an available resource. Terms of a trust that grant discretion to 1635
preserve a portion of the trust shall not qualify as a clear 1636
statement requiring the trustee to preserve a portion of the 1637
trust. 1638

(b) If a trust contains a clear statement requiring the 1639
trustee to use a portion of the trust for a purpose other than 1640

medical care, care, comfort, maintenance, welfare, or general well 1641
being of the applicant or recipient, that portion of the trust 1642
shall not be counted as an available resource. Terms of a trust 1643
that grant discretion to limit the use of a portion of the trust 1644
shall not qualify as a clear statement requiring the trustee to 1645
use a portion of the trust for a particular purpose. 1646

(c) If a trust contains a clear statement limiting the 1647
trustee to making fixed periodic payments, the trust shall not be 1648
counted as an available resource and payments shall be treated in 1649
accordance with rules adopted by the department of job and family 1650
services governing income. Terms of a trust that grant discretion 1651
to limit payments shall not qualify as a clear statement requiring 1652
the trustee to make fixed periodic payments. 1653

(d) If a trust contains a clear statement that requires the 1654
trustee to terminate the trust if it is counted as an available 1655
resource, the trust shall not be counted as an available resource. 1656
Terms of a trust that grant discretion to terminate the trust do 1657
not qualify as a clear statement requiring the trustee to 1658
terminate the trust. 1659

(e) If a person obtains a judgment from a court of competent 1660
jurisdiction that expressly prevents the trustee from using part 1661
or all of the trust for the medical care, care, comfort, 1662
maintenance, welfare, or general well being of the applicant or 1663
recipient, the trust or that portion of the trust subject to the 1664
court order shall not be counted as a resource. 1665

(f) If a trust is specifically exempt from being counted as 1666
an available resource by a provision of the Revised Code, rules, 1667
or federal law, the trust shall not be counted as a resource. 1668

(g) If an applicant or recipient presents a final judgment 1669
from a court demonstrating that the applicant or recipient was 1670
unsuccessful in a civil action against the trustee to compel 1671

payments from the trust, the trust shall not be counted as an 1672
available resource. 1673

(h) If an applicant or recipient presents a final judgment 1674
from a court demonstrating that in a civil action against the 1675
trustee the applicant or recipient was only able to compel limited 1676
or periodic payments, the trust shall not be counted as an 1677
available resource and payments shall be treated in accordance 1678
with rules adopted by the department of job and family services 1679
governing income. 1680

(i) If an applicant or recipient provides written 1681
documentation showing that the cost of a civil action brought to 1682
compel payments from the trust would be cost prohibitive, the 1683
trust shall not be counted as an available resource. 1684

(5) Any actual payments to the applicant or recipient from a 1685
trust that meet the requirements of division (G)(1) of this 1686
section, including trusts that are not counted as an available 1687
resource, shall be treated as provided in rules adopted by the 1688
department of job and family services governing income. Payments 1689
to any person other than the applicant or recipient shall not be 1690
considered income to the applicant or recipient. Payments from the 1691
trust to a person other than the applicant or recipient shall not 1692
be considered an improper transfer of assets. 1693

Sec. 5119.01. The director of mental health is the chief 1694
executive and administrative officer of the department of mental 1695
health. The director may establish procedures for the governance 1696
of the department, conduct of its employees and officers, 1697
performance of its business, and custody, use, and preservation of 1698
departmental records, papers, books, documents, and property. 1699
Whenever the Revised Code imposes a duty upon or requires an 1700
action of the department or any of its institutions, the director 1701
shall perform the action or duty in the name of the department, 1702

except that the medical director appointed pursuant to section 1703
5119.07 of the Revised Code shall be responsible for decisions 1704
relating to medical diagnosis, treatment, rehabilitation, quality 1705
assurance, and the clinical aspects of the following: licensure of 1706
hospitals and residential facilities, research, community mental 1707
health plans, and delivery of mental health services. 1708

The director shall: 1709

(A) Adopt rules for the proper execution of the powers and 1710
duties of the department with respect to the institutions under 1711
its control, and require the performance of additional duties by 1712
the officers of the institutions as necessary to fully meet the 1713
requirements, intents, and purposes of this chapter. In case of an 1714
apparent conflict between the powers conferred upon any managing 1715
officer and those conferred by such sections upon the department, 1716
the presumption shall be conclusive in favor of the department. 1717

(B) Adopt rules for the nonpartisan management of the 1718
institutions under the department's control. An officer or 1719
employee of the department or any officer or employee of any 1720
institution under its control who, by solicitation or otherwise, 1721
exerts influence directly or indirectly to induce any other 1722
officer or employee of the department or any of its institutions 1723
to adopt the exerting officer's or employee's political views or 1724
to favor any particular person, issue, or candidate for office 1725
shall be removed from the exerting officer's or employee's office 1726
or position, by the department in case of an officer or employee, 1727
and by the governor in case of the director. 1728

(C) Appoint such employees, including the medical director, 1729
as are necessary for the efficient conduct of the department, and 1730
prescribe their titles and duties; 1731

(D) Prescribe the forms of affidavits, applications, medical 1732
certificates, orders of hospitalization and release, and all other 1733

forms, reports, and records that are required in the 1734
hospitalization or admission and release of all persons to the 1735
institutions under the control of the department, or are otherwise 1736
required under this chapter or Chapter 5122. of the Revised Code; 1737

(E) Contract with hospitals licensed by the department under 1738
section 5119.20 of the Revised Code for the care and treatment of 1739
mentally ill patients, or with persons, organizations, or agencies 1740
for the custody, supervision, care, or treatment of mentally ill 1741
persons receiving services elsewhere than within the enclosure of 1742
a hospital operated under section 5119.02 of the Revised Code; 1743

(F) Exercise the powers and perform the duties relating to 1744
community mental health facilities and services that are assigned 1745
to the director under this chapter and Chapter 340. of the Revised 1746
Code; 1747

(G) Develop and implement clinical evaluation and monitoring 1748
of services that are operated by the department; 1749

(H) At the director's discretion, adopt rules establishing 1750
standards for the adequacy of services provided by community 1751
mental health facilities, and certify the compliance of such 1752
facilities with the standards for the purpose of authorizing their 1753
participation in the health care plans of health insuring 1754
corporations under Chapter 1751. and sickness and accident 1755
insurance policies issued under Chapter 3923. of the Revised Code. 1756
The director shall cease to certify such compliance two years 1757
after ~~the effective date of this amendment~~ June 6, 2001. The 1758
director shall rescind the rules after the date the director 1759
ceases to certify such compliance. 1760

(I) Adopt rules establishing standards for the performance of 1761
evaluations by a forensic center or other psychiatric program or 1762
facility of the mental condition of defendants ordered by the 1763
court under section 2919.271, or 2945.371 of the Revised Code, and 1764

for the treatment of defendants who have been found incompetent to stand trial and ordered by the court under section 2945.38, 2945.39, 2945.401, or 2945.402 of the Revised Code to receive treatment in facilities;

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

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

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

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

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

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

Supplemental services may be provided through the department or boards of alcohol, drug addiction, and mental health services. In accordance with Chapter 119. of the Revised Code, the

department of mental health may adopt any rules necessary to 1795
implement this section. 1796

Sec. 5121.04. (A) The department of mental retardation and 1797
developmental disabilities shall investigate the financial 1798
condition of the residents in institutions, residents whose care 1799
or treatment is being paid for in a private facility or home under 1800
the control of the department, and of the relatives named in 1801
section 5121.06 of the Revised Code as liable for the support of 1802
such residents, in order to determine the ability of any resident 1803
or liable relatives to pay for the support of the resident and to 1804
provide suitable clothing as required by the superintendent of the 1805
institution. 1806

(B) The department shall follow the provisions of this 1807
division in determining the ability to pay of a resident or the 1808
resident's liable relatives and the amount to be charged such 1809
resident or liable relatives. 1810

(1) Subject to divisions (B)(10) and (11) of this section, a 1811
resident without dependents shall be liable for the full 1812
applicable cost. A resident without dependents who has a gross 1813
annual income equal to or exceeding the sum of the full applicable 1814
cost, plus fifty dollars per month, regardless of the source of 1815
such income, shall pay currently the full amount of the applicable 1816
cost; if the resident's gross annual income is less than such sum, 1817
not more than fifty dollars per month shall be kept for personal 1818
use by or on behalf of the resident, except as permitted in the 1819
state plan for providing medical assistance under Title XIX of the 1820
"Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as 1821
amended, and the balance shall be paid currently on the resident's 1822
support. Subject to divisions (B)(10) and (11) of this section, 1823
the estate of a resident without dependents shall pay currently 1824
any remaining difference between the applicable cost and the 1825

amounts prescribed in this section, or shall execute an agreement 1826
with the department for payment to be made at some future date 1827
under terms suitable to the department. However, no security 1828
interest, mortgage, or lien shall be taken, granted, or charged 1829
against any principal residence of a resident without dependents 1830
under an agreement or otherwise to secure support payments, and no 1831
foreclosure actions shall be taken on security interests, 1832
mortgages, or liens taken, granted, or charged against principal 1833
residences of residents prior to October 7, 1977. 1834

(2) The ability to pay of a resident with dependents, or of a 1835
liable relative of a resident either with or without dependents, 1836
shall be determined in accordance with the resident's or liable 1837
relative's income or other assets, the needs of others who are 1838
dependent on such income and other assets for support, and, if 1839
applicable, divisions (B)(10) and (11) of this section. 1840

For the first thirty days of care and treatment of each 1841
admission, but in no event for more than thirty days in any 1842
calendar year, the resident with dependents or the liable relative 1843
of a resident either with or without dependents shall be charged 1844
an amount equal to the percentage of the average applicable cost 1845
determined in accordance with the schedule of adjusted gross 1846
annual income contained after this paragraph. After such first 1847
thirty days of care and treatment, such resident or such liable 1848
relative shall be charged an amount equal to the percentage of a 1849
base support rate of four dollars per day for residents, as 1850
determined in accordance with the schedule of gross annual income 1851
contained after this paragraph, or in accordance with division 1852
(B)(5) of this section. Beginning January 1, 1978, the department 1853
shall increase the base rate when the consumer price index average 1854
is more than 4.0 for the preceding calendar year by not more than 1855
the average for such calendar year. 1856
Adjusted Gross Annual 1857

Income of Resident									1858
or Liable Relative (FN a)	Number of Dependents (FN b)								1859
								8 or	1860
	1	2	3	4	5	6	7	more	1861
	Rate of Support (In Percentages)								1862
\$15,000 or less	--	--	--	--	--	--	--	--	1863
15,001 to 17,500	20	--	--	--	--	--	--	--	1864
17,501 to 20,000	25	20	--	--	--	--	--	--	1865
20,001 to 21,000	30	25	20	--	--	--	--	--	1866
21,001 to 22,000	35	30	25	20	--	--	--	--	1867
22,001 to 23,000	40	35	30	25	20	--	--	--	1868
23,001 to 24,000	45	40	35	30	25	20	--	--	1869
24,001 to 25,000	50	45	40	35	30	25	20	--	1870
25,001 to 26,000	55	50	45	40	35	30	25	20	1871
26,001 to 27,000	60	55	50	45	40	35	30	25	1872
27,001 to 28,000	70	60	55	50	45	40	35	30	1873
28,001 to 30,000	80	70	60	55	50	45	40	35	1874
30,001 to 40,000	90	80	70	60	55	50	45	40	1875
40,001 and over	100	90	80	70	60	55	50	45	1876

Footnote a. The resident or relative shall furnish a copy of the resident's or relative's federal income tax return as evidence of gross annual income. 1877
1878
1879

Footnote b. The number of dependents includes the liable relative but excludes a resident in an institution. "Dependent" includes any person who receives more than half the person's support from the resident or the resident's liable relative. 1880
1881
1882
1883

(3) A resident or liable relative having medical, funeral, or related expenses in excess of four per cent of the adjusted gross annual income, which expenses were not covered by insurance, may adjust such gross annual income by reducing the adjusted gross annual income by the full amount of such expenses. Proof of such expenses satisfactory to the department must be furnished. 1884
1885
1886
1887
1888
1889

(4) Additional dependencies may be claimed if:	1890
(a) The liable relative is blind;	1891
(b) The liable relative is over sixty-five;	1892
(c) A child is a college student with expenses in excess of fifty dollars per month;	1893 1894
(d) The services of a housekeeper, costing in excess of fifty dollars per month, are required if the person who normally keeps house for minor children is the resident.	1895 1896 1897
(5) If with respect to any resident with dependents there is chargeable under division (B)(2) of this section less than fifty per cent of the applicable cost or, if the base support rate was used, less than fifty per cent of the amount determined by use of the base support rate, and if with respect to such resident there is a liable relative who has an estate having a value in excess of fifteen thousand dollars or if such resident has a dependent and an estate having a value in excess of fifteen thousand dollars, there shall be paid with respect to such resident a total of fifty per cent of the applicable cost or the base support rate amount, as the case may be, on a current basis or there shall be executed with respect to such resident an agreement with the department for payment to be made at some future date under terms suitable to the department.	1898 1899 1900 1901 1902 1903 1904 1905 1906 1907 1908 1909 1910 1911
(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.	1912 1913 1914 1915
(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	1916 1917 1918 1919

from both liable and nonliable relatives. 1920

(8) If a resident is covered by an insurance policy, or other 1921
contract that provides for payment of expenses for care and 1922
treatment for mental retardation or other developmental disability 1923
at or from an institution or facility (including a community 1924
service unit under the jurisdiction of the department), the other 1925
provisions of this section, except divisions (B)(8), (10), and 1926
(11) of this section, and of section 5121.01 of the Revised Code 1927
shall be suspended to the extent that such insurance policy or 1928
other contract is in force, and such resident shall be charged the 1929
full amount of the applicable cost. Any insurance carrier or other 1930
third party payor providing coverage for such care and treatment 1931
shall pay for this support obligation in an amount equal to the 1932
lesser of either the applicable cost or the benefits provided 1933
under the policy or other contract. Whether or not an insured, 1934
owner of, or other person having an interest in such policy or 1935
other contract is liable for support payments under other 1936
provisions of this chapter, the insured, policy owner, or other 1937
person shall assign payment directly to the department of all 1938
assignable benefits under the policy or other contract and shall 1939
pay over to the department, within ten days of receipt, all 1940
insurance or other benefits received as reimbursement or payment 1941
for expenses incurred by the resident or for any other reason. If 1942
the insured, policy owner, or other person refuses to assign such 1943
payment to the department or refuses to pay such received 1944
reimbursements or payments over to the department within ten days 1945
of receipt, the insured's, policy owners', or other person's total 1946
liability for the services equals the applicable statutory 1947
liability for payment for the services as determined under other 1948
provisions of this chapter, plus the amounts payable under the 1949
terms of the policy or other contract. In no event shall this 1950
total liability exceed the full amount of the applicable cost. 1951

Upon its request, the department is entitled to a court order that
compels the insured, owner of, or other person having an interest
in the policy or other contract to comply with the assignment
requirements of this division or that itself serves as a legally
sufficient assignment in compliance with such requirements.
Notwithstanding section 5123.89 of the Revised Code and any other
law relating to confidentiality of records, the managing officer
of the institution or facility where a person is or has been a
resident shall disclose pertinent medical information concerning
the resident to the insurance carrier or other third party payor
in question, in order to effect collection from the carrier or
payor of the state's claim for care and treatment under this
division. For such disclosure, the managing officer is not subject
to any civil or criminal liability.

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

(10) If a resident with or without dependents is the
beneficiary of a trust created pursuant to section ~~1339.51~~ 5815.28
of the Revised Code, then, notwithstanding any contrary provision
of this chapter or of a rule adopted pursuant to this chapter,
divisions (C) and (D) of that section shall apply in determining
the assets or resources of the resident, the resident's estate,
the settlor, or the settlor's estate and to claims arising under
this chapter against the resident, the resident's estate, the
settlor, or the settlor's estate.

(11) If the department waives the liability of an individual
and the individual's liable relatives pursuant to section 5123.194
of the Revised Code, the liability of the individual and relative

ceases in accordance with the waiver's terms. 1984

(C) The department may enter into agreements with a resident 1985
or a liable relative for support payments to be made in the 1986
future. However, no security interest, mortgage, or lien shall be 1987
taken, granted, or charged against any principal family residence 1988
of a resident with dependents or a liable relative under an 1989
agreement or otherwise to secure support payments, and no 1990
foreclosure actions shall be taken on security interests, 1991
mortgages or liens taken, granted, or charged against principal 1992
residences of residents or liable relatives prior to October 7, 1993
1977. 1994

(D) The department shall make all investigations and 1995
determinations required by this section within ninety days after a 1996
resident is admitted to an institution under the department's 1997
control and immediately shall notify by mail the persons liable of 1998
the amount to be charged. 1999

(E) All actions to enforce the collection of payments agreed 2000
upon or charged by the department shall be commenced within six 2001
years after the date of default of an agreement to pay support 2002
charges or the date such payment becomes delinquent. If a payment 2003
is made pursuant to an agreement which is in default, a new 2004
six-year period for actions to enforce the collection of payments 2005
under such agreement shall be computed from the date of such 2006
payment. For purposes of this division an agreement is in default 2007
or a payment is delinquent if a payment is not made within thirty 2008
days after it is incurred or a payment, pursuant to an agreement, 2009
is not made within thirty days after the date specified for such 2010
payment. In all actions to enforce the collection of payment for 2011
the liability for support, every court of record shall receive 2012
into evidence the proof of claim made by the state together with 2013
all debts and credits, and it shall be prima-facie evidence of the 2014
facts contained in it. 2015

Sec. 5121.10. Upon the death of a resident or former resident 2016
of any institution under the jurisdiction of the department of 2017
mental retardation and developmental disabilities, or upon the 2018
death of a person responsible under section 5121.06 of the Revised 2019
Code for the support of a resident, the department may waive the 2020
presentation of any claim for support against the estate of such 2021
decedent, when in its judgment an otherwise dependent person will 2022
be directly benefited by the estate. Claims against an estate for 2023
support of a resident are subject to section ~~1339.51~~ 5815.28 and 2024
Chapter 2117. of the Revised Code, and shall be treated, and may 2025
be barred, the same as the claims of other creditors of the 2026
estate, pursuant to that section or chapter. 2027

The department may accept from a guardian or trustee of a 2028
resident a contract agreeing to pay to the state from the property 2029
of the guardian's or trustee's ward before or at the death of the 2030
ward a fixed annual amount for the support of the ward while the 2031
ward is a resident, with interest at four per cent per annum. A 2032
copy of the contract shall be filed in the probate court of the 2033
proper county and duly entered as a part of the records concerning 2034
the ward. 2035

Sec. 5121.30. As used in sections 5121.30 to 5121.56 of the 2036
Revised Code: 2037

(A) "Community mental health services client" or "client" 2038
means a person receiving state-operated community mental health 2039
services. 2040

(B) "Countable assets" means all of the following: 2041

(1) Cash; 2042

(2) Bank deposits; 2043

(3) Securities; 2044

(4) Individual retirement accounts;	2045
(5) Qualified employer plans, including 401(k) and Keogh plans;	2046 2047
(6) Annuities;	2048
(7) Funds in a trust created under section 1339.51 <u>5815.28</u> of the Revised Code;	2049 2050
(8) Investment property and income;	2051
(9) The cash surrender values of life insurance policies;	2052
(10) Assets acquired by gift, bequest, devise, or inheritance;	2053 2054
(11) Any other asset determined by the department of mental health to be equivalent to the assets enumerated in this division.	2055 2056
(C) "Federal poverty level" or "FPL" means the income level represented by the poverty guidelines as revised annually by the United States department of health and human services in accordance with section 673(2) of the "Omnibus Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, for a family size equal to the size of the family of the person whose income is being determined.	2057 2058 2059 2060 2061 2062 2063
(D) "Federal poverty guidelines" means the poverty guidelines as revised annually by the United States department of health and human services in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, for a family size equal to the size of the family of the person whose income is being determined.	2064 2065 2066 2067 2068 2069
(E) "Hospital" means an institution, hospital, or other place established, controlled, or supervised by the department of mental health under Chapter 5119. of the Revised Code.	2070 2071 2072
(F) "Liable relative" means all of the following:	2073

(1) A patient's spouse;	2074
(2) A patient's mother or father, or both, if the patient is under eighteen years of age;	2075 2076
(3) A patient's guardian.	2077
(G) "Patient" means a person admitted to a hospital for inpatient care or treatment, including a person transferred to a hospital from a state correctional institution or a person under indictment or conviction who has been transferred to a hospital.	2078 2079 2080 2081
Sec. 5121.52. On the death of a person who is a patient, or has been a patient in a hospital, or on the death of a person responsible under section 5121.34 of the Revised Code for the support of a patient, the department of mental health may waive the presentation of any claim for support against the estate of such decedent, when in its judgment an otherwise dependent person will be directly benefited by the estate. Claims against an estate for support of a patient are subject to section 1339.51 <u>5815.28</u> 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.	2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092
The department of mental health may accept from a guardian or trustee of a patient a contract agreeing to pay to the state from the property of the guardian's or trustee's ward before or at the death of the ward a fixed annual amount for the support of the ward while the ward is a patient, with interest at four per cent per annum. A copy of the contract shall be filed in the probate court of the proper county and duly entered as a part of the records concerning the ward.	2093 2094 2095 2096 2097 2098 2099 2100
Sec. 5123.04. (A) The director of mental retardation and developmental disabilities is the executive head of the department of mental retardation and developmental disabilities. All duties	2101 2102 2103

conferred on the department and its institutions by law or by 2104
order of the director shall be performed under such rules as the 2105
director prescribes, and shall be under the director's control. 2106
The director shall establish bylaws for the government of all 2107
institutions under the jurisdiction of the department. Except as 2108
otherwise is provided as to appointments by chiefs of divisions, 2109
the director shall appoint such employees as are necessary for the 2110
efficient conduct of the department, and shall prescribe their 2111
titles and duties. If the director is not a licensed physician, 2112
decisions relating to medical diagnosis and treatment shall be the 2113
responsibility of a licensed physician appointed by the director. 2114

(B) The director shall adopt rules for the proper execution 2115
of the powers and duties of the department. 2116

(C) The director shall adopt rules establishing standards 2117
that mental retardation programs and facilities shall follow when 2118
performing evaluations of the mental condition of defendants 2119
ordered by the court under section 2919.271 or 2945.371 of the 2120
Revised Code, and for the treatment of defendants who have been 2121
found incompetent to stand trial under section 2945.38 of the 2122
Revised Code, and certify the compliance of such programs and 2123
facilities with the standards. 2124

(D) On behalf of the department, the director has the 2125
authority to, and responsibility for, entering into contracts and 2126
other agreements. 2127

(E) The director shall adopt rules in accordance with Chapter 2128
119. of the Revised Code that do all of the following: 2129

(1) Specify the supplemental services that may be provided 2130
through a trust authorized by section ~~1339.51~~ 5815.28 of the 2131
Revised Code; 2132

(2) Establish standards for the maintenance and distribution 2133
to a beneficiary of assets of a trust authorized by section 2134

~~1339.51~~ 5815.28 of the Revised Code. 2135

(F) The director shall provide monitoring of county boards of 2136
mental retardation and developmental disabilities. 2137

Sec. 5123.28. (A) Except as otherwise provided in this 2138
division, money or property deposited with managing officers of 2139
institutions under the jurisdiction of the department of mental 2140
retardation and developmental disabilities by any resident under 2141
the department's control or by relatives, guardians, conservators, 2142
and others for the special benefit of such resident, as well as 2143
all other funds and all other income paid to the resident, to ~~his~~ 2144
the resident's estate, or on ~~his~~ the resident's behalf, or paid to 2145
the managing officer or to the institution as representative payee 2146
or otherwise paid on the resident's behalf, shall remain in the 2147
hands of such managing officers in appropriate accounts for use 2148
accordingly. Each such managing officer shall keep itemized book 2149
accounts of the receipt and disposition of such money and 2150
property, which book shall be open at all times to the inspection 2151
of the department. The director of mental retardation and 2152
developmental disabilities shall adopt rules governing the 2153
deposit, transfer, withdrawal, or investment of such funds and the 2154
income of the funds, as well as rules under which such funds and 2155
income shall be paid by managing officers, institutions, or 2156
district managers for the support of such residents pursuant to 2157
Chapter 5121. of the Revised Code, or for their other needs. 2158

This division does not require, and shall not be construed as 2159
requiring, the deposit of the principal or income of a trust 2160
created pursuant to section ~~1339.51~~ 5815.28 of the Revised Code 2161
with managing officers of institutions under the jurisdiction of 2162
the department. 2163

(B) Whenever any resident confined in a state institution 2164
under the jurisdiction of the department dies, escapes, or is 2165

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

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

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

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

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

possible to locate the owner or ~~his~~ the owner's legal 2197
representative. If, at the end of this period, no demand has been 2198
made by the owner of the property or ~~his~~ the owner's legal 2199
representative, the managing officer shall file with the county 2200
recorder of the county of commitment of such owner, all deeds, 2201
wills, contract mortgages, or assignments. The balance of the 2202
personal effects shall be sold at public auction after being duly 2203
advertised, and the funds turned over to the treasurer of state 2204
for credit to the general revenue fund. If any of the property is 2205
not of a type to be filed with the county recorder and is not 2206
salable at public auction, the managing officer of the institution 2207
shall destroy that property. 2208

Sec. 5123.40. There is hereby created in the state treasury 2209
the services fund for individuals with mental retardation and 2210
developmental disabilities. On the death of the beneficiary of a 2211
trust created pursuant to section ~~1339.51~~ 5815.28 of the Revised 2212
Code, the portion of the remaining assets of the trust specified 2213
in the trust instrument shall be deposited to the credit of the 2214
fund. 2215

Money credited to the fund shall be used for individuals with 2216
mental retardation and developmental disabilities. In accordance 2217
with Chapter 119. of the Revised Code, the department of mental 2218
retardation and developmental disabilities may adopt any rules 2219
necessary to implement this section. 2220

Sec. 5801.01. As used in Chapters 5801. to 5811. of the 2221
Revised Code: 2222

(A) "Action," with respect to an act of a trustee, includes a 2223
failure to act. 2224

(B) "Ascertainable standard" means a standard relating to an 2225
individual's health, education, support, or maintenance within the 2226

meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal 2227
Revenue Code. 2228

(C) "Beneficiary" means a person that has a present or future 2229
beneficial interest in a trust, whether vested or contingent, or 2230
that, in a capacity other than that of trustee, holds a power of 2231
appointment over trust property, or a charitable organization that 2232
is expressly designated in the terms of the trust to receive 2233
distributions. "Beneficiary" does not include any charitable 2234
organization that is not expressly designated in the terms of the 2235
trust to receive distributions, but to whom the trustee may in its 2236
discretion make distributions. 2237

(D) "Beneficiary surrogate" means a person, other than a 2238
trustee, designated by the settlor in the trust instrument to 2239
receive notices, information, and reports otherwise required to be 2240
provided to a current beneficiary under divisions (B)(8) and (9) 2241
of section 5801.04 of the Revised Code. 2242

(E) "Charitable trust" means a trust, or portion of a trust, 2243
created for a charitable purpose described in division (A) of 2244
section 5804.05 of the Revised Code. 2245

(F) "Current beneficiary" means a beneficiary that, on the 2246
date the beneficiary's qualification is determined, is a 2247
distributee or permissible distributee of trust income or 2248
principal. 2249

(G) "Environmental law" means a federal, state, or local law, 2250
rule, regulation, or ordinance relating to protection of the 2251
environment. 2252

(H) "Guardian of the estate" means a guardian appointed by a 2253
court to administer the estate of any individual or to serve as 2254
conservator of the property of an individual eighteen years of age 2255
or older under section 2111.021 of the Revised Code. 2256

(I) "Guardian of the person" means a guardian appointed by a court to make decisions regarding the support, care, education, health, and welfare of any individual or to serve as conservator of the person of an individual eighteen years of age or older under section 2111.021 of the Revised Code. "Guardian of the person" does not include a guardian ad litem. 2257
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(J) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended. 2263
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(K) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust. 2265
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(L) "Jurisdiction," with respect to a geographic area, includes a state or country. 2267
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(M) "Mandatory distribution" means a distribution of income or principal, including a distribution upon termination of the trust, that the trustee is required to make to a beneficiary under the terms of the trust. Mandatory distributions do not include distributions that a trustee is directed or authorized to make pursuant to a support or other standard, regardless of whether the terms of the trust provide that the trustee "may" or "shall" make the distributions pursuant to a support or other standard. 2269
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(N) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental agency or instrumentality, public corporation, or any other legal or commercial entity. 2277
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(O) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable by a trustee that is limited by an ascertainable standard or that is exercisable by another person only upon consent of the trustee or a person holding an adverse interest. 2282
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(P) "Property" means anything or any interest in anything 2287
that may be the subject of ownership. 2288

(O) "Qualified beneficiary" means a beneficiary to whom, on 2289
the date the beneficiary's qualification is determined, any of the 2290
following applies: 2291

(1) The beneficiary is a distributee or permissible 2292
distributee of trust income or principal. 2293

(2) The beneficiary would be a distributee or permissible 2294
distributee of trust income or principal if the interests of the 2295
distributees described in division (O)(1) of this section 2296
terminated on that date, but the termination of those interests 2297
would not cause the trust to terminate. 2298

(3) The beneficiary would be a distributee or permissible 2299
distributee of trust income or principal if the trust terminated 2300
on that date. 2301

(R) "Revocable," as applied to a trust, means revocable at 2302
the time of determination by the settlor alone or by the settlor 2303
with the consent of any person other than a person holding an 2304
adverse interest. A trust's characterization as revocable is not 2305
affected by the settlor's lack of capacity to exercise the power 2306
of revocation, regardless of whether an agent of the settlor under 2307
a power of attorney, or a guardian of the person or estate of the 2308
settlor, is serving. 2309

(S) "Settlor" means a person, including a testator, who 2310
creates, or contributes property to, a trust. If more than one 2311
person creates or contributes property to a trust, each person is 2312
a settlor of the portion of the trust property attributable to 2313
that person's contribution except to the extent another person has 2314
the power to revoke or withdraw that portion. 2315

(T) "Spendthrift provision" means a term of a trust that 2316

restrains both voluntary and involuntary transfer of a 2317
beneficiary's interest. 2318

(U) "State" means a state of the United States, the District 2319
of Columbia, the Commonwealth of Puerto Rico, a territory or 2320
possession of the United States, or an Indian tribe or band 2321
recognized by federal law or formally acknowledged by a state. 2322

(V) "Terms of a trust" means the manifestation of the 2323
settlor's intent regarding a trust's provisions as expressed in 2324
the trust instrument or as may be established by other evidence 2325
that would be admissible in a judicial proceeding. 2326

(W) "Trust instrument" means an instrument executed by the 2327
settlor that contains terms of the trust and any amendments to 2328
that instrument. 2329

(X) "Trustee" includes an original, additional, and successor 2330
trustee and a cotrustee. 2331

(Y)(1) "Wholly discretionary trust" means a trust to which 2332
all of the following apply: 2333

(a) The trust is irrevocable. 2334

(b) Distributions of income or principal from the trust may 2335
or shall be made to or for the benefit of the beneficiary only at 2336
the trustee's discretion. 2337

(c) The beneficiary does not have a power of withdrawal from 2338
the trust. 2339

(d) The terms of the trust use "sole," "absolute," 2340
"uncontrolled," or language of similar import to describe the 2341
trustee's discretion to make distributions to or for the benefit 2342
of the beneficiary. 2343

(e) The terms of the trust do not provide any standards to 2344
guide the trustee in exercising its discretion to make 2345
distributions to or for the benefit of the beneficiary. 2346

(f) The beneficiary is not the settlor, the trustee, or a cotrustee. 2347
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(g) The beneficiary does not have the power to become the trustee or a cotrustee. 2349
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(2) A trust may be a wholly discretionary trust with respect to one or more but less than all beneficiaries. 2351
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(3) If a beneficiary has a power of withdrawal, the trust may be a wholly discretionary trust with respect to that beneficiary during any period in which the beneficiary may not exercise the power. During a period in which the beneficiary may exercise the power, both of the following apply: 2353
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(a) The portion of the trust the beneficiary may withdraw may not be a wholly discretionary trust with respect to that beneficiary; 2358
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(b) The portion of the trust the beneficiary may not withdraw may be a wholly discretionary trust with respect to that beneficiary. 2361
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(4) If the beneficiary and one or more others have made contributions to the trust, the portion of the trust attributable to the beneficiary's contributions may not be a wholly discretionary trust with respect to that beneficiary, but the portion of the trust attributable to the contributions of others may be a wholly discretionary trust with respect to that beneficiary. If a beneficiary has a power of withdrawal, then upon the lapse, release, or waiver of the power, the beneficiary is treated as having made contributions to the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greatest of the following amounts: 2364
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(a) The amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code; 2375
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(b) If the donor of the property subject to the beneficiary's power of withdrawal is not married at the time of the transfer of the property to the trust, the amount specified in section 2503(b) of the Internal Revenue Code; 2377
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(c) If the donor of the property subject to the beneficiary's power of withdrawal is married at the time of the transfer of the property to the trust, twice the amount specified in section 2503(b) of the Internal Revenue Code. 2381
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(5) Notwithstanding divisions (Y)(1)(f) and (g) of this section, a trust may be a wholly discretionary trust if the beneficiary is, or has the power to become, a trustee only with respect to the management or the investment of the trust assets, and not with respect to making discretionary distribution decisions. With respect to a trust established for the benefit of an individual who is blind or disabled as defined in 42 U.S.C. 1382c(a)(2) or (3), as amended, a wholly discretionary trust may include either or both of the following: 2385
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(a) Precatory language regarding its intended purpose of providing supplemental goods and services to or for the benefit of the beneficiary, and not to supplant benefits from public assistance programs; 2394
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(b) A prohibition against providing food, clothing, and shelter to the beneficiary. 2398
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Sec. 5801.011. Chapters 5801. to 5811. of the Revised Code may be cited as the Ohio trust code. 2400
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Sec. 5801.02. Except as otherwise provided in any provision of Chapters 5801. to 5811. of the Revised Code, those chapters apply to charitable and noncharitable inter vivos express trusts and to trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an 2402
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express trust. Chapters 5801. to 5811. of the Revised Code apply 2407
to testamentary trusts to the extent provided by section 2109.69 2408
of the Revised Code. 2409

Sec. 5801.03. (A) Subject to division (B) of this section, a 2410
person has knowledge of a fact if any of the following apply: 2411

(1) The person has actual knowledge of the fact. 2412

(2) The person has received notice or notification of the 2413
fact. 2414

(3) From all the facts and circumstances known to the person 2415
at the time in question, the person has reason to know the fact. 2416

(B) An organization that conducts activities through 2417
employees has notice or knowledge of a fact involving a trust only 2418
from the time an employee having responsibility to act for the 2419
trust received the information or the information would have been 2420
brought to the employee's attention if the organization had 2421
exercised reasonable diligence. An organization exercises 2422
reasonable diligence if it maintains reasonable routines for 2423
communicating significant information to the employee having 2424
responsibility to act for the trust and there is reasonable 2425
compliance with the routines. Reasonable diligence does not 2426
require an employee of the organization to communicate information 2427
unless the communication is part of the individual's regular 2428
duties or the individual knows a matter involving the trust would 2429
be materially affected by the information. 2430

Sec. 5801.04. (A) Except as otherwise provided in the terms 2431
of the trust, Chapters 5801. to 5811. of the Revised Code govern 2432
the duties and powers of a trustee, relations among trustees, and 2433
the rights and interests of a beneficiary. 2434

(B) The terms of a trust prevail over any provision of 2435

<u>Chapters 5801. to 5811. of the Revised Code except the following:</u>	2436
<u>(1) The requirements for creating a trust;</u>	2437
<u>(2) The duty of a trustee to act in good faith and in accordance with the purposes of the trust;</u>	2438
<u>(3) The requirement that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;</u>	2440
<u>(4) The power of the court to modify or terminate a trust under sections 5804.10 to 5804.16 of the Revised Code;</u>	2442
<u>(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Chapter 5805. of the Revised Code;</u>	2444
<u>(6) The power of the court under section 5807.02 of the Revised Code to require, dispense with, or modify or terminate a bond;</u>	2447
<u>(7) The power of the court under division (B) of section 5807.08 of the Revised Code to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;</u>	2448
<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>	2449
<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>	2450
<u>(10) The effect of an exculpatory term under section 5810.08</u>	2451
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<u>of the Revised Code;</u>	2466
<u>(11) The rights under sections 5810.10 to 5810.13 of the</u>	2467
<u>Revised Code of a person other than a trustee or beneficiary;</u>	2468
<u>(12) Periods of limitation for commencing a judicial</u>	2469
<u>proceeding;</u>	2470
<u>(13) The power of the court to take any action and exercise</u>	2471
<u>any jurisdiction that may be necessary in the interests of</u>	2472
<u>justice;</u>	2473
<u>(14) The subject-matter jurisdiction of the court for</u>	2474
<u>commencing a proceeding as provided in section 5802.03 of the</u>	2475
<u>Revised Code.</u>	2476
<u>(C) With respect to one or more of the current beneficiaries,</u>	2477
<u>the settlor, in the trust instrument, may waive or modify the</u>	2478
<u>duties of the trustee described in divisions (B)(8) and (9) of</u>	2479
<u>this section. The waiver or modification may be made only by the</u>	2480
<u>settlor designating in the trust instrument one or more</u>	2481
<u>beneficiary surrogates to receive any notices, information, or</u>	2482
<u>reports otherwise required under those divisions to be provided to</u>	2483
<u>the current beneficiaries. If the settlor makes a waiver or</u>	2484
<u>modification pursuant to this division, the trustee shall provide</u>	2485
<u>the notices, information, and reports to the beneficiary surrogate</u>	2486
<u>or surrogates in lieu of providing them to the current</u>	2487
<u>beneficiaries. The beneficiary surrogate or surrogates shall act</u>	2488
<u>in good faith to protect the interests of the current</u>	2489
<u>beneficiaries for whom the notices, information, or reports are</u>	2490
<u>received. A waiver or modification made under this division shall</u>	2491
<u>be effective for so long as the beneficiary surrogate or</u>	2492
<u>surrogates, or their successor or successors designated in</u>	2493
<u>accordance with the terms of the trust instrument, act in that</u>	2494
<u>capacity.</u>	2495

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

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

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

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

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

(D) The trustee shall notify the current beneficiaries of a proposed transfer of a trust's principal place of administration

not less than sixty days before initiating the transfer. The 2525
notice of a proposed transfer shall include all of the following: 2526

(1) The name of the jurisdiction to which the principal place 2527
of administration is to be transferred; 2528

(2) The address and telephone number at the new location at 2529
which the trustee can be contacted; 2530

(3) An explanation of the reasons for the proposed transfer; 2531

(4) The date on which the trustee expects the proposed 2532
transfer to occur. 2533

(E) In connection with a transfer of the trust's principal 2534
place of administration, the trustee may transfer some or all of 2535
the trust property to a successor trustee designated in the terms 2536
of the trust or appointed pursuant to section 5807.04 of the 2537
Revised Code. 2538

Sec. 5801.08. (A) Notice to a person or the sending of a 2539
document to a person under Chapters 5801. to 5811. of the Revised 2540
Code shall be accomplished in a manner reasonably suitable under 2541
the circumstances and likely to result in receipt of the notice or 2542
document. Permissible methods of notice or for sending a document 2543
include first-class mail, personal delivery, delivery to the 2544
person's last known place of residence or place of business, or a 2545
properly directed electronic message. 2546

(B) Notice otherwise required or a document otherwise 2547
required to be sent under Chapters 5801. to 5811. of the Revised 2548
Code is not required to be provided to a person whose identity or 2549
location is unknown to and not reasonably ascertainable by the 2550
trustee. 2551

(C) The person to be notified or sent a document may waive 2552
notice or the sending of a document under Chapters 5801. to 5811. 2553
of the Revised Code. 2554

(D) Notice of a judicial proceeding must be given as provided 2555
in the applicable rules of civil procedure. 2556

Sec. 5801.09. (A) Whenever Chapters 5801. to 5811. of the 2557
Revised Code require notice to current or qualified beneficiaries 2558
of a trust, the trustee shall also give notice to any other 2559
beneficiary who has sent the trustee a request for notice. 2560

(B) A person appointed to enforce a trust created for the 2561
care of an animal or another noncharitable purpose as provided in 2562
section 5804.08 or 5804.09 of the Revised Code has the rights of a 2563
current beneficiary under Chapters 5801. to 5811. of the Revised 2564
Code. 2565

Sec. 5801.10. (A) As used in this section, "creditor" means 2566
any of the following: 2567

(1) A person holding a debt or security for a debt entered 2568
into by a trustee on behalf of the trust; 2569

(2) A person holding a debt secured by one or more assets of 2570
the trust; 2571

(3) A person having a claim against the trustee or the assets 2572
of the trust under section 5805.06 of the Revised Code; 2573

(4) A person who has attached through legal process a 2574
beneficiary's interest in the trust. 2575

(B) The parties to an agreement under this section shall be 2576
all of the following, or their representatives under the 2577
representation provisions of Chapter 5803. of the Revised Code, 2578
except that only the settlor and any trustee are required to be 2579
parties to an amendment of any revocable trust: 2580

(1) The settlor if living and if no adverse income or 2581
transfer tax results would arise from the settlor's participation; 2582

<u>(2) All beneficiaries;</u>	2583
<u>(3) All currently serving trustees;</u>	2584
<u>(4) Creditors, if their interest is to be affected by the agreement.</u>	2585 2586
<u>(C) The persons specified in division (B) of this section may by written instrument enter into an agreement with respect to any matter concerning the construction of, administration of, or distributions under the trust instrument, the investment of income or principal held by the trustee, or other matters. The agreement is valid only to the extent that it does not effect a termination of the trust before the date specified for the trust's termination in the trust instrument, does not change the interests of the beneficiaries in the trust except as necessary to effect a modification described in division (C)(5) or (6) of this section, and includes terms and conditions that could be properly approved by the court under Chapters 5801. to 5811. of the Revised Code or other applicable law. Matters that may be resolved by a private settlement agreement include, but are not limited to, all of the following:</u>	2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601
<u>(1) Determining classes of creditors, beneficiaries, heirs, next of kin, or other persons;</u>	2602 2603
<u>(2) Resolving disputes arising out of the administration or distribution under the trust instrument, including disputes over the construction of the language of the trust instrument or construction of the language of other writings that affect the trust instrument;</u>	2604 2605 2606 2607 2608
<u>(3) Granting to the trustee necessary or desirable powers not granted in the trust instrument or otherwise provided by law, to the extent that those powers either are not inconsistent with the express provisions or purposes of the trust instrument or, if inconsistent with the express provisions or purposes of the trust</u>	2609 2610 2611 2612 2613

instrument, are necessary for the due administration of the trust 2614
instrument; 2615

(4) Modifying the trust instrument, if the modification is 2616
not inconsistent with any dominant purpose or objective of the 2617
trust; 2618

(5) Modifying the trust instrument in the manner required to 2619
qualify the gift under the trust instrument for the charitable 2620
estate or gift tax deduction permitted by federal law, including 2621
the addition of mandatory governing instrument requirements for a 2622
charitable remainder trust as required by the Internal Revenue 2623
Code and regulations promulgated under it in any case in which all 2624
parties interested in the trust have submitted written agreements 2625
to the proposed changes or written disclaimer of interest; 2626

(6) Modifying the trust instrument in the manner required to 2627
qualify any gift under the trust instrument for the estate tax 2628
marital deduction available to noncitizen spouses, including the 2629
addition of mandatory governing instrument requirements for a 2630
qualified domestic trust under section 2056A of the Internal 2631
Revenue Code and regulations promulgated under it in any case in 2632
which all parties interested in the trust have submitted written 2633
agreements to the proposed changes or written disclaimer of 2634
interest; 2635

(7) Resolving any other matter that arises under Chapters 2636
5801. to 5811. of the Revised Code. 2637

(D) No agreement shall be entered into under this section 2638
affecting the rights of a creditor without the creditor's consent 2639
or affecting the collection rights of federal, state, or local 2640
taxing authorities. 2641

(E) Any agreement entered into under this section that 2642
complies with the requirements of division (C) of this section 2643
shall be final and binding on the trustee, the settlor if living, 2644

all beneficiaries, and their heirs, successors, and assigns. 2645

(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. 2646
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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. 2655
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(H) If an agreement entered into under this section contains a provision requiring binding arbitration of any disputes arising under the agreement, the provision is enforceable. 2661
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(I) Nothing in this section affects any of the following: 2664

(1) The right of a beneficiary to disclaim under section 5815.36 of the Revised Code; 2665
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(2) The termination or modification of a trust under section 5804.10, 5804.11, 5804.12, 5804.13, 5804.14, 5804.15, or 5804.16 of the Revised Code; 2667
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(3) The ability of a trustee to divide or consolidate a trust under section 5804.17 of the Revised Code. 2670
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(J) Nothing in this section restricts or limits the jurisdiction of any court to dispose of matters not covered by agreements under this section or to supervise the acts of trustees 2672
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<u>appointed by that court.</u>	2675
<u>(K) This section shall be liberally construed to favor the validity and enforceability of agreements entered into under it.</u>	2676 2677
<u>(L) A trustee serving under the trust instrument is not liable to any third person arising from any loss due to that trustee's actions or inactions taken or omitted in good faith reliance on the terms of an agreement entered into under this section.</u>	2678 2679 2680 2681 2682
<u>(M) This section does not apply to any of the following:</u>	2683
<u>(1) A charitable trust that has one or more charitable organizations as qualified beneficiaries;</u>	2684 2685
<u>(2) A charitable trust the terms of which authorize or direct the trustee to distribute trust income or principal to one or more charitable organizations to be selected by the trustee, or for one or more charitable purposes described in division (A) of section 5804.05 of the Revised Code, if any of the following apply:</u>	2686 2687 2688 2689 2690
<u>(a) The distributions may be made on the date that an agreement under this section would be entered into.</u>	2691 2692
<u>(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.</u>	2693 2694 2695 2696 2697
<u>(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.</u>	2698 2699 2700
Sec. 5802.01. <u>(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.</u>	2701 2702 2703

(B) An inter vivos trust is not subject to continuing 2704
judicial supervision unless ordered by the court. Trusts created 2705
pursuant to a section of the Revised Code or a judgment or decree 2706
of a court are subject to continuing judicial supervision to the 2707
extent provided by the section, judgment, or decree or by court 2708
order. 2709

(C) A judicial proceeding involving a trust may relate to any 2710
matter involving the trust's administration, including a request 2711
for instructions and an action to declare rights. 2712

Sec. 5802.02. (A) By accepting the trusteeship of a trust 2713
having its principal place of administration in this state or by 2714
moving the principal place of administration to this state, the 2715
trustee submits personally to the jurisdiction of the courts of 2716
this state regarding any matter involving the trust. 2717

(B) With respect to their interests in the trust, the 2718
beneficiaries of a trust having its principal place of 2719
administration in this state are subject to the jurisdiction of 2720
the courts of this state regarding any matter involving the trust. 2721
By accepting a distribution from the trust, the recipient submits 2722
personally to the jurisdiction of the courts of this state 2723
regarding any matter involving the trust. 2724

(C) This section does not preclude other methods of obtaining 2725
jurisdiction over a trustee, beneficiary, or other person 2726
receiving property from the trust. 2727

Sec. 5802.03. The probate division of the court of common 2728
pleas has concurrent jurisdiction with, and the same powers at law 2729
and in equity as, the general division of the court of common 2730
pleas to issue writs and orders and to hear and determine any 2731
action that involves an inter vivos trust. 2732

Sec. 5803.01. (A) Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person. 2733
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(B) The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective. 2736
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(C) Except as otherwise provided in sections 5804.11 and 5806.02 of the Revised Code, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf. 2741
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(D) A settlor may not represent and bind a beneficiary under this chapter with respect to the termination or modification of a trust under division (A) of section 5804.11 of the Revised Code. 2745
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Sec. 5803.02. To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power. 2748
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Sec. 5803.03. To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute, all of the following apply: 2754
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(A) A guardian of the estate may represent and bind the estate that the guardian of the estate controls. 2758
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(B) A guardian of the person may represent and bind the ward if a guardian of the estate has not been appointed. 2760
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(C) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal. 2762
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(D) Except as provided in division (F) of section 5801.10 of the Revised Code, a trustee may represent and bind the beneficiaries of the trust. 2765
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(E) A personal representative of a decedent's estate may represent and bind persons interested in the estate. 2768
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(F) A parent may represent and bind the parent's minor or unborn child if neither a guardian for the child's estate or a guardian of the person has been appointed. 2770
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Sec. 5803.04. Unless otherwise represented, a minor, incapacitated individual, unborn individual, or person whose identity or location is unknown and not reasonably ascertainable may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented. 2773
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Sec. 5803.05. (A) If the court determines that an interest is not represented under this chapter or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated individual, unborn individual, or person whose identity or location is unknown. A representative may be appointed to represent several persons or interests. 2780
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(B) A representative may act on behalf of the individual represented with respect to any matter arising under Chapters 5801. to 5811. of the Revised Code, whether or not a judicial proceeding concerning the trust is pending. 2788
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(C) In making decisions, a representative may consider 2792
general benefit accruing to the living members of the individual's 2793
family. 2794

Sec. 5804.01. A trust may be created by any of the following 2795
methods: 2796

(A) Transfer of property to another person as trustee during 2797
the settlor's lifetime or by will or other disposition taking 2798
effect upon the settlor's death; 2799

(B) Declaration by the owner of property that the owner holds 2800
identifiable property as trustee; 2801

(C) Exercise of a power of appointment in favor of a trustee; 2802

(D) A court order. 2803

Sec. 5804.02. (A) A trust is created only if all of the 2804
following apply: 2805

(1) The settlor of the trust, other than the settlor of a 2806
trust created by a court order, has capacity to create a trust. 2807

(2) The settlor of the trust, other than the settlor of a 2808
trust created by a court order, indicates an intention to create 2809
the trust. 2810

(3) The trust has a definite beneficiary or is one of the 2811
following: 2812

(a) A charitable trust; 2813

(b) A trust for the care of an animal, as provided in section 2814
5804.08 of the Revised Code; 2815

(c) A trust for a noncharitable purpose, as provided in 2816
section 5804.09 of the Revised Code. 2817

(4) The trustee has duties to perform. 2818

(5) The same person is not the sole trustee and sole beneficiary. 2819
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(B) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities. 2821
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(C) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred. 2824
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(D) A trust is valid regardless of the existence, size, or character of the corpus of the trust. This division applies to any trust that was executed prior to, or is executed on or after, the effective date of Chapters 5801. to 5811. of the Revised Code. 2829
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(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. 2833
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Sec. 5804.03. A trust not created by will is validly created 2850
if its creation complies with the law of the jurisdiction in which 2851
the trust instrument was executed or the law of the jurisdiction 2852
in which, at the time of creation, any of the following applies: 2853

(A) The settlor was domiciled in, had a place of abode in, or 2854
was a national of the jurisdiction. 2855

(B) A trustee was domiciled or had a place of business in the 2856
jurisdiction. 2857

(C) Any trust property was located in the jurisdiction. 2858

Sec. 5804.04. A trust may be created only to the extent that 2859
its purposes are lawful, not contrary to public policy, and 2860
possible to achieve. A trust exists, and its assets shall be held, 2861
for the benefit of its beneficiaries in accordance with the 2862
interests of the beneficiaries in the trust. 2863

Sec. 5804.05. (A) A charitable trust may be created for the 2864
relief of poverty, the advancement of education or religion, the 2865
promotion of health, governmental or municipal purposes, or other 2866
purposes the achievement of which is beneficial to the community. 2867

(B) If the terms of a charitable trust do not indicate a 2868
particular charitable purpose or beneficiary, the court may select 2869
one or more charitable purposes or beneficiaries. The selection 2870
must be consistent with the settlor's intention to the extent it 2871
can be ascertained. 2872

(C) The settlor of a charitable trust, among others, may 2873
maintain a proceeding to enforce the trust. 2874

Sec. 5804.06. A trust is void to the extent its creation was 2875
induced by fraud, duress, or undue influence. As used in this 2876
section, "fraud," "duress," and "undue influence" have the same 2877

meanings for trust validity purposes as they have for purposes of 2878
determining the validity of a will. 2879

Sec. 5804.07. Except as required by any section of the 2880
Revised Code not in Chapters 5801. to 5811. of the Revised Code, a 2881
trust is not required to be evidenced by a trust instrument, but 2882
the creation of an oral trust and its terms may be established 2883
only by clear and convincing evidence. 2884

Sec. 5804.08. (A) A trust may be created to provide for the 2885
care of an animal alive during the settlor's lifetime. The trust 2886
terminates upon the death of the animal or, if the trust was 2887
created to provide for the care of more than one animal alive 2888
during the settlor's lifetime, upon the death of the last 2889
surviving animal. 2890

(B) A person appointed in the terms of a trust or, if no 2891
person is so appointed, a person appointed by the court may 2892
enforce a trust authorized by this section. A person having an 2893
interest in the welfare of an animal that is provided care by a 2894
trust authorized by this section may request the court to appoint 2895
a person to enforce the trust or to remove a person appointed. 2896

(C) The property of a trust authorized by this section may be 2897
applied only to its intended use, except to the extent the court 2898
determines that the value of the trust property exceeds the amount 2899
required for the intended use. Except as otherwise provided in the 2900
terms of the trust, property not required for the intended use 2901
must be distributed to the settlor if then living or to the 2902
settlor's successors in interest. 2903

Sec. 5804.09. Except as otherwise provided in section 5804.08 2904
of the Revised Code or any other section of the Revised Code: 2905
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(A) A trust may be created for a noncharitable purpose 2907
without a definite or definitely ascertainable beneficiary or for 2908
a noncharitable but otherwise valid purpose to be selected by the 2909
trustee. A trust created for a noncharitable purpose may not be 2910
enforced for more than twenty-one years. 2911

(B) A trust authorized by this section may be enforced by a 2912
person appointed in the terms of the trust or, if no person is so 2913
appointed, by a person appointed by the court. 2914

(C) The property of a trust authorized by this section may be 2915
applied only to its intended use, except to the extent the court 2916
determines that the value of the trust property exceeds the amount 2917
required for the intended use. Except as otherwise provided in the 2918
terms of the trust, property not required for the intended use 2919
must be distributed to the settlor if then living or to the 2920
settlor's successors in interest. 2921

Sec. 5804.10. (A) In addition to the methods of termination 2922
prescribed by sections 5804.11 to 5804.14 of the Revised Code, a 2923
trust terminates to the extent the trust is revoked or expires 2924
pursuant to its terms, a court determines that no purpose of the 2925
trust remains to be achieved, or a court determines that the 2926
purposes of the trust have become unlawful or impossible to 2927
achieve. 2928

(B) A trustee or beneficiary may commence a proceeding to 2929
approve or disapprove a proposed modification or termination under 2930
sections 5804.11 to 5804.16 of the Revised Code or to approve or 2931
disapprove a trust combination or division under section 5804.17 2932
of the Revised Code. The settlor may commence a proceeding to 2933
approve or disapprove a proposed modification or termination under 2934
section 5804.11 of the Revised Code. The settlor of a charitable 2935
trust may maintain a proceeding to modify the trust under section 2936
5804.13 of the Revised Code. 2937

Sec. 5804.11. (A) If upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. An agent under a power of attorney may exercise a settlor's power to consent to a trust's modification or termination only to the extent expressly authorized by both the power of attorney and the terms of the trust. The settlor's guardian of the estate may exercise a settlor's power to consent to a trust's modification or termination with the approval of the court supervising the guardianship if an agent is not so authorized. The guardian of the settlor's person may exercise a settlor's power to consent to a trust's modification or termination with the approval of the court supervising the guardianship if an agent is not so authorized and a guardian of the estate has not been appointed. This division applies only to irrevocable trusts created on or after the effective date of Chapters 5801. to 5811. of the Revised Code and to revocable trusts that become irrevocable on or after the effective date of Chapters 5801. to 5811. of the Revised Code. This division does not apply to a noncharitable irrevocable trust described in 42 U.S.C. 1396p(d)(4).

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

(C) Upon termination of a trust under division (A) or (B) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries. 2970
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(D) If not all of the beneficiaries consent to a proposed modification or termination of the trust under division (A) or (B) of this section, the court may approve the modification or termination if the court is satisfied of both of the following: 2973
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(1) That if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; 2977
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(2) That the interests of a beneficiary who does not consent will be adequately protected. 2979
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Sec. 5804.12. (A) The court may modify the administrative or dispositive terms of a trust or terminate the trust if because of circumstances not anticipated by the settlor modification or termination will further the purposes of the trust. To the extent practicable, the court shall make the modification in accordance with the settlor's probable intention. 2981
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(B) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or impair the trust's administration. 2987
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(C) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust. 2990
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Sec. 5804.13. (A) Except as otherwise provided in division (B) of this section, if a particular charitable purpose becomes unlawful, impracticable, or impossible to achieve, all of the following apply: 2993
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(1) The trust does not fail in whole or in part. 2997

(2) The trust property does not revert to the settlor or the 2998

settlor's successors in interest. 2999

(3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes. In accordance with section 109.25 of the Revised Code, the attorney general is a necessary party to a judicial proceeding brought under this section. 3000
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(B) A provision in the terms of a charitable trust for the distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under division (A) of this section to apply cy pres to modify or terminate the trust. 3006
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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. 3010
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(2) Division (A)(1) of this section does not apply to any of the following: 3017
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(a) A charitable trust that has one or more charitable organizations as qualified beneficiaries; 3019
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(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: 3021
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(i) The distributions may be made on the date that the trust would be terminated under division (A)(1) of this section. 3026
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(ii) The distributions could be made on the date that the 3028

trust would be terminated under division (A)(1) of this section if 3029
the interests of the current beneficiaries of the trust terminated 3030
on that date, but the termination of those interests would not 3031
cause the trust to terminate. 3032

(iii) The distributions could be made on the date that the 3033
trust would be terminated under division (A)(1) of this section, 3034
if the trust terminated on that date but not under that division. 3035

(B) If an inter vivos trust consists of trust property having 3036
a total value of less than one hundred thousand dollars, the court 3037
may modify or terminate the trust or remove the trustee and 3038
appoint a different trustee if it determines that the value of the 3039
trust property is insufficient to justify the cost of 3040
administration. 3041

(C) Upon the termination of a trust pursuant to division 3042
(A)(1) of this section, the trustee shall distribute the trust 3043
estate in accordance with any provision specified in the trust 3044
instrument for the premature termination of the trust. If there is 3045
no provision of that nature in the trust instrument, the trustee 3046
shall distribute the trust estate among the beneficiaries of the 3047
trust in accordance with their respective beneficial interests and 3048
in a manner that the trustee determines to be equitable. For 3049
purposes of distributing the trust estate among the beneficiaries 3050
of the trust under this division, the trustee shall consider all 3051
of the following: 3052

(1) The existence of any agreement among the beneficiaries 3053
with respect to their beneficial interests; 3054

(2) The actuarial values of the separate beneficial interests 3055
of the beneficiaries; 3056

(3) Any expression of preference of the beneficiaries that is 3057
contained in the trust instrument. 3058

(D) Upon the termination of a trust pursuant to division (B) 3059
of this section, the probate court shall order the distribution of 3060
the trust estate in accordance with any provision specified in the 3061
trust instrument for the premature termination of the trust. If 3062
there is no provision of that nature in the trust instrument, the 3063
probate court shall order the distribution of the trust estate 3064
among the beneficiaries of the trust in accordance with their 3065
respective beneficial interests and in a manner that the court 3066
determines to be equitable. For purposes of ordering the 3067
distribution of the trust estate among the beneficiaries of the 3068
trust under this division, the court shall consider the three 3069
factors listed in division (C) of this section. 3070

(E) The existence of a spendthrift or similar provision in a 3071
trust instrument or will does not preclude the termination of a 3072
trust pursuant to this section. 3073

(F) This section does not apply to an easement for 3074
conservation or preservation. 3075

Sec. 5804.15. The court may reform the terms of a trust, even 3076
if they are unambiguous, to conform the terms to the settlor's 3077
intention if it is proved by clear and convincing evidence that 3078
both the settlor's intent and the terms of the trust were affected 3079
by a mistake of fact or law, whether in expression or inducement. 3080
3081

Sec. 5804.16. To achieve the settlor's tax objectives, the 3082
court may modify the terms of a trust in a manner that is not 3083
contrary to the settlor's probable intention. The court may 3084
provide that the modification has retroactive effect. 3085

Sec. 5804.17. After notice to the qualified beneficiaries, a 3086
trustee may combine two or more trusts into a single trust or 3087

divide a trust into two or more separate trusts if the result does 3088
not impair the rights of any beneficiary or adversely affect 3089
achievement of the purposes of the trust. 3090

Sec. 5804.18. A trust described in 42 U.S.C. 1396p(d)(4) is 3091
irrevocable if the terms of the trust prohibit the settlor from 3092
revoking it, whether or not the settlor's estate or the settlor's 3093
heirs are named as the remainder beneficiary or beneficiaries of 3094
the trust upon the settlor's death. 3095

Sec. 5805.01. (A) A spendthrift provision is valid only if it 3096
restrains both voluntary and involuntary transfer of a 3097
beneficiary's interest or if it restrains involuntary transfer of 3098
a beneficiary's interest and permits voluntary transfer of a 3099
beneficiary's interest only with the consent of a trustee who is 3100
not the beneficiary. 3101

(B) A term of a trust providing that the interest of a 3102
beneficiary is held subject to a "spendthrift trust," or words of 3103
similar import, is sufficient to restrain both voluntary and 3104
involuntary transfer of the beneficiary's interest. 3105

(C) A beneficiary may not transfer an interest in a trust in 3106
violation of a valid spendthrift provision and, except as 3107
otherwise provided in this chapter and in section 5810.04 of the 3108
Revised Code, a creditor or assignee of the beneficiary may not 3109
reach the interest or a distribution by the trustee before its 3110
receipt by the beneficiary. Real property or tangible personal 3111
property that is owned by the trust but that is made available for 3112
a beneficiary's use or occupancy in accordance with the trustee's 3113
authority under the trust instrument shall not be considered to 3114
have been distributed by the trustee or received by the 3115
beneficiary for purposes of allowing a creditor or assignee of the 3116
beneficiary to reach the property. 3117

Sec. 5805.02. (A) As used in this section, "child" includes 3118
any person for whom an order or judgment for child support has 3119
been entered in this or another state. 3120

(B) Subject to section 5805.03 of the Revised Code, a 3121
spendthrift provision is unenforceable against either of the 3122
following: 3123

(1) The beneficiary's child or spouse who has a judgment or 3124
court order against the beneficiary for support, but only if 3125
distributions can be made for the beneficiary's support under the 3126
terms of the trust; 3127

(2) A claim of this state or the United States to the extent 3128
provided by the Revised Code or federal law. 3129

(C) A spendthrift provision is enforceable against the 3130
beneficiary's former spouse. 3131

(D) A claimant described in division (B) of this section may 3132
obtain from the court an order attaching present or future 3133
distributions to or for the benefit of the beneficiary. The court 3134
may limit the award to the relief that is appropriate under the 3135
circumstances, considering among any other factors determined 3136
appropriate by the court the support needs of the beneficiary, the 3137
beneficiary's spouse, and the beneficiary's dependent children or, 3138
with respect to a beneficiary who is the recipient of public 3139
benefits, the supplemental needs of the beneficiary if the trust 3140
was not intended to provide for the beneficiary's basic support. 3141

(E) The only exceptions to the effectiveness of a spendthrift 3142
provision are those described in divisions (B) and (D) of this 3143
section, in division (B) of section 5805.05 of the Revised Code, 3144
and in sections 5805.06 and 5810.04 of the Revised Code. 3145

Sec. 5805.03. Notwithstanding anything to the contrary in 3146

division (B) of section 5805.02 of the Revised Code, no creditor 3147
or assignee of a beneficiary of a wholly discretionary trust may 3148
reach the beneficiary's interest in the trust, or a distribution 3149
by the trustee before its receipt by the beneficiary, whether by 3150
attachment of present or future distributions to or for the 3151
benefit of the beneficiary, by judicial sale, by obtaining an 3152
order compelling the trustee to make distributions from the trust, 3153
or by any other means, regardless of whether the trust instrument 3154
includes a spendthrift provision. 3155

Sec. 5805.04. (A) As used in this section, "child" includes 3156
any person for whom an order or judgment for child support has 3157
been entered in this or any other state. 3158

(B) Except as otherwise provided in divisions (C) and (D) of 3159
this section, whether or not a trust contains a spendthrift 3160
provision, a creditor of a beneficiary may not compel a 3161
distribution that is subject to the trustee's discretion, even if 3162
the discretion is expressed in the form of a standard of 3163
distribution or the trustee has abused the discretion. 3164

(C) Division (B) of this section does not apply to this state 3165
for any claim for support of a beneficiary in a state institution 3166
if the terms of the trust do not include a spendthrift provision 3167
and do include a standard for distributions to or for the 3168
beneficiary under which the trustee may make distributions for the 3169
beneficiary's support. 3170

(D) Unless the settlor has explicitly provided in the trust 3171
that the beneficiary's child or spouse or both are excluded from 3172
benefiting from the trust, to the extent a trustee of a trust that 3173
is not a wholly discretionary trust has not complied with a 3174
standard of distribution or has abused a discretion, both of the 3175
following apply: 3176

(1) The court may order a distribution to satisfy a judgment 3177
or court order against the beneficiary for support of the 3178
beneficiary's child or spouse, provided that the court may order 3179
the distributions only if distributions can be made for the 3180
beneficiary's support under the terms of the trust and that the 3181
court may not order any distributions under this division to 3182
satisfy a judgment or court order against the beneficiary for 3183
support of the beneficiary's former spouse. 3184

(2) The court shall direct the trustee to pay to the child or 3185
spouse the amount that is equitable under the circumstances but 3186
not more than the amount the trustee would have been required to 3187
distribute to or for the benefit of the beneficiary had the 3188
trustee complied with the standard or not abused the discretion. 3189

(E) Even if a trust does not contain a spendthrift provision, 3190
to the extent a beneficiary's interest in a trust is subject to 3191
the exercise of the trustee's discretion, whether or not such 3192
discretion is subject to one or more standards of distribution, 3193
the interest may not be ordered sold to satisfy or partially 3194
satisfy a claim of the beneficiary's creditor or assignee. 3195

(F) If the trustee's or cotrustee's discretion to make 3196
distributions for the trustee's or cotrustee's own benefit is 3197
limited by an ascertainable standard, a creditor may not reach or 3198
compel distribution of the beneficial interest except to the 3199
extent the interest would be subject to the creditor's claim if 3200
the beneficiary were not acting as trustee or cotrustee. 3201

Sec. 5805.05. (A) To the extent that a trust that gives a 3202
beneficiary the right to receive one or more mandatory 3203
distributions does not contain a spendthrift provision, the court 3204
may authorize a creditor or assignee of the beneficiary to attach 3205
present or future mandatory distributions to or for the benefit of 3206
the beneficiary or to reach the beneficiary's interest by other 3207

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

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

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

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

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

<u>contribution.</u>	3238
<u>(3) With respect to a trust described in 42 U.S.C. section 1396p(d)(4)(A) or (C), the court may limit the award of a settlor's creditor under division (A)(1) or (2) of this section to the relief that is appropriate under the circumstances, considering among any other factors determined appropriate by the court, the supplemental needs of the beneficiary.</u>	3239 3240 3241 3242 3243 3244
<u>(B) For purposes of this section, all of the following apply:</u>	3245
<u>(1) The holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power during the period the power may be exercised.</u>	3246 3247 3248 3249
<u>(2) Upon the lapse, release, or waiver of the power of withdrawal, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greatest of the following amounts:</u>	3250 3251 3252 3253
<u>(a) The amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code;</u>	3254 3255
<u>(b) If the donor of the property subject to the holder's power of withdrawal is not married at the time of the transfer of the property to the trust, the amount specified in section 2503(b) of the Internal Revenue Code;</u>	3256 3257 3258 3259
<u>(c) If the donor of the property subject to the holder's power of withdrawal is married at the time of the transfer of the property to the trust, twice the amount specified in section 2503(b) of the Internal Revenue Code.</u>	3260 3261 3262 3263
<u>Sec. 5805.07. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.</u>	3264 3265 3266

Sec. 5806.01. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. 3267
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Sec. 5806.02. (A) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This division does not apply to a trust created under an instrument executed before the effective date of this section. 3271
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(B) If a revocable trust is created or funded by more than one settlor, all of the following apply: 3276
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(1) To the extent the trust consists of community property, either spouse acting alone may revoke the trust, but the trust may be amended only by joint action of both spouses. 3278
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(2) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution. 3281
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(3) Upon the revocation or amendment of the trust by less than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment. 3285
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(C) The settlor may revoke or amend a revocable trust by substantial compliance with a method provided in the terms of the trust or, if the terms of the trust do not provide a method, by any other method manifesting clear and convincing evidence of the settlor's intent, provided that a revocable trust may not be revoked or amended by a will or codicil, regardless of whether it refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust unless the terms of the trust expressly allow it to be revoked or amended 3288
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by a will or codicil. 3297

(D) Upon revocation of a revocable trust, the trustee shall 3298
deliver the trust property as the settlor directs. 3299

(E) An agent under a power of attorney may exercise a 3300
settlor's powers with respect to revocation, amendment, or 3301
distribution of trust property only to the extent expressly 3302
authorized by both the terms of the trust and the power. 3303

(F) A guardian of the estate of the settlor or, if no 3304
guardian of the estate has been appointed, a guardian of the 3305
person of the settlor may exercise a settlor's powers with respect 3306
to revocation, amendment, or distribution of trust property only 3307
with the approval of the court supervising the guardianship. 3308

(G) A trustee who does not know that a trust has been revoked 3309
or amended is not liable to the settlor or settlor's successors in 3310
interest for distributions made and other actions taken on the 3311
assumption that the trust had not been amended or revoked. 3312

Sec. 5806.03. (A) During the lifetime of the settlor of a 3313
revocable trust, whether or not the settlor has capacity to revoke 3314
the trust, the rights of the beneficiaries are subject to the 3315
control of, and the duties of the trustee are owed exclusively to, 3316
the settlor. If the trustee breaches its duty during the lifetime 3317
of the settlor, any recovery obtained from the trustee after the 3318
settlor becomes incapacitated or dies shall be apportioned by the 3319
court. If the settlor is living when the recovery is obtained, the 3320
court shall apportion the recovery between the settlor and the 3321
trust, or allocate the entire recovery to the settlor or the 3322
trust, as it determines to be equitable under the circumstances. 3323
If the settlor is not living when the recovery is obtained, the 3324
court shall apportion the recovery between the settlor's estate 3325
and the trust, or allocate the entire recovery to the settlor's 3326

estate or the trust, as it determines to be equitable under the 3327
circumstances. 3328

(B) During the period the power may be exercised, the holder 3329
of a power of withdrawal has the rights of a settlor of a 3330
revocable trust under this section to the extent of the property 3331
subject to the power. 3332

Sec. ~~2305.121~~ 5806.04. (A) Any of the following actions 3333
pertaining to a revocable trust that is made irrevocable by the 3334
death of the ~~grantor~~ settlor of the trust shall be commenced 3335
within two years after the date of the death of the ~~grantor~~ 3336
settlor of the trust: 3337

(1) An action to contest the validity of the trust; 3338

(2) An action to contest the validity of any amendment to the 3339
trust that was made during the lifetime of the ~~grantor~~ settlor of 3340
the trust; 3341

(3) An action to contest the revocation of the trust during 3342
the lifetime of the ~~grantor~~ settlor of the trust; 3343

(4) An action to contest the validity of any transfer made to 3344
the trust during the lifetime of the ~~grantor~~ settlor of the trust. 3345

(B) Upon the death of the ~~grantor~~ settlor of a revocable 3346
trust that was made irrevocable by the death of the ~~grantor~~ 3347
settlor, the trustee, without liability, may proceed to distribute 3348
the trust property in accordance with the terms of the trust 3349
unless either of the following applies: 3350

(1) The trustee has actual knowledge of a pending action to 3351
contest the validity of the trust, any amendment to the trust, the 3352
revocation of the trust, or any transfer made to the trust during 3353
the lifetime of the ~~grantor~~ settlor of the trust. 3354

(2) The trustee receives written notification from a 3355

potential contestant of a potential action to contest the validity 3356
of the trust, any amendment to the trust, the revocation of the 3357
trust, or any transfer made to the trust during the lifetime of 3358
the ~~grantor~~ settlor of the trust, and the action is actually filed 3359
within ninety days after the written notification was given to the 3360
trustee. 3361

(C) If a distribution of trust property is made pursuant to 3362
division (B) of this section, a beneficiary of the trust shall 3363
return any distribution to the extent that it exceeds the 3364
distribution to which the beneficiary is entitled if the trust, an 3365
amendment to the trust, or a transfer made to the trust later is 3366
determined to be invalid. 3367

(D) This section applies only to revocable trusts that are 3368
made irrevocable by the death of the ~~grantor~~ settlor of the trust 3369
if the grantor dies on or after ~~the effective date of this section~~ 3370
July 23, 2002. 3371

Sec. 5807.01. (A) Except as otherwise provided in division 3372
(C) of this section, a person designated as trustee accepts the 3373
trusteeship by substantially complying with a method of acceptance 3374
provided in the terms of the trust or, if the terms of the trust 3375
do not provide a method or the method provided in the terms is not 3376
expressly made exclusive, by accepting delivery of the trust 3377
property, exercising powers or performing duties as trustee, or 3378
otherwise indicating acceptance of the trusteeship. 3379

(B) A person designated as trustee who has not yet accepted 3380
the trusteeship may reject the trusteeship. A designated trustee 3381
who does not accept the trusteeship within a reasonable time after 3382
knowing of the designation is deemed to have rejected the 3383
trusteeship. 3384

(C) A person designated as trustee, without accepting the 3385

trusteeship, may do either or both of the following: 3386

(1) Act to preserve the trust property if, within a 3387
reasonable time after acting, the person sends a rejection of the 3388
trusteeship to the settlor or, if the settlor is dead or lacks 3389
capacity, to a qualified beneficiary; 3390

(2) Inspect or investigate trust property to determine 3391
potential liability under environmental or other law or for any 3392
other purpose. 3393

Sec. 5807.02. (A) A trustee shall give bond to secure 3394
performance of the trustee's duties only if the court finds that a 3395
bond is needed to protect the interests of the beneficiaries or is 3396
required by the terms of the trust and the court has not dispensed 3397
with the requirement. 3398

(B) The court may specify the amount of a bond, its 3399
liabilities, and whether sureties are necessary. The court may 3400
modify or terminate a bond at any time. 3401

(C) A regulated financial-service institution qualified to do 3402
trust business in this state need not give bond, even if required 3403
by the terms of the trust. 3404

Sec. 5807.03. (A) If there are three or more cotrustees 3405
serving, the cotrustees may act by majority decision. 3406

(B) If a vacancy occurs in a cotrusteeship, the remaining 3407
cotrustees may act for the trust. 3408

(C) A cotrustee must participate in the performance of a 3409
trustee's function unless the cotrustee is unavailable to perform 3410
the function because of absence, illness, disqualification under 3411
other law, or other temporary incapacity or the cotrustee has 3412
properly delegated the performance of the function to another 3413
trustee. 3414

(D) If a cotrustee is unavailable to perform duties because 3415
of absence, illness, disqualification under other law, or other 3416
temporary incapacity and prompt action is necessary to achieve the 3417
purposes of the trust or to avoid injury to the trust property, 3418
the remaining cotrustee or a majority of the remaining cotrustees 3419
may act for the trust. 3420

(E) A trustee may delegate to a cotrustee duties and powers 3421
that a prudent trustee of comparable skills could properly 3422
delegate under the circumstances. A delegation made under this 3423
division shall be governed by section 5808.07 of the Revised Code. 3424
Unless a delegation was irrevocable, a trustee may revoke a 3425
delegation previously made. 3426

(F) Except as otherwise provided in division (G) of this 3427
section, and subject to divisions (C) and (E) of this section, a 3428
trustee who does not join in an action of another trustee is not 3429
liable for the action. 3430

(G) Except as otherwise provided in this division, each 3431
trustee shall exercise reasonable care to prevent a cotrustee from 3432
committing a serious breach of trust and to compel a cotrustee to 3433
redress a serious breach of trust. A trustee is not required to 3434
exercise reasonable care of that nature under this division, and a 3435
trustee is not liable for resulting losses, when section 5815.25 3436
of the Revised Code is applicable or there is more than one other 3437
trustee and the other trustees act by majority vote. 3438

(H) A dissenting trustee who joins in an action at the 3439
direction of the majority of the trustees and who notified any 3440
cotrustee of the dissent at or before the time of the action is 3441
not liable for the action. 3442

Sec. 5807.04. (A) A vacancy in a trusteeship occurs under any 3443
of the following circumstances: 3444

<u>(1) A person designated as trustee rejects the trusteeship;</u>	3445
<u>(2) A person designated as trustee cannot be identified or does not exist;</u>	3446 3447
<u>(3) A trustee resigns;</u>	3448
<u>(4) A trustee is disqualified or removed;</u>	3449
<u>(5) A trustee dies;</u>	3450
<u>(6) A guardian of the estate or person is appointed for an individual serving as trustee.</u>	3451 3452
<u>(B) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.</u>	3453 3454 3455
<u>(C) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:</u>	3456 3457 3458
<u>(1) By a person designated in the terms of the trust to act as successor trustee;</u>	3459 3460
<u>(2) By a person appointed by someone designated in the terms of the trust to appoint a successor trustee;</u>	3461 3462
<u>(3) By a person appointed by unanimous agreement of the qualified beneficiaries;</u>	3463 3464
<u>(4) By a person appointed by the court.</u>	3465
<u>(D) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:</u>	3466 3467 3468
<u>(1) By a person designated in the terms of the trust to act as successor trustee;</u>	3469 3470
<u>(2) By a person appointed by someone designated in the terms of the trust to appoint a successor trustee;</u>	3471 3472

<u>(3) By a person selected by the charitable organizations</u>	3473
<u>expressly designated to receive distributions under the terms of</u>	3474
<u>the trust;</u>	3475
<u>(4) By a person appointed by the court.</u>	3476
<u>(E) Whether or not a vacancy in a trusteeship exists or is</u>	3477
<u>required to be filled, the court may appoint an additional trustee</u>	3478
<u>or special fiduciary whenever the court considers the appointment</u>	3479
<u>necessary for the administration of the trust.</u>	3480
<u>Sec. 5807.05. (A) A trustee may resign upon at least thirty</u>	3481
<u>days' notice to the qualified beneficiaries, the settlor, if</u>	3482
<u>living, and all cotrustees or with the approval of the court.</u>	3483
<u>(B) In approving a resignation of a trustee, the court may</u>	3484
<u>issue orders and impose conditions reasonably necessary for the</u>	3485
<u>protection of the trust property.</u>	3486
<u>(C) Any liability of a resigning trustee or of any sureties</u>	3487
<u>on the trustee's bond for acts or omissions of the trustee is not</u>	3488
<u>discharged or affected by the trustee's resignation.</u>	3489
<u>Sec. 5807.06. (A) The settlor, a cotrustee, or a beneficiary</u>	3490
<u>may request the court to remove a trustee, or the court may remove</u>	3491
<u>a trustee on its own initiative.</u>	3492
<u>(B) The court may remove a trustee for any of the following</u>	3493
<u>reasons:</u>	3494
<u>(1) The trustee has committed a serious breach of trust;</u>	3495
<u>(2) Lack of cooperation among cotrustees substantially</u>	3496
<u>impairs the administration of the trust;</u>	3497
<u>(3) Because of unfitness, unwillingness, or persistent</u>	3498
<u>failure of the trustee to administer the trust effectively, the</u>	3499
<u>court determines that removal of the trustee best serves the</u>	3500

interests of the beneficiaries. 3501

(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. 3502
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Sec. 5807.07. (A) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property. 3507
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(B) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it. 3512
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Sec. 5807.08. (A) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances. 3516
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(B) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if the duties of the trustee are substantially different from those contemplated when the trust was created or the compensation specified by the terms of the trust would be unreasonably low or high. 3519
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Sec. 5807.09. (A) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for expenses that were properly incurred in the administration of the trust and, to the extent necessary to prevent unjust enrichment of the 3526
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trust, expenses that were not properly incurred in the 3530
administration of the trust. 3531

(B) An advance by the trustee of money for the protection of 3532
the trust gives rise to a lien against trust property to secure 3533
reimbursement with reasonable interest. 3534

Sec. 5808.01. Upon acceptance of a trusteeship, the trustee 3535
shall administer the trust in good faith, in accordance with its 3536
terms and purposes and the interests of the beneficiaries, and in 3537
accordance with Chapters 5801. to 5811. of the Revised Code. 3538

Sec. 5808.02. (A) A trustee shall administer the trust solely 3539
in the interests of the beneficiaries. 3540

(B) Subject to the rights of persons dealing with or 3541
assisting the trustee as provided in section 5810.12 of the 3542
Revised Code, a sale, encumbrance, or other transaction involving 3543
the investment or management of trust property entered into by the 3544
trustee for the trustee's own personal account or that is 3545
otherwise affected by a conflict between the trustee's fiduciary 3546
and personal interests is voidable by a beneficiary affected by 3547
the transaction unless one of the following applies: 3548

(1) The transaction was authorized by the terms of the trust 3549
or by other provisions of the Revised Code. 3550

(2) The transaction was approved by the court. 3551

(3) The beneficiary did not commence a judicial proceeding 3552
within the time allowed by section 5810.05 of the Revised Code. 3553

(4) The beneficiary consented to the trustee's conduct, 3554
ratified the transaction, or released the trustee in compliance 3555
with section 5810.09 of the Revised Code. 3556

(5) The transaction involves a contract entered into or claim 3557

<u>acquired by the trustee before the person became or contemplated</u>	3558
<u>becoming trustee.</u>	3559
<u>(C) A sale, encumbrance, or other transaction involving the</u>	3560
<u>investment or management of trust property is presumed to be</u>	3561
<u>affected by a conflict between personal and fiduciary interests if</u>	3562
<u>it is entered into by the trustee with one of the following:</u>	3563
<u>(1) The trustee's spouse;</u>	3564
<u>(2) The trustee's descendant, sibling, or parent or the</u>	3565
<u>spouse of a trustee's descendant, sibling, or parent;</u>	3566
<u>(3) An agent or attorney of the trustee;</u>	3567
<u>(4) A corporation or other person or enterprise in which the</u>	3568
<u>trustee, or a person that owns a significant interest in the</u>	3569
<u>trustee, has an interest that might affect the trustee's best</u>	3570
<u>judgment.</u>	3571
<u>(D) A transaction not concerning trust property in which the</u>	3572
<u>trustee engages in the trustee's individual capacity involves a</u>	3573
<u>conflict between personal and fiduciary interests if the</u>	3574
<u>transaction concerns an opportunity properly belonging to the</u>	3575
<u>trust.</u>	3576
<u>(E) An investment by a trustee that is permitted by other</u>	3577
<u>provisions of the Revised Code is not presumed to be affected by a</u>	3578
<u>conflict between personal and fiduciary interests if the</u>	3579
<u>investment otherwise complies with the prudent investor rule of</u>	3580
<u>Chapter 5809. of the Revised Code.</u>	3581
<u>(F) In voting shares of stock or in exercising powers of</u>	3582
<u>control over similar interests in other forms of enterprise, the</u>	3583
<u>trustee shall act in the best interests of the beneficiaries. If</u>	3584
<u>the trust is the sole owner of a corporation or other form of</u>	3585
<u>enterprise, the trustee shall elect or appoint directors or other</u>	3586
<u>managers who will manage the corporation or enterprise in the best</u>	3587

<u>interests of the beneficiaries.</u>	3588
<u>(G) This section does not preclude either of the following:</u>	3589
<u>(1) Any transaction authorized by another section of the Revised Code;</u>	3590
	3591
<u>(2) Unless the beneficiaries establish that it is unfair, any of the following transactions:</u>	3592
	3593
<u>(a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;</u>	3594
	3595
<u>(b) Payment of reasonable compensation to the trustee;</u>	3596
<u>(c) A transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;</u>	3597
	3598
	3599
<u>(d) A deposit of trust money in a regulated financial-services institution that is an affiliate of the trustee;</u>	3600
	3601
	3602
<u>(e) An advance by the trustee of money for the protection of the trust.</u>	3603
	3604
<u>(H) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.</u>	3605
	3606
	3607
Sec. 1339.55 5808.03. (A) A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.	3608
	3609
(B) If a trust has two or more beneficiaries, the trustee shall act impartially in investing <u>and, managing, and distributing</u> the trust assets taking into account any differing property, giving due regard to the beneficiaries' respective interests of the beneficiaries.	3610
	3611
	3612
	3613
	3614
Sec. 5808.04. <u>A trustee shall administer the trust as a</u>	3615

prudent person would and shall consider the purposes, terms, 3616
distributional requirements, and other circumstances of the trust. 3617
In satisfying this standard, the trustee shall exercise reasonable 3618
care, skill, and caution. 3619

Sec. ~~1339.57~~ 5808.05. Except as otherwise permitted by law, 3620
in ~~investing and managing~~ administering a trust assets, a trustee 3621
may ~~only~~ incur only costs that are appropriate and reasonable in 3622
relation to the assets, the purposes of the trust, and the skills 3623
of the trustee. 3624

Sec. 5808.06. A trustee who has special skills or expertise, 3625
or is named trustee in reliance upon the trustee's representation 3626
that the trustee has special skills or expertise, shall use those 3627
special skills or expertise. 3628

Sec. ~~1339.59~~ 5808.07. (A) A trustee may delegate ~~investment~~ 3629
~~duties~~ and ~~management functions of a trust~~ powers that a prudent 3630
trustee having comparable skills could properly delegate under the 3631
circumstances. In accordance with this division, a trustee shall 3632
exercise reasonable care, skill, and caution in doing all of the 3633
following: 3634

(1) Selecting an agent, cotrustee, or other fiduciary to whom 3635
the delegation is made; 3636

(2) Establishing the scope and terms of the delegation 3637
consistent with the purposes and terms of the trust; 3638

(3) Periodically reviewing the agent's, cotrustee's, or other 3639
fiduciary's actions in order to monitor the agent's, cotrustee's, 3640
or other fiduciary's performance and compliance with the terms of 3641
the delegation. 3642

(B) In performing ~~investment or management functions of a~~ 3643

~~trust that are delegated to an agent function, an agent,~~ 3644
~~cotrustee, or other fiduciary~~ owes a duty to the trust to exercise 3645
reasonable care to comply with the terms of the delegation. 3646

(C) A trustee who complies with division (A) of this section 3647
is not liable to the beneficiaries of the trust or to the trust 3648
for the decisions or actions of the ~~agent, cotrustee, or other~~ 3649
~~fiduciary~~ to whom the function was delegated. 3650

(D) By accepting the delegation of ~~investment powers or~~ 3651
~~management functions~~ duties from the trustee of a trust that is 3652
subject to the laws of this state, an ~~agent, cotrustee, or other~~ 3653
~~fiduciary~~ submits to the jurisdiction of this state. 3654

Sec. 5808.08. (A) While a trust is revocable, the trustee may 3655
follow a direction of the settlor that is contrary to the terms of 3656
the trust. 3657

(B) As provided in section 5815.25 of the Revised Code, a 3658
trustee is not liable for losses resulting from certain actions or 3659
failures to act when other persons are granted certain powers with 3660
respect to the administration of the trust. 3661

(C) The terms of a trust may confer upon a trustee or other 3662
person a power to direct the modification or termination of the 3663
trust. 3664

(D) A person other than a beneficiary who holds a power to 3665
direct is presumptively a fiduciary who, as a fiduciary, is 3666
required to act in good faith with regard to the purposes of the 3667
trust and the interests of the beneficiaries. The holder of a 3668
power to direct is liable for any loss that results from breach of 3669
a fiduciary duty. 3670

Sec. 5808.09. A trustee shall take reasonable steps to take 3671
control of and protect the trust property. 3672

Sec. 5808.10. (A) A trustee shall keep adequate records of 3673
the administration of the trust. 3674

(B) A trustee shall keep trust property separate from the 3675
trustee's own property. 3676

(C) Except as otherwise provided in division (D) of this 3677
section and in section 2131.21 of the Revised Code, a trustee not 3678
subject to federal or state banking regulation shall cause the 3679
trust property to be designated so that the interest of the trust, 3680
to the extent feasible, appears in records maintained by a party 3681
other than a trustee or beneficiary. 3682

(D) If the trustee maintains records clearly indicating the 3683
respective interests, a trustee may invest as a whole the property 3684
of two or more separate trusts. 3685

Sec. 5808.11. A trustee shall take reasonable steps to 3686
enforce claims of the trust and to defend claims against the 3687
trust. 3688

Sec. 5808.12. A trustee shall take reasonable steps to 3689
collect trust property held by third persons. The responsibility 3690
of a successor trustee with respect to the administration of the 3691
trust by a prior trustee shall be governed by section 5815.24 of 3692
the Revised Code. 3693

Sec. 5808.13. (A) A trustee shall keep the current 3694
beneficiaries of the trust reasonably informed about the 3695
administration of the trust and of the material facts necessary 3696
for them to protect their interests. Unless unreasonable under the 3697
circumstances, a trustee shall promptly respond to a beneficiary's 3698
request for information related to the administration of the 3699
trust. 3700

(B) A trustee shall do all of the following: 3701

(1) Upon the request of a beneficiary, promptly furnish to 3702
the beneficiary a copy of the trust instrument. If the settlor of 3703
a revocable trust that has become irrevocable has completely 3704
restated the terms of the trust, the trust instrument furnished by 3705
the trustee shall be the restated trust instrument, including any 3706
amendments to the restated trust instrument. Nothing in division 3707
(B)(1) of this section limits the ability of a beneficiary to 3708
obtain a copy of the original trust instrument, any other 3709
restatements of the original trust instrument, or amendments to 3710
the original trust instrument and any other restatements of the 3711
original trust instrument in a judicial proceeding with respect to 3712
the trust. 3713

(2) Within sixty days after accepting a trusteeship, notify 3714
the current beneficiaries of the acceptance and of the trustee's 3715
name, address, and telephone number; 3716

(3) Within sixty days after the date the trustee acquires 3717
knowledge of the creation of an irrevocable trust, or the date the 3718
trustee acquires knowledge that a formerly revocable trust has 3719
become irrevocable, whether by the death of the settlor or 3720
otherwise, notify the current beneficiaries of the trust's 3721
existence, of the identity of the settlor or settlors, of the 3722
right to request a copy of the trust instrument, and of the right 3723
to a trustee's report as provided in division (C) of this section; 3724

(4) Notify the current beneficiaries in advance of any change 3725
in the method or rate of the trustee's compensation. 3726

(C) A trustee shall send to the current beneficiaries, and to 3727
other beneficiaries who request it, at least annually and at the 3728
termination of the trust, a report of the trust property, 3729
liabilities, receipts, and disbursements, including the source and 3730
amount of the trustee's compensation, a listing of the trust 3731

assets, and, if feasible, the trust assets' respective market 3732
values. Upon a vacancy in a trusteeship, unless a cotrustee 3733
remains in office, a report for the period during which the former 3734
trustee served must be sent to the current beneficiaries by the 3735
former trustee. A personal representative or guardian may send the 3736
current beneficiaries a report on behalf of a deceased or 3737
incapacitated trustee. 3738

(D) A beneficiary may waive the right to a trustee's report 3739
or other information otherwise required to be furnished under this 3740
section. A beneficiary, with respect to future reports and other 3741
information, may withdraw a waiver previously given. 3742

(E) The trustee may provide information and reports to 3743
beneficiaries to whom the provided information and reports are not 3744
required to be provided under this section. 3745

(F) Divisions (B)(2) and (3) of this section apply only to a 3746
trustee who accepts a trusteeship on or after the effective date 3747
of this section, to an irrevocable trust created on or after the 3748
effective date of this section, and to a revocable trust that 3749
becomes irrevocable on or after the effective date of this 3750
section. 3751

Sec. 5808.14. (A) The judicial standard of review for 3752
discretionary trusts is that the trustee shall exercise a 3753
discretionary power reasonably, in good faith, and in accordance 3754
with the terms and purposes of the trust and the interests of the 3755
beneficiaries, except that a reasonableness standard shall not be 3756
applied to the exercise of discretion by the trustee of a wholly 3757
discretionary trust. The greater the grant of discretion by the 3758
settlor to the trustee, the broader the range of permissible 3759
conduct by the trustee in exercising it. 3760

(B) Subject to division (D) of this section, and unless the 3761

terms of the trust expressly indicate that a rule in this division 3762
does not apply: 3763

(1) A person other than a settlor who is a beneficiary and 3764
trustee of a trust that confers on the trustee a power to make 3765
discretionary distributions to or for the trustee's personal 3766
benefit may exercise the power only in accordance with an 3767
ascertainable standard. 3768

(2) A trustee may not exercise a power to make discretionary 3769
distributions to satisfy a legal obligation of support that the 3770
trustee personally owes another person. 3771

(C) A power whose exercise is limited or prohibited by 3772
division (B) of this section may be exercised by a majority of the 3773
remaining trustees whose exercise of the power is not so limited 3774
or prohibited. If the power of all trustees is so limited or 3775
prohibited, the court may appoint a special fiduciary with 3776
authority to exercise the power. 3777

(D) Division (B) of this section does not apply to any of the 3778
following: 3779

(1) A power held by the settlor's spouse who is the trustee 3780
of a trust for which a marital deduction, as defined in section 3781
2056(b)(5) or 2523(e) of the Internal Revenue Code, was previously 3782
allowed; 3783

(2) Any trust during any period that the trust may be revoked 3784
or amended by its settlor; 3785

(3) A trust if contributions to the trust qualify for the 3786
annual exclusion under section 2503(c) of the Internal Revenue 3787
Code. 3788

Sec. 5808.15. (A) A trustee, without authorization by the 3789
court, may exercise powers conferred by the terms of the trust 3790
and, except as limited by the terms of the trust, may exercise all 3791

<u>of the following powers:</u>	3792
<u>(1) All powers over the trust property that an unmarried</u>	3793
<u>competent owner has over individually owned property;</u>	3794
<u>(2) Any other powers appropriate to achieve the proper</u>	3795
<u>investment, management, and distribution of the trust property;</u>	3796
<u>(3) Any other powers conferred by Chapters 5801. to 5811. of</u>	3797
<u>the Revised Code.</u>	3798
<u>(B) The exercise of a power is subject to the fiduciary</u>	3799
<u>duties prescribed by Chapter 5808. of the Revised Code.</u>	3800
<u>Sec. 5808.16. Without limiting the authority conferred by</u>	3801
<u>section 5808.15 of the Revised Code, a trustee may do all of the</u>	3802
<u>following:</u>	3803
<u>(A) Collect trust property and accept or reject additions to</u>	3804
<u>the trust property from a settlor or any other person;</u>	3805
<u>(B) Acquire or sell property, for cash or on credit, at</u>	3806
<u>public or private sale;</u>	3807
<u>(C) Exchange, partition, or otherwise change the character of</u>	3808
<u>trust property;</u>	3809
<u>(D) Deposit trust money in an account in a regulated</u>	3810
<u>financial-service institution;</u>	3811
<u>(E) Borrow money, with or without security, and mortgage or</u>	3812
<u>pledge trust property for a period within or extending beyond the</u>	3813
<u>duration of the trust;</u>	3814
<u>(F) With respect to an interest in a proprietorship,</u>	3815
<u>partnership, limited liability company, business trust,</u>	3816
<u>corporation, or other form of business or enterprise, continue the</u>	3817
<u>business or other enterprise and take any action that may be taken</u>	3818
<u>by shareholders, members, or property owners, including merging,</u>	3819

<u>dissolving, or otherwise changing the form of business</u>	3820
<u>organization or contributing additional capital;</u>	3821
<u>(G) With respect to stocks or other securities, exercise the</u>	3822
<u>rights of an absolute owner, including the right to do any of the</u>	3823
<u>following:</u>	3824
<u>(1) Vote, or give proxies to vote, with or without power of</u>	3825
<u>substitution, or enter into or continue a voting trust agreement;</u>	3826
<u>(2) Hold a security in the name of a nominee or in other form</u>	3827
<u>without disclosure of the trust so that title may pass by</u>	3828
<u>delivery;</u>	3829
<u>(3) Pay calls, assessments, and other sums chargeable or</u>	3830
<u>accruing against the securities and sell or exercise stock</u>	3831
<u>subscription or conversion rights;</u>	3832
<u>(4) Deposit the securities with a depository or other</u>	3833
<u>regulated financial-service institution.</u>	3834
<u>(H) With respect to an interest in real property, construct,</u>	3835
<u>or make ordinary or extraordinary repairs to, alterations to, or</u>	3836
<u>improvements in, buildings or other structures, demolish</u>	3837
<u>improvements, raze existing or erect new party walls or buildings,</u>	3838
<u>subdivide or develop land, dedicate land to public use or grant</u>	3839
<u>public or private easements, and make or vacate plats and adjust</u>	3840
<u>boundaries;</u>	3841
<u>(I) Enter into a lease for any purpose as lessor or lessee,</u>	3842
<u>including a lease or other arrangement for exploration and removal</u>	3843
<u>of natural resources, with or without the option to purchase or</u>	3844
<u>renew, for a period within or extending beyond the duration of the</u>	3845
<u>trust;</u>	3846
<u>(J) Grant an option involving a sale, lease, or other</u>	3847
<u>disposition of trust property or acquire an option for the</u>	3848
<u>acquisition of property, including an option exercisable beyond</u>	3849

<u>the duration of the trust, and exercise an option so acquired;</u>	3850
<u>(K) Insure the property of the trust against damage or loss</u>	3851
<u>and insure the trustee, the trustee's agents, and beneficiaries</u>	3852
<u>against liability arising from the administration of the trust;</u>	3853
<u>(L) Abandon or decline to administer property of no value or</u>	3854
<u>of insufficient value to justify its collection or continued</u>	3855
<u>administration;</u>	3856
<u>(M) With respect to possible liability for violation of</u>	3857
<u>environmental law, do any of the following:</u>	3858
<u>(1) Inspect or investigate property the trustee holds or has</u>	3859
<u>been asked to hold, or property owned or operated by an</u>	3860
<u>organization in which the trustee holds or has been asked to hold</u>	3861
<u>an interest, for the purpose of determining the application of</u>	3862
<u>environmental law with respect to the property;</u>	3863
<u>(2) Take action to prevent, abate, or otherwise remedy any</u>	3864
<u>actual or potential violation of any environmental law affecting</u>	3865
<u>property held directly or indirectly by the trustee, whether taken</u>	3866
<u>before or after the assertion of a claim or the initiation of</u>	3867
<u>governmental enforcement;</u>	3868
<u>(3) Decline to accept property into trust or disclaim any</u>	3869
<u>power with respect to property that is or may be burdened with</u>	3870
<u>liability for violation of environmental law;</u>	3871
<u>(4) Compromise claims against the trust that may be asserted</u>	3872
<u>for an alleged violation of environmental law;</u>	3873
<u>(5) Pay the expense of any inspection, review, abatement, or</u>	3874
<u>remedial action to comply with environmental law.</u>	3875
<u>(N) Pay or contest any claim, settle a claim by or against</u>	3876
<u>the trust, and release, in whole or in part, a claim belonging to</u>	3877
<u>the trust;</u>	3878
<u>(O) Pay taxes, assessments, compensation of the trustee and</u>	3879

<u>of employees and agents of the trust, and other expenses incurred</u>	3880
<u>in the administration of the trust;</u>	3881
<u>(P) Exercise elections with respect to federal, state, and</u>	3882
<u>local taxes;</u>	3883
<u>(O) Select a mode of payment under any employee benefit or</u>	3884
<u>retirement plan, annuity, or life insurance policy payable to the</u>	3885
<u>trustee, exercise rights under any employee benefit or retirement</u>	3886
<u>plan, annuity, or life insurance policy payable to the trustee,</u>	3887
<u>including the right to indemnification for expenses and against</u>	3888
<u>liabilities, and take appropriate action to collect the proceeds;</u>	3889
<u>(R) Make loans out of trust property, including loans to a</u>	3890
<u>beneficiary on terms and conditions the trustee considers to be</u>	3891
<u>fair and reasonable under the circumstances, and the trustee has a</u>	3892
<u>lien on future distributions for repayment of those loans;</u>	3893
<u>(S) Pledge the property of a revocable trust to guarantee</u>	3894
<u>loans made by others to the settlor of the revocable trust, or, if</u>	3895
<u>the settlor so directs, to guarantee loans made by others to a</u>	3896
<u>third party;</u>	3897
<u>(T) Appoint a trustee to act in another jurisdiction with</u>	3898
<u>respect to trust property located in the other jurisdiction,</u>	3899
<u>confer upon the appointed trustee all of the powers and duties of</u>	3900
<u>the appointing trustee, require that the appointed trustee furnish</u>	3901
<u>security, and remove any trustee so appointed;</u>	3902
<u>(U) Pay an amount distributable to a beneficiary who is under</u>	3903
<u>a legal disability or who the trustee reasonably believes is</u>	3904
<u>incapacitated, by paying it directly to the beneficiary or</u>	3905
<u>applying it for the beneficiary's benefit, or by doing any of the</u>	3906
<u>following:</u>	3907
<u>(1) Paying it to the beneficiary's guardian of the estate,</u>	3908
<u>or, if the beneficiary does not have a guardian of the estate, the</u>	3909

<u>beneficiary's guardian of the person;</u>	3910
<u>(2) Paying it to the beneficiary's custodian under sections 5814.01 to 5814.09 of the Revised Code and, for that purpose, creating a custodianship;</u>	3911 3912 3913
<u>(3) If the trustee does not know of a guardian of the person or estate, or custodian, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf;</u>	3914 3915 3916 3917
<u>(4) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.</u>	3918 3919 3920
<u>(V) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;</u>	3921 3922 3923 3924 3925
<u>(W) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;</u>	3926 3927 3928
<u>(X) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;</u>	3929 3930 3931
<u>(Y) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;</u>	3932 3933 3934
<u>(Z) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.</u>	3935 3936 3937
<u>Sec. 5808.17. (A) Upon termination or partial termination of</u>	3938

a trust, the trustee may send to the beneficiaries a proposal for 3939
distribution. The right of any beneficiary to object to the 3940
proposed distribution terminates if the beneficiary does not 3941
notify the trustee of an objection within thirty days after the 3942
proposal was sent but only if the proposal informed the 3943
beneficiary of the right to object and of the time allowed for 3944
objection. 3945

(B) Upon the occurrence of an event terminating or partially 3946
terminating a trust, the trustee shall proceed expeditiously to 3947
distribute the trust property to the persons entitled to it, 3948
subject to the right of the trustee to retain a reasonable reserve 3949
for the payment of debts, expenses, and taxes. 3950

(C) A release by a beneficiary of a trustee from liability 3951
for breach of trust is invalid to the extent that it was induced 3952
by improper conduct of the trustee or that the beneficiary, at the 3953
time of the release, did not know of the beneficiary's rights or 3954
of the material facts relating to the breach. 3955

Sec. ~~1339.52~~ 5809.01. (A)(1) As used in the Revised Code, the 3956
"Ohio Uniform Prudent Investor Act" means sections 5809.01 to 3957
5809.08, 5808.03, 5808.05, and 5808.06, division (A) of section 3958
5808.02, and division (B) of section 5808.07 of the Revised Code, 3959
and those sections may be cited as the "Ohio Uniform Prudent 3960
Investor Act." 3961

(2) As used in ~~sections 1339.52 to 1339.61~~ of the Revised 3962
Code ~~the Ohio Uniform Prudent Investor Act~~, "trustee" means a 3963
trustee under any testamentary, inter vivos, or other trust. 3964

(B) Except as provided in division (C) or (D) of this 3965
section, a trustee who invests and manages trust assets under 3966
~~sections 1339.52 to 1339.61~~ of the Revised Code the Ohio Uniform 3967
Prudent Investor Act owes a duty to the beneficiaries of the trust 3968

to comply with ~~sections 1339.52 to 1339.61 of the Revised Code~~ the 3969
Ohio Uniform Prudent Investor Act. 3970

(C) ~~Sections 1339.52 to 1339.61 of the Revised Code~~ The Ohio 3971
Uniform Prudent Investor Act may be expanded, restricted, 3972
eliminated, or otherwise altered, without express reference ~~to~~ 3973
~~these sections~~ by the instrument creating a trust to the Ohio 3974
Uniform Prudent Investor Act or any section of the Revised Code 3975
that is part of that act. 3976

(D) A trustee is not liable to a beneficiary of a trust to 3977
the extent the trustee acted in reasonable reliance on the 3978
provisions of the trust. 3979

Sec. ~~1339.53~~ 5809.02. (A) A trustee shall invest and manage 3980
trust assets as a prudent investor would, by considering the 3981
purposes, terms, distribution requirements, and other 3982
circumstances of the trust. In satisfying this requirement, the 3983
trustee shall exercise reasonable care, skill, and caution. 3984

(B) A trustee shall make a reasonable effort to verify facts 3985
relevant to the investment and management of trust assets. 3986

(C) ~~A trustee who has special skills or expertise, or is~~ 3987
~~named trustee in reliance upon the trustee's representation that~~ 3988
~~the trustee has special skills or expertise, has a duty to use~~ 3989
~~those special skills or expertise.~~ 3990

~~(D)~~ A trustee's investment and management decisions 3991
respecting individual trust assets shall not be evaluated in 3992
isolation but in the context of the trust portfolio as a whole and 3993
as part of an overall investment strategy having risk and return 3994
objectives reasonably suited to the trust. 3995

~~(E)~~(D) Among circumstances that a trustee shall consider in 3996
investing and managing trust assets are the following as are 3997
relevant to the trust or its beneficiaries: 3998

(1) The general economic conditions;	3999
(2) The possible effect of inflation or deflation;	4000
(3) The expected tax consequences of investment decisions or strategies;	4001 4002
(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;	4003 4004 4005 4006
(5) The expected total return from income and appreciation of capital;	4007 4008
(6) Other resources of the beneficiaries;	4009
(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;	4010 4011
(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.	4012 4013 4014
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 Act</u> .	4015 4016 4017 4018 4019
(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.	4020 4021 4022 4023
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	4024 4025 4026

concerning the retention and disposition of trust assets in order 4027
to bring the trust portfolio into compliance with the purposes, 4028
terms, distribution requirements, and other circumstances of the 4029
trust, and in order to comply with the requirements and standards 4030
of ~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio 4031
Uniform Prudent Investor Act. 4032

Sec. ~~1339.58~~ 5809.05. Compliance with ~~sections 1339.52 to~~ 4033
~~1339.61 of the Revised Code~~ the Ohio Uniform Prudent Investor Act 4034
shall be determined in light of the facts and circumstances 4035
existing at the time of a trustee's decision or action and not by 4036
hindsight. 4037

Sec. 5809.06. (A) A trustee may delegate investment and 4038
management functions of a trust that a prudent trustee having 4039
comparable skills could properly delegate under the circumstances. 4040
A trustee that exercises its delegation authority under this 4041
division shall comply with the requirements of division (A) of 4042
section 5808.07 of the Revised Code. 4043

(B) In performing investment or management functions of a 4044
trust that are delegated to an agent, an agent owes a duty to the 4045
trust to exercise reasonable care to comply with the terms of the 4046
delegation. 4047

(C) A trustee who delegates a function to an agent in 4048
compliance with division (A) of this section is not liable to the 4049
beneficiaries of the trust or to the trust for the decisions or 4050
actions of the agent to whom the function was delegated. 4051

(D) By accepting the delegation of investment or management 4052
functions of a trust that is subject to the laws of this state, an 4053
agent submits to the jurisdiction of this state. 4054

Sec. ~~1339.60~~ 5809.07. The following terms or comparable 4055

language in the provisions of a trust, unless otherwise limited or 4056
modified, authorizes any investment or strategy permitted by 4057
~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform 4058
Prudent Investor Act: "investments permissible by law for 4059
investment of trust funds"; "legal investments"; "authorized 4060
investments"; "using the judgment and care under the circumstances 4061
then prevailing that persons of prudence, discretion, and 4062
intelligence exercise in the management of their own affairs, not 4063
in regard to speculation but in regard to the permanent 4064
disposition of their funds considering the probable income as well 4065
as the probable safety of their capital"; "prudent man rule"; 4066
"prudent trustee rule"; "prudent person rule"; and "prudent 4067
investor rule." 4068

Sec. ~~1339.61~~ 5809.08. (A) ~~Sections 1339.52 to 1339.61 of the~~ 4069
~~Revised Code~~ The Ohio Uniform Prudent Investor Act shall be 4070
applied and construed to effectuate the general purpose to make 4071
uniform the law with respect to the subject of these sections 4072
among the states enacting it. ~~These sections may be cited as the~~ 4073
~~"Ohio Uniform Prudent Investor Act."~~ 4074

(B) ~~Sections 1339.52 to 1339.61 of the Revised Code~~ apply The 4075
Ohio Uniform Prudent Investor Act applies to trusts existing on or 4076
created after ~~the effective date of these sections~~ March 22, 1999. 4077
As applied to trusts existing on ~~the effective date of these~~ 4078
~~sections~~ March 22, 1999, ~~sections 1339.52 to 1339.61 of the~~ 4079
~~Revised Code~~ govern Ohio Uniform Prudent Investor Act governs only 4080
decisions or actions occurring after ~~the effective date of these~~ 4081
~~sections~~ March 22, 1999. 4082

(C) The temporary investment of cash or funds pursuant to 4083
section ~~1339.44~~ 5815.26 or 2109.372 of the Revised Code shall be 4084
considered a prudent investment in compliance with ~~sections~~ 4085
~~1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform Prudent 4086

<u>Investor Act.</u>	4087
<u>Sec. 5810.01. (A) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.</u>	4088
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<u>(B) To remedy a breach of trust that has occurred or may occur, the court may do any of the following:</u>	4090
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<u>(1) Compel the trustee to perform the trustee's duties;</u>	4092
<u>(2) Enjoin the trustee from committing a breach of trust;</u>	4093
<u>(3) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;</u>	4094
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<u>(4) Order a trustee to account;</u>	4096
<u>(5) Appoint a special fiduciary to take possession of the trust property and administer the trust;</u>	4097
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<u>(6) Suspend the trustee;</u>	4099
<u>(7) Remove the trustee as provided in section 5807.06 of the Revised Code;</u>	4100
	4101
<u>(8) Reduce or deny compensation to the trustee;</u>	4102
<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>	4103
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<u>(10) Order any other appropriate relief.</u>	4107
<u>Sec. 5810.02. (A) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of the following:</u>	4108
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	4110
<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>	4111
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(2) The profit the trustee made by reason of the breach. 4114

(B) Except as otherwise provided in this division, if more 4115
than one trustee is liable to the beneficiaries for a breach of 4116
trust, a trustee is entitled to contribution from the other 4117
trustee or trustees. A trustee is not entitled to contribution if 4118
the trustee was substantially more at fault than another trustee 4119
or if the trustee committed the breach of trust in bad faith or 4120
with reckless indifference to the purposes of the trust or the 4121
interests of the beneficiaries. A trustee who received a benefit 4122
from the breach of trust is not entitled to contribution from 4123
another trustee to the extent of the benefit received. 4124

Sec. 5810.03. (A) Absent a breach of trust, a trustee is not 4125
accountable to a beneficiary for any profit made by the trustee 4126
arising from the administration of the trust. 4127

(B) Absent a breach of trust, a trustee is not liable to a 4128
beneficiary for a loss or depreciation in the value of trust 4129
property or for not having made a profit. 4130

Sec. 5810.04. In a judicial proceeding involving the 4131
administration of a trust, including a trust that contains a 4132
spendthrift provision, the court, as justice and equity may 4133
require, may award costs, expenses, and reasonable attorney's fees 4134
to any party, to be paid by another party, from the trust that is 4135
the subject of the controversy, or from a party's interest in the 4136
trust that is the subject of the controversy. 4137

Sec. 5810.05. (A) A beneficiary may not commence a proceeding 4138
against a trustee for breach of trust more than two years after 4139
the date the beneficiary, a representative of the beneficiary, or 4140
a beneficiary surrogate is sent a report that adequately discloses 4141
the existence of a potential claim for breach of trust and informs 4142

the beneficiary, the representative of the beneficiary, or the 4143
beneficiary surrogate of the time allowed for commencing a 4144
proceeding against a trustee. 4145

(B) A report adequately discloses the existence of a 4146
potential claim for breach of trust if it provides sufficient 4147
information so that the beneficiary or the representative of the 4148
beneficiary knows of the potential claim or should know of the 4149
existence of the potential claim. 4150

(C) If division (A) of this section does not apply, 4151
notwithstanding section 2305.09 of the Revised Code, a judicial 4152
proceeding by a beneficiary against a trustee for breach of trust 4153
must be commenced within four years after the first of the 4154
following to occur: 4155

(1) The removal, resignation, or death of the trustee; 4156

(2) The termination of the beneficiary's interest in the 4157
trust; 4158

(3) The termination of the trust; 4159

(4) The time at which the beneficiary knew or should have 4160
known of the breach of trust. 4161

Sec. 5810.06. A trustee who acts in reasonable reliance on 4162
the terms of the trust as expressed in the trust instrument is not 4163
liable to a beneficiary for a breach of trust to the extent the 4164
breach resulted from the reliance. 4165

Sec. 5810.07. If the happening of an event, including 4166
marriage, divorce, performance of educational requirements, or 4167
death, affects the administration or distribution of a trust, a 4168
trustee who has exercised reasonable care to ascertain the 4169
happening of the event is not liable for a loss resulting from the 4170

trustee's lack of knowledge.

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

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Sec. 5810.09. A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee or, at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

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

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(B) A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for

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violation of environmental law, only if the trustee is personally 4200
at fault. 4201

(C) A claim based on a contract entered into by a trustee in 4202
the trustee's fiduciary capacity, on an obligation arising from 4203
ownership or control of trust property, or on a tort committed in 4204
the course of administering a trust may be asserted in a judicial 4205
proceeding against the trustee in the trustee's fiduciary 4206
capacity, whether or not the trustee is personally liable for the 4207
claim. 4208

Sec. 5810.11. (A)(1) Except as otherwise provided in division 4209
(C) of this section or unless personal liability is imposed in the 4210
contract, a trustee who holds an interest as a general partner in 4211
a general or limited partnership is not personally liable on a 4212
contract entered into by the partnership after the trust's 4213
acquisition of the interest if the fiduciary capacity was 4214
disclosed. A partnership certificate that is filed pursuant to 4215
Chapter 1777. or another chapter of the Revised Code and that 4216
indicates that a trustee holds a general partnership interest in a 4217
fiduciary capacity by the use following the name or signature of 4218
the trustee of the words "as trustee" or other words that indicate 4219
the trustee's fiduciary capacity constitutes a sufficient 4220
disclosure for purposes of this division. 4221

(2) If a partnership certificate is not required to be filed 4222
pursuant to Chapter 1777. or another chapter of the Revised Code, 4223
a sufficient disclosure for purposes of division (A) of this 4224
section can be made by a trustee if a certificate that is filed 4225
with the recorder of the county in which the partnership's 4226
principal office or place of business is situated and with the 4227
recorder of each county in which the partnership owns real estate 4228
satisfies all of the following requirements: 4229

(a) The certificate states in full the names of all persons 4230

holding interests in the partnership and their places of residence. 4231
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(b) The certificate is signed by all persons who are general partners in the partnership and is acknowledged by a person authorized to take acknowledgements of deeds. 4233
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(c) The certificate uses the words "trustee under the (will or trust) of (name of decedent or settlor)," or other words that indicate the trustee's fiduciary capacity, following the trustee's name or signature. 4236
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(3) A contract or other written instrument that is delivered to a party that contracts with the partnership in which a trustee holds a general partnership interest in a fiduciary capacity and that indicates that the trustee so holds the interest constitutes a disclosure for purposes of division (A)(1) of this section with respect to transactions between the party and the partnership. If a disclosure has been made by a certificate in accordance with division (A) of this section, a disclosure for purposes of division (A) of this section with respect to such transactions exists regardless of whether a contract or other instrument indicates the trustee holds the general partnership interest in a fiduciary capacity. 4240
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(B) Except as otherwise provided in division (C) of this section, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault. 4252
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(C) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or 4258
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parents, or the spouse of any of them. 4262

(D) If the trustee of a revocable trust holds an interest as 4263
a general partner in a general or limited partnership, the settlor 4264
is personally liable for contracts and other obligations of the 4265
partnership as if the settlor were a general partner. 4266

Sec. 5810.12. (A) A person other than a beneficiary who in 4267
good faith assists a trustee, or who in good faith and for value 4268
deals with a trustee, without knowledge that the trustee is 4269
exceeding or improperly exercising the trustee's powers is 4270
protected from liability as if the trustee properly exercised the 4271
power. 4272

(B) A person other than a beneficiary who in good faith deals 4273
with a trustee is not required to inquire into the extent of the 4274
trustee's powers or the propriety of their exercise. 4275

(C) A person who in good faith delivers assets to a trustee 4276
is not required to ensure their proper application. 4277

(D) A person other than a beneficiary who in good faith 4278
assists a former trustee, or who in good faith and for value deals 4279
with a former trustee, without knowledge that the trusteeship has 4280
terminated is protected from liability as if the former trustee 4281
were still a trustee. 4282

(E) Comparable protective provisions of other laws relating 4283
to commercial transactions or transfer of securities by 4284
fiduciaries prevail over the protection provided by this section. 4285

Sec. 5810.13. (A) Instead of furnishing a copy of the trust 4286
instrument to a person other than a beneficiary, the trustee may 4287
furnish to the person a certification of trust containing all of 4288
the following information: 4289

(1) A statement that the trust exists and the date the trust 4290

<u>instrument was executed;</u>	4291
<u>(2) The identity of the settlor;</u>	4292
<u>(3) The identity and address of the currently acting trustee;</u>	4293
<u>(4) The powers of the trustee;</u>	4294
<u>(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;</u>	4295 4296
<u>(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;</u>	4297 4298 4299
<u>(7) The trust's taxpayer identification number;</u>	4300
<u>(8) The manner of taking title to trust property.</u>	4301
<u>(B) Any trustee may sign or otherwise authenticate a certification of trust.</u>	4302 4303
<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>	4304 4305 4306 4307
<u>(D) A certification of trust is not required to contain the dispositive terms of a trust.</u>	4308 4309
<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>	4310 4311 4312 4313 4314
<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</u>	4315 4316 4317 4318 4319

trust may not be inferred solely from the fact that a copy of all 4320
or part of the trust instrument is held by the person relying upon 4321
the certification. 4322

(G) A person who in good faith enters into a transaction in 4323
reliance upon a certification of trust may enforce the transaction 4324
against the trust property as if the representations contained in 4325
the certification were correct. 4326

(H) A person making a demand for the trust instrument in 4327
addition to a certification of trust or excerpts is liable for 4328
damages if the court determines that the person did not act in 4329
good faith in demanding the trust instrument. 4330

(I) This section does not limit the right of a person to 4331
obtain a copy of the trust instrument in a judicial proceeding 4332
concerning the trust. 4333

Sec. 5811.01. In applying and construing Chapters 5801. to 4334
5811. of the Revised Code, a court may consider the need to 4335
promote uniformity of the law with respect to the subject matter 4336
of those chapters among states that enact the uniform trust code. 4337

Sec. 5811.02. The provisions of Chapters 5801. to 5811. of 4338
the Revised Code governing the legal effect, validity, or 4339
enforceability of electronic records or electronic signatures and 4340
of contracts formed or performed with the use of electronic 4341
records or electronic signatures conform to the requirements of 4342
section 102 of the Electronic Signatures in Global and National 4343
Commerce Act, 15 U.S.C. 7002, 114 Stat. 467, and supersede, 4344
modify, and limit the requirements of the Electronic Signatures in 4345
Global and National Commerce Act. 4346

Sec. 5811.03. (A) Except as otherwise provided in Chapters 4347
5801. to 5811. of the Revised Code, all of the following apply: 4348

(1) Chapters 5801. to 5811. of the Revised Code apply to all trusts created before, on, or after their effective date. 4349
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(2) Chapters 5801. to 5811. of the Revised Code apply to all judicial proceedings concerning trusts commenced on or after their effective date. 4351
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(3) Chapters 5801. to 5811. of the Revised Code apply to judicial proceedings concerning trusts commenced before the effective date of those chapters unless the court finds that application of a particular provision of those chapters would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision does not apply, and the superseded law applies. 4354
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(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. 4362
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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. 4367
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(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. 4369
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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: 4374
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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 4376
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twelve-month period that begins when an income interest begins or 4379
ends when an income interest ends. 4380

(B) "Beneficiary" includes, in the case of a decedent's 4381
estate, an heir, legatee, and devisee and, in the case of a trust, 4382
an income beneficiary and a remainder beneficiary. 4383

(C) "Fiduciary" means a personal representative or a trustee. 4384
The term includes an executor, administrator, successor personal 4385
representative, special administrator, and a person performing 4386
substantially the same function. 4387

(D) "Income" means money or property that a fiduciary 4388
receives as current return from a principal asset. "Income" 4389
includes a portion of receipts from a sale, exchange, or 4390
liquidation of a principal asset, to the extent provided in 4391
sections ~~1340.57~~ 5812.18 to ~~1340.77~~ 5812.38 of the Revised Code. 4392

(E) "Income beneficiary" means a person to whom net income of 4393
a trust is or may be payable. 4394

(F) "Income interest" means the right of an income 4395
beneficiary to receive all or part of net income, whether the 4396
terms of the trust require or authorize it to be distributed in 4397
the trustee's discretion. 4398

(G) "Mandatory income interest" means the right of an income 4399
beneficiary to receive net income that the terms of the trust 4400
require the fiduciary to distribute. 4401

(H) "Net income" means the total receipts allocated to income 4402
during an accounting period minus the disbursements made from 4403
income during the period, plus or minus transfers under sections 4404
~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code to or from 4405
income during the period. 4406

(I) "Person" means an individual, corporation, business 4407
trust, estate, trust, partnership, limited liability company, 4408

association, joint venture, or government; governmental 4409
subdivision, agency, or instrumentality; public corporation; or 4410
any other legal or commercial entity. 4411

(J) "Principal" means property held in trust for distribution 4412
to a remainder beneficiary when the trust terminates. 4413

(K) "Remainder beneficiary" means a person entitled to 4414
receive principal when an income interest ends. 4415

(L) "Terms of a trust" means the manifestation of the intent 4416
of a settlor or decedent with respect to the trust, expressed in a 4417
manner that admits of its proof in a judicial proceeding, whether 4418
by written or spoken words or by conduct. 4419

(M) "Trustee" includes an original, additional, or successor 4420
trustee, whether or not appointed or confirmed by a court. 4421

Sec. ~~1340.41~~ 5812.02. (A) In allocating receipts and 4422
disbursements to or between principal and income, and with respect 4423
to any matter within the scope of sections ~~1340.46~~ 5812.07 to 4424
~~1340.53~~ 5812.14 of the Revised Code, all of the following apply: 4425

(1) A fiduciary shall administer a trust or estate in 4426
accordance with the terms of the trust or the will, even if there 4427
is a different provision in sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 4428
5812.52 of the Revised Code. 4429

(2) A fiduciary may administer a trust or estate by the 4430
exercise of a discretionary power of administration given to the 4431
fiduciary by the terms of the trust or the will, even if the 4432
exercise of the power produces a result different from a result 4433
required or permitted by any provision of sections ~~1340.40~~ 5812.01 4434
to ~~1340.91~~ 5812.52 of the Revised Code. 4435

(3) A fiduciary shall administer a trust or estate in 4436
accordance with sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the 4437
Revised Code if the terms of the trust or the will do not contain 4438

a different provision or do not give the fiduciary a discretionary 4439
power of administration. 4440

(4) A fiduciary shall add a receipt, or charge a 4441
disbursement, to principal to the extent that the terms of the 4442
trust and any provision of sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 4443
5812.52 of the Revised Code do not provide for allocating the 4444
receipt or disbursement to or between principal and income. 4445

(B) In exercising the power to adjust under division (A) of 4446
section ~~1340.42~~ 5812.03 of the Revised Code or a discretionary 4447
power of administration regarding a matter within the scope of 4448
sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code, 4449
whether granted by the terms of a trust, a will, or a provision of 4450
any such section, a fiduciary shall administer a trust or estate 4451
impartially, based on what is fair and reasonable to all of the 4452
beneficiaries, except to the extent that the terms of the trust or 4453
the will clearly manifest an intention that the fiduciary shall or 4454
may favor one or more of the beneficiaries. A determination in 4455
accordance with sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the 4456
Revised Code is presumed to be fair and reasonable to all of the 4457
beneficiaries. 4458

(C) In allocating receipts and disbursements to or between 4459
principal and income, a fiduciary may credit a receipt or charge 4460
an expenditure to income or principal with respect to a decedent's 4461
estate, a trust, or property passing to a trust, that is eligible 4462
for a federal estate tax marital deduction or Ohio estate tax 4463
marital deduction, or for a federal estate tax charitable 4464
deduction or Ohio estate tax charitable deduction, or for a 4465
federal gift tax marital deduction or federal gift tax charitable 4466
deduction only to the extent that the credit of the receipt or 4467
charge of the expenditure will not cause the reduction or loss of 4468
the deduction. 4469

(D) As used in division (C) of this section: 4470

(1) "Federal estate tax charitable deduction" means the 4471
estate tax charitable deduction allowed by subtitle B, Chapter 11 4472
of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2055, as 4473
amended. 4474

(2) "Federal estate tax marital deduction" means the estate 4475
tax marital deduction allowed by subtitle B, Chapter 11 of the 4476
"Internal Revenue Code of 1986," 26 U.S.C.A. 2056, as amended. 4477

(3) "Federal gift tax charitable deduction" means the gift 4478
tax charitable deduction allowed by subtitle B, Chapter 12 of the 4479
"Internal Revenue Code of 1986," 26 U.S.C.A. 2522, as amended. 4480

(4) "Federal gift tax marital deduction" means the gift tax 4481
marital deduction allowed by subtitle B, Chapter 12 of the 4482
"Internal Revenue Code of 1986," 26 U.S.C.A. 2523, as amended. 4483

(5) "Ohio estate tax charitable deduction" means the estate 4484
tax charitable deduction allowed by division (A) of section 4485
5731.17 of the Revised Code. 4486

(6) "Ohio estate tax marital deduction" means the estate tax 4487
marital deduction allowed by section 5731.15 of the Revised Code. 4488

Sec. ~~1340.42~~ 5812.03. (A) A trustee may adjust between 4489
principal and income to the extent the trustee considers necessary 4490
if the trustee invests and manages the trust assets as a prudent 4491
investor, the terms of the trust describe the amount that may or 4492
must be distributed to a beneficiary by referring to the trust's 4493
income, and the trustee determines, after applying division (A) of 4494
section ~~1340.41~~ 5812.02 of the Revised Code, that the trustee is 4495
unable to comply with division (B) of that section. 4496

(B) In deciding whether and to what extent to exercise the 4497
power conferred by division (A) of this section, a trustee shall 4498
consider all factors relevant to the trust and its beneficiaries, 4499
including all of the following factors to the extent they are 4500

relevant:	4501
(1) The nature, purpose, and expected duration of the trust;	4502
(2) The intent of the settlor;	4503
(3) The identity and circumstances of the beneficiaries;	4504
(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;	4505 4506
(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;	4507 4508 4509 4510 4511 4512
(6) The net amount allocated to income under sections 1340.40 <u>5812.01</u> , 1340.41 <u>5812.02</u> , and 1340.46 <u>5812.07</u> to 1340.91 <u>5812.52</u> of the Revised Code; and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;	4513 4514 4515 4516 4517
(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;	4518 4519 4520 4521 4522
(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;	4523 4524
(9) The anticipated tax consequences of an adjustment.	4525
(C) A trustee shall not make an adjustment if any of the following applies:	4526 4527
(1) The adjustment diminishes the income interest in a trust that requires all of the income to be paid at least annually to a	4528 4529

spouse and for which an estate tax or gift tax marital deduction	4530
would be allowed, in whole or in part, if the trustee did not have	4531
the power to make the adjustment.	4532
(2) The adjustment reduces the actuarial value of the income	4533
interest in a trust to which a person transfers property with the	4534
intent to qualify for a gift tax exclusion.	4535
(3) The adjustment changes the amount payable to a	4536
beneficiary as a fixed annuity or a fixed fraction of the value of	4537
the trust assets.	4538
(4) The adjustment is from any amount that is permanently set	4539
aside for charitable purposes under a will or the terms of a trust	4540
unless both income and principal are so set aside.	4541
(5) If possessing or exercising the power to make the	4542
adjustment causes an individual to be treated as the owner of all	4543
or part of the trust for income tax purposes, and the individual	4544
would not be treated as the owner if the trustee did not possess	4545
the power to make the adjustment;	4546
(6) If possessing or exercising the power to make the	4547
adjustment causes all or part of the trust assets to be included	4548
for estate tax purposes in the estate of an individual who has the	4549
power to remove a trustee or appoint a trustee, or both, and the	4550
assets would not be included in the estate of the individual if	4551
the trustee did not possess the power to make the adjustment;	4552
(7) If the trustee is a beneficiary of the trust;	4553
(8) If the trustee is not a beneficiary, but the adjustment	4554
would benefit the trustee directly or indirectly.	4555
(D) If division (C)(5), (6), (7), or (8) of this section	4556
applies to a trustee and there is more than one trustee, a	4557
cotrustee to whom the provision does not apply may make the	4558
adjustment unless the exercise of the power by the remaining	4559

trustee or trustees is not permitted by the terms of the trust. 4560

(E) A trustee may release the entire power conferred by 4561
division (A) of this section or may release only the power to 4562
adjust from income to principal or the power to adjust from 4563
principal to income if the trustee is uncertain about whether 4564
possessing or exercising the power will cause a result described 4565
in division (C)(1), (2), (3), (4), (5), (6), or (8) of this 4566
section or if the trustee determines that possessing or exercising 4567
the power will or may deprive the trust of a tax benefit or impose 4568
a tax burden not described in division (C) of this section. The 4569
release may be permanent or for a specified period, including a 4570
period measured by the life of an individual. 4571

(F) Terms of a trust that limit the power of a trustee to 4572
make an adjustment between principal and income do not affect the 4573
application of this section unless it is clear from the terms of 4574
the trust that the terms are intended to deny the trustee the 4575
power of adjustment conferred by division (A) of this section. 4576

(G) The liability of a trustee relative to the exercise of 4577
adjustment authority conferred by divisions (A) to (F) of this 4578
section shall be limited in the following manner: 4579

(1) Unless a court determines that a trustee has acted in bad 4580
faith, no trustee shall be held liable for damages for choosing 4581
not to make an adjustment. 4582

(2) Unless a court determines that a trustee has acted in bad 4583
faith with respect to an adjustment, the sole remedy to be ordered 4584
by a court shall be a prospective correction of the adjustment. 4585

(3) For purposes of this section, and subject to division (C) 4586
of this section, from time to time a trustee may make a 4587
safe-harbor adjustment to increase net trust accounting income up 4588
to and including an amount equal to four per cent of the trust's 4589
fair market value determined as of the first business day of the 4590

current year. If a trustee determines to make this safe-harbor
adjustment, the propriety of this adjustment shall be conclusively
presumed. Nothing in division (G)(3) of this section prohibits any
other type of adjustment authorized under any provision of this
section.

Sec. ~~1340.46~~ 5812.07. After a decedent dies, in the case of
an estate, or after an income interest in a trust ends, all of the
following apply:

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

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

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

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

reduction or loss of the deduction. 4621

(3) Paying from principal all other disbursements made or 4622
incurred in connection with the settlement of a decedent's estate 4623
or the winding up of a terminating income interest, including 4624
debts, funeral expenses, disposition of remains, family 4625
allowances, and death taxes and related penalties that are 4626
apportioned to the estate or terminating income interest by the 4627
will, the terms of the trust, or applicable law. 4628

(C) A fiduciary shall distribute to a beneficiary that 4629
receives a pecuniary amount outright the interest or any other 4630
amount provided by the will, the terms of the trust, or applicable 4631
law from net income determined under division (B) of this section 4632
or from principal to the extent that net income is insufficient. 4633
If a beneficiary is to receive a pecuniary amount outright from a 4634
trust after an income interest ends and no interest or other 4635
amount is provided for by the terms of the trust or applicable 4636
law, the fiduciary shall distribute the interest or other amount 4637
to which the beneficiary would be entitled under applicable law if 4638
the pecuniary amount were required to be paid under a will. 4639

(D) A fiduciary shall distribute the net income remaining 4640
after distributions required by division (C) of this section, in 4641
the manner described in section ~~1340.47~~ 5812.08 of the Revised 4642
Code, to all other beneficiaries, including a beneficiary that 4643
receives a pecuniary amount in trust, even if the beneficiary 4644
holds an unqualified power to withdraw assets from the trust or 4645
other presently exercisable, general power of appointment over the 4646
trust. 4647

(E) A fiduciary shall not reduce principal or income receipts 4648
from property described in division (A) of this section because of 4649
a payment described in section ~~1340.81~~ 5812.42 or ~~1340.82~~ 5812.43 4650
of the Revised Code to the extent that the will, the terms of the 4651

trust, or applicable law requires the fiduciary to make the 4652
payment from assets other than the property or to the extent that 4653
the fiduciary recovers or expects to recover the payment from a 4654
third party. The net income and principal receipts from the 4655
property are determined by including all of the amounts the 4656
fiduciary receives or pays with respect to the property, whether 4657
those amounts accrued or became due before, on, or after the date 4658
of a decedent's death or an income interest's terminating event, 4659
and by making a reasonable provision for amounts that the 4660
fiduciary believes the estate or terminating income interest may 4661
become obligated to pay after the property is distributed. 4662

Sec. ~~1340.47~~ 5812.08. (A) Each beneficiary described in 4663
division (D) of section ~~1340.46~~ 5812.07 of the Revised Code is 4664
entitled to receive a portion of the net income equal to the 4665
beneficiary's fractional interest in undistributed principal 4666
assets, using values as of the distribution date. If a fiduciary 4667
makes more than one distribution of assets to beneficiaries to 4668
whom this section applies, each beneficiary, including one that 4669
does not receive part of the distribution, is entitled, as of each 4670
distribution date, to the net income the fiduciary has received 4671
after the date of the decedent's death or terminating event or 4672
earlier distribution date but has not distributed as of the 4673
current distribution date. 4674

(B) In determining a beneficiary's share of net income for 4675
the purpose of this section, all of the following apply: 4676

(1) The beneficiary is entitled to receive a portion of the 4677
net income equal to the beneficiary's fractional interest in the 4678
undistributed principal assets immediately before the distribution 4679
date, including assets that later may be sold to meet principal 4680
obligations. 4681

(2) The beneficiary's fractional interest in the 4682

undistributed principal assets must be calculated without regard 4683
to property specifically given to a beneficiary and property 4684
required to pay pecuniary amounts not in trust. 4685

(3) The beneficiary's fractional interest in the 4686
undistributed principal assets must be calculated on the basis of 4687
the aggregate value of those assets as of the distribution date 4688
without reducing the value by any unpaid principal obligation. 4689

(4) The distribution date for purposes of this section may be 4690
the date as of which the fiduciary calculates the value of the 4691
assets if that date is reasonably near the date on which assets 4692
are actually distributed. 4693

(C) If a fiduciary does not distribute all of the collected 4694
but undistributed net income described in divisions (A) and (B) of 4695
this section to each person as of a distribution date, the 4696
fiduciary shall maintain appropriate records showing the interest 4697
of each. 4698

(D) To the extent that a fiduciary considers it appropriate, 4699
the fiduciary may apply the provisions of divisions (A) to (C) of 4700
this section to any net gain or loss, realized after the date of 4701
the decedent's death or an income interest termination or earlier 4702
distribution date, from the disposition of a principal asset to 4703
which such provisions apply. 4704

Sec. ~~1340-51~~ 5812.12. (A) An income beneficiary is entitled 4705
to net income from the date on which the income interest begins. 4706
An income interest begins on the date specified in the terms of 4707
the trust or, if no date is specified, on the date an asset 4708
becomes subject to a trust or successive income interest. 4709

(B) An asset becomes subject to a trust on any of the 4710
following dates: 4711

(1) The date it is transferred to the trust, in the case of 4712

an asset that is transferred to a trust during the transferor's 4713
life; 4714

(2) The date of a testator's death, in the case of an asset 4715
that becomes subject to a trust by reason of a will, even if there 4716
is an intervening period of administration of the testator's 4717
estate; 4718

(3) The date of an individual's death, in the case of an 4719
asset that is transferred to a fiduciary by a third party because 4720
of the individual's death. 4721

(C) An asset becomes subject to a successive income interest 4722
on the day after the preceding income interest ends, as determined 4723
under division (D) of this section, even if there is an 4724
intervening period of administration to wind up the preceding 4725
income interest. 4726

(D) An income interest ends on the day before an income 4727
beneficiary dies or another terminating event occurs, or on the 4728
last day of a period during which there is no beneficiary to whom 4729
a trustee may distribute income. 4730

Sec. ~~1340.52~~ 5812.13. (A) A trustee shall allocate to 4731
principal an income receipt or disbursement other than one to 4732
which division (A) of section ~~1340.46~~ 5812.07 of the Revised Code 4733
applies, if its due date occurs before a decedent dies in the case 4734
of an estate or before an income interest begins in the case of a 4735
trust or successive income interest. 4736

(B) A trustee shall allocate an income receipt or 4737
disbursement to income if its due date occurs on or after the date 4738
on which a decedent dies or an income interest begins and if it is 4739
a periodic due date. An income receipt or disbursement shall be 4740
treated as accruing from day to day if its due date is not 4741
periodic or it has no due date. The portion of the receipt or 4742

disbursement accruing before the date on which a decedent dies or 4743
an income interest begins shall be allocated to principal, and the 4744
balance shall be allocated to income. 4745

(C) For the purposes of this section, an item of income or an 4746
obligation is due on the date the payer is required to make a 4747
payment. If a payment date is not stated, there is no due date. 4748
Distributions to shareholders or other owners from an entity to 4749
which section ~~1340.57~~ 5812.18 of the Revised Code applies are 4750
deemed to be due on the date fixed by the entity for determining 4751
who is entitled to receive the distribution or, if no date is 4752
fixed, on the declaration date for the distribution. A due date is 4753
periodic for receipts or disbursements that must be paid at 4754
regular intervals under a lease or an obligation to pay interest 4755
or if an entity customarily makes distributions at regular 4756
intervals. 4757

Sec. ~~1340.53~~ 5812.14. (A) As used in this section, 4758
"undistributed income" means net income received before the date 4759
on which an income interest ends. "Undistributed income" excludes 4760
an item of income or expense that is due or accrued or net income 4761
that has been added or is required to be added to principal under 4762
the terms of the trust. 4763

(B) When a mandatory income interest ends, the trustee shall 4764
pay to a mandatory income beneficiary that survives that date, or 4765
the estate of a deceased mandatory income beneficiary whose death 4766
causes the interest to end, the beneficiary's share of the 4767
undistributed income that is not disposed of under the terms of 4768
the trust, unless the beneficiary has an unqualified power to 4769
revoke more than five per cent of the trust immediately before the 4770
income interest ends. If the beneficiary has such power, the 4771
undistributed income from the portion of the trust that may be 4772
revoked shall be added to principal. 4773

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

Sec. ~~1340.57~~ 5812.18. (A) As used in this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which section ~~1340.58~~ 5812.19 of the Revised Code applies, a business or activity to which section ~~1340.59~~ 5812.20 of the Revised Code applies, or an asset-backed security to which section ~~1340.77~~ 5812.38 of the Revised Code applies.

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

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

(1) Property other than money;

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

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

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

(D) Money is received in partial liquidation in either of the

following circumstances: 4804

(1) To the extent that the entity, at or near the time of a 4805
distribution, indicates that it is a distribution in partial 4806
liquidation; 4807

(2) If the total amount of money and property received in a 4808
distribution or series of related distributions is greater than 4809
twenty per cent of the entity's gross assets, as shown by the 4810
entity's year-end financial statements immediately preceding the 4811
initial receipt. 4812

(E) Money is not received in partial liquidation, nor shall 4813
it be taken into account under division (D)(2) of this section, to 4814
the extent that it does not exceed the amount of income tax that a 4815
trustee or beneficiary must pay on taxable income of the entity 4816
that distributes the money. 4817

(F) A trustee may rely upon a statement made by an entity 4818
about the source or character of a distribution if the statement 4819
is made at or near the time of distribution by the entity's board 4820
of directors or other person or group of persons authorized to 4821
exercise powers to pay money or transfer property comparable to 4822
those of a corporation's board of directors. 4823

Sec. ~~1340.58~~ 5812.19. A trustee shall allocate to income an 4824
amount received as a distribution of income from a trust or an 4825
estate in which the trust has an interest other than a purchased 4826
interest, and shall allocate to principal an amount received as a 4827
distribution of principal from such a trust or estate. If a 4828
trustee purchases an interest in a trust that is an investment 4829
entity, or a decedent or donor transfers an interest in such a 4830
trust to a trustee, section ~~1340.57~~ 5812.18 or ~~1340.77~~ 5812.38 of 4831
the Revised Code applies to a receipt from the trust. 4832

Sec. ~~1340.59~~ 5812.20. (A) If a trust that conducts a business 4833

or other activity determines that it is in the best interest of 4834
all the beneficiaries to account separately for the business or 4835
activity instead of accounting for it as part of the trust's 4836
general accounting records, the trustee may maintain separate 4837
accounting records for its transactions, whether or not its assets 4838
are segregated from other trust assets. 4839

(B) A trustee that accounts separately for a business or 4840
other activity may determine the extent to which its net cash 4841
receipts must be retained for working capital, the acquisition or 4842
replacement of fixed assets, and other reasonably foreseeable 4843
needs of the business or activity, and the extent to which the 4844
remaining net cash receipts are accounted for as principal or 4845
income in the trust's general accounting records. If a trustee 4846
sells assets of the business or other activity, other than in the 4847
ordinary course of the business or activity, the trustee shall 4848
account for the net amount received as principal in the trust's 4849
general accounting records to the extent the trustee determines 4850
that the amount received is no longer required in the conduct of 4851
the business. 4852

(C) Activities for which a trustee may maintain separate 4853
accounting records under this section include all of the 4854
following: 4855

(1) Retail, manufacturing, service, and other traditional 4856
business activities; 4857

(2) Farming; 4858

(3) Raising and selling livestock and other animals; 4859

(4) Management of rental properties; 4860

(5) Extraction of minerals and other natural resources; 4861

(6) Timber operations; 4862

(7) Activities to which section 1340.76 of the Revised Code 4863

applies.

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Sec. ~~1340.63~~ 5812.24. A trustee shall allocate to principal
all of the following:

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(A) To the extent not allocated to income under sections
~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code, assets
received from a transferor during the transferor's lifetime, a
decedent's estate, a trust with a terminating income interest, or
a payer under a contract naming the trust or its trustee as
beneficiary;

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

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

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(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;

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

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

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Sec. ~~1340.64~~ 5812.25. To the extent that a trustee accounts
for receipts from rental property pursuant to this section, the
trustee shall allocate to income an amount received as rent of

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real or personal property, including an amount received for 4893
cancellation or renewal of a lease. An amount received as a 4894
refundable deposit, including a security deposit or a deposit that 4895
is to be applied as rent for future periods, shall be added to 4896
principal and held subject to the terms of the lease and shall not 4897
be available for distribution to a beneficiary until the trustee's 4898
contractual obligations have been satisfied with respect to that 4899
amount. 4900

Sec. ~~1340.65~~ 5812.26. (A) An amount received as interest, 4901
whether determined at a fixed, variable, or floating rate, on an 4902
obligation to pay money to the trustee, including an amount 4903
received as consideration for prepaying principal, shall be 4904
allocated to income without any provision for amortization of 4905
premium. 4906

(B) A trustee shall allocate to principal an amount received 4907
from the sale, redemption, or other disposition of an obligation 4908
to pay money to the trustee more than one year after the date it 4909
is purchased or acquired by the trustee, including an obligation 4910
whose purchase price or value when it is acquired is less than its 4911
value at maturity. If the obligation matures within one year after 4912
the date it is purchased or acquired by the trustee, an amount 4913
received in excess of its purchase price or its value when 4914
acquired by the trust shall be allocated to income. 4915

(C) This section does not apply to an obligation to which 4916
section ~~1340.71~~ 5812.32, ~~1340.72~~ 5812.33, ~~1340.73~~ 5812.34, ~~1340.74~~ 4917
5812.35, ~~1340.76~~ 5812.37, or ~~1340.77~~ 5812.38 of the Revised Code 4918
applies. 4919

Sec. ~~1340.66~~ 5812.27. (A) Except as otherwise provided in 4920
division (B) of this section, a trustee shall allocate to 4921
principal the proceeds of a life insurance policy or other 4922

contract in which the trust or its trustee is named as 4923
beneficiary, including a contract that insures the trust or its 4924
trustee against loss for damage to, destruction of, or loss of 4925
title to a trust asset. The trustee shall allocate dividends on an 4926
insurance policy to income if the premiums on the policy are paid 4927
from income, and to principal if the premiums are paid from 4928
principal. 4929

(B) A trustee shall allocate to income proceeds of a contract 4930
that insures the trustee against loss of occupancy or other use by 4931
an income beneficiary, loss of income, or, subject to section 4932
~~1340.59~~ 5812.20 of the Revised Code, loss of profits from a 4933
business. 4934

(C) This section does not apply to a contract to which 4935
section ~~1340.71~~ 5812.32 of the Revised Code applies. 4936

Sec. ~~1340.70~~ 5812.31. If a trustee determines that an 4937
allocation between principal and income required by section 4938
~~1340.71~~ 5812.32, ~~1340.72~~ 5812.33, ~~1340.73~~ 5812.34, ~~1340.74~~ 4939
5812.35, or ~~1340.77~~ 5812.38 of the Revised Code is insubstantial, 4940
the trustee may allocate the entire amount to principal unless one 4941
of the circumstances described in division (C) of section ~~1340.42~~ 4942
5812.03 of the Revised Code applies to the allocation. This power 4943
may be exercised by a cotrustee in the circumstances described in 4944
division (D) of that section and may be released for the reasons 4945
and in the manner described in division (E) of the section. An 4946
allocation is presumed to be insubstantial if either of the 4947
following applies: 4948

(A) The amount of the allocation would increase or decrease 4949
net income in an accounting period, as determined before the 4950
allocation, by less than ten per cent. 4951

(B) The value of the asset producing the receipt for which 4952

the allocation would be made is less than ten per cent of the 4953
total value of the trust's assets at the beginning of the 4954
accounting period. 4955

Sec. ~~1340.71~~ 5812.32. (A) As used in this section, "payment" 4956
means a payment that a trustee may receive over a fixed number of 4957
years or during the life of one or more individuals because of 4958
services rendered or property transferred to the payer in exchange 4959
for future payments. "Payment" includes a payment made in money or 4960
property from the payer's general assets or from a separate fund 4961
created by the payer, including a private or commercial annuity, 4962
an individual retirement account, or a pension, profit-sharing, 4963
stock-bonus, or stock-ownership plan. 4964

(B) To the extent that a payment is characterized as interest 4965
or a dividend or a payment made in lieu of interest or a dividend, 4966
a trustee shall allocate it to income. The trustee shall allocate 4967
to principal the balance of the payment and any other payment 4968
received in the same accounting period that is not characterized 4969
as interest, a dividend, or an equivalent payment. 4970

(C) If no part of a payment is characterized as interest, a 4971
dividend, or an equivalent payment, and all or part of the payment 4972
is required to be made, a trustee shall allocate to income ten per 4973
cent of the part that is required to be made during the accounting 4974
period and the balance to principal. If no part of a payment is 4975
required to be made or the payment received is the entire amount 4976
to which the trustee is entitled, the trustee shall allocate the 4977
entire payment to principal. For purposes of this division, a 4978
payment is not "required to be made" to the extent that it is made 4979
because the trustee exercises a right of withdrawal. 4980

(D) If, to obtain an estate tax marital deduction for a 4981
trust, a trustee must allocate more of a payment to income than is 4982
provided for by this section, the trustee shall allocate to income 4983

the additional amount necessary to obtain the marital deduction. 4984

(E) This section does not apply to payments to which section 4985
~~1340.72~~ 5812.33 of the Revised Code applies. 4986

Sec. ~~1340.72~~ 5812.33. (A) As used in this section, 4987
"liquidating asset" means an asset whose value will diminish or 4988
terminate because the asset is expected to produce receipts for a 4989
period of limited duration. "Liquidating asset" includes a 4990
leasehold, patent, copyright, royalty right, and right to receive 4991
payments during a period of more than one year under an 4992
arrangement that does not provide for the payment of interest on 4993
the unpaid balance. "Liquidating asset" excludes a payment subject 4994
to section ~~1340.71~~ 5812.32 of the Revised Code, resources subject 4995
to section ~~1340.73~~ 5812.34 of the Revised Code, timber subject to 4996
section ~~1340.74~~ 5812.35 of the Revised Code, an activity subject 4997
to section ~~1340.76~~ 5812.37 of the Revised Code, an asset subject 4998
to section ~~1340.77~~ 5812.38 of the Revised Code, or any asset for 4999
which the trustee establishes a reserve for depreciation under 5000
section ~~1340.83~~ 5812.44 of the Revised Code. 5001

(B) A trustee shall allocate to income ten per cent of the 5002
receipts from a liquidating asset and the balance to principal. 5003

Sec. ~~1340.73~~ 5812.34. (A) To the extent that a trustee 5004
accounts for receipts from an interest in minerals or other 5005
natural resources pursuant to this section, the trustee shall 5006
allocate the receipts in accordance with all of the following: 5007

(1) If received as nominal delay rental or nominal annual 5008
rent on a lease, a receipt shall be allocated to income. 5009

(2) If received from a production payment, a receipt shall be 5010
allocated to income if and to the extent that the agreement 5011
creating the production payment provides a factor for interest or 5012
its equivalent. The balance shall be allocated to principal. 5013

(3) If an amount received as a royalty, shut-in-well payment, 5014
take-or-pay payment, bonus, or delay rental is more than nominal, 5015
ninety per cent shall be allocated to principal and the balance to 5016
income. 5017

(4) If an amount is received from a working interest or any 5018
other interest not provided for in division (A)(1), (2), or (3) of 5019
this section, ninety per cent of the net amount received shall be 5020
allocated to principal and the balance to income. 5021

(B) An amount received on account of an interest in water 5022
that is renewable shall be allocated to income. If the water is 5023
not renewable, ninety per cent of the amount shall be allocated to 5024
principal and the balance to income. 5025

(C) This section applies whether or not a decedent or donor 5026
was extracting minerals, water, or other natural resources before 5027
the interest became subject to the trust. 5028

(D) If a trust owns an interest in minerals, water, or other 5029
natural resources on ~~the effective date of this section~~ January 1, 5030
2003, the trustee may allocate receipts from the interest as 5031
provided in this section or in the manner used by the trustee 5032
before that date. If the trust acquires an interest in minerals, 5033
water, or other natural resources after ~~the effective date of this~~ 5034
~~section~~ January 1, 2003, the trustee shall allocate receipts from 5035
the interest as provided in this section. 5036

Sec. ~~1340.74~~ 5812.35. (A) To the extent that a trustee 5037
accounts for receipts from the sale of timber and related products 5038
pursuant to this section, the trustee shall allocate the net 5039
receipts in accordance with all of the following: 5040

(1) To income, to the extent that the amount of timber 5041
removed from the land does not exceed the rate of growth of the 5042
timber during the accounting periods in which a beneficiary has a 5043

mandatory income interest; 5044

(2) To principal, to the extent that the amount of timber 5045
removed from the land exceeds the rate of growth of the timber or 5046
the net receipts are from the sale of standing timber; 5047

(3) To or between income and principal, if the net receipts 5048
are from the lease of timberland or from a contract to cut timber 5049
from land owned by a trust, by determining the amount of timber 5050
removed from the land under the lease or contract and applying 5051
divisions (A)(1) and (2) of this section; 5052

(4) To principal, to the extent that advance payments, 5053
bonuses, and other payments are not allocated pursuant to division 5054
(A)(1), (2), or (3) of this section. 5055

(B) In determining net receipts to be allocated pursuant to 5056
division (A) of this section, a trustee shall deduct and transfer 5057
to principal a reasonable amount for depletion. 5058

(C) This section applies whether or not a decedent or 5059
transferor was harvesting timber from the property before it 5060
became subject to the trust. 5061

(D) If a trust owns an interest in timberland on ~~the~~ 5062
~~effective date of this section~~ January 1, 2003, the trustee may 5063
allocate net receipts from the sale of timber and related products 5064
as provided in this section or in the manner used by the trustee 5065
before that date. If the trust acquires an interest in timberland 5066
after ~~the effective date of this section~~ January 1, 2003, the 5067
trustee shall allocate net receipts from the sale of timber and 5068
related products as provided in this section. 5069

Sec. ~~1340-75~~ 5812.36. (A) If a marital deduction is allowed 5070
for all or part of a trust whose assets consist substantially of 5071
property that does not provide the spouse with sufficient income 5072
from or use of the trust assets, and if the amounts that the 5073

trustee transfers from principal to income under section ~~1340.42~~ 5074
5812.03 of the Revised Code and distributes to the spouse from 5075
principal pursuant to the terms of the trust are insufficient to 5076
provide the spouse with the beneficial enjoyment required to 5077
obtain the marital deduction, the spouse may require the trustee 5078
to make property productive of income, convert property within a 5079
reasonable time, or exercise the power conferred by division (A) 5080
of that section. The trustee may decide which action or 5081
combination of actions to take. 5082

(B) In cases not governed by division (A) of this section, 5083
proceeds from the sale or other disposition of an asset shall be 5084
principal without regard to the amount of income the asset 5085
produces during any accounting period. 5086

Sec. ~~1340.76~~ 5812.37. (A) As used in this section, 5087
"derivative" means a contract or financial instrument or a 5088
combination of contracts and financial instruments that gives a 5089
trust the right or obligation to participate in some or all 5090
changes in the price of a tangible or intangible asset or group of 5091
assets, or changes in a rate, an index of prices or rates, or 5092
other market indicator for an asset or a group of assets. 5093

(B) To the extent that a trustee does not account under 5094
section ~~1340.59~~ 5812.20 of the Revised Code for transactions in 5095
derivatives, the trustee shall allocate to principal receipts from 5096
and disbursements made in connection with those transactions. 5097

(C) If a trustee grants an option to buy property from the 5098
trust, whether or not the trust owns the property when the option 5099
is granted, grants an option that permits another person to sell 5100
property to the trust, or acquires an option to buy property for 5101
the trust or an option to sell an asset owned by the trust, and 5102
the trustee or other owner of the asset is required to deliver the 5103

asset if the option is exercised, an amount received for granting 5104
the option shall be allocated to principal. An amount paid to 5105
acquire the option shall be paid from principal. A gain or loss 5106
realized upon the exercise of an option, including an option 5107
granted to a settlor of the trust for services rendered, shall be 5108
allocated to principal. 5109

Sec. ~~1340.77~~ 5812.38. (A) As used in this section, 5110
"asset-backed security" means an asset whose value is based upon 5111
the right it gives the owner to receive distributions from the 5112
proceeds of financial assets that provide collateral for the 5113
security. "Asset-backed security" includes an asset that gives the 5114
owner the right to receive from the collateral financial assets 5115
only the interest or other current return or only the proceeds 5116
other than interest or current return. "Asset-backed security" 5117
excludes an asset to which section ~~1340.57~~ 5812.18 or ~~1340.71~~ 5118
5812.32 of the Revised Code applies. 5119

(B) If a trust receives a payment from interest or other 5120
current return and from other proceeds of the collateral financial 5121
assets, the trustee shall allocate to income the portion of the 5122
payment that the payer identifies as being from interest or other 5123
current return and shall allocate the balance of the payment to 5124
principal. 5125

(C) If a trust receives one or more payments in exchange for 5126
the trust's entire interest in an asset-backed security in one 5127
accounting period, the trustee shall allocate the payments to 5128
principal. If a payment is one of a series of payments that will 5129
result in the liquidation of the trust's interest in the security 5130
over more than one accounting period, the trustee shall allocate 5131
ten per cent of the payment to income and the balance to 5132
principal. 5133

Sec. ~~1340.81~~ 5812.42. A trustee shall make all of the 5134
following disbursements from income to the extent that they are 5135
not disbursements to which division (B)(2) or (3) of section 5136
~~1340.46~~ 5812.07 of the Revised Code applies: 5137

(A) One-half of the regular compensation of the trustee and 5138
of any person providing investment advisory or custodial services 5139
to the trustee; 5140

(B) One-half of all expenses for accountings, judicial 5141
proceedings, or other matters that involve both the income and 5142
remainder interests; 5143

(C) All of the other ordinary expenses incurred in connection 5144
with the administration, management, or preservation of trust 5145
property and the distribution of income, including interest, 5146
ordinary repairs, regularly recurring taxes assessed against 5147
principal, and expenses of a proceeding or other matter that 5148
concerns primarily the income interest; 5149

(D) Recurring premiums on insurance covering the loss of a 5150
principal asset or the loss of income from or use of the asset. 5151

Sec. ~~1340.82~~ 5812.43. (A) A trustee shall make all of the 5152
following disbursements from principal: 5153

(1) The remaining one-half of the disbursements described in 5154
divisions (A) and (B) of section ~~1340.81~~ 5812.42 of the Revised 5155
Code; 5156

(2) All of the trustee's compensation calculated on principal 5157
as a fee for acceptance, distribution, or termination, and 5158
disbursements made to prepare property for sale; 5159

(3) Payments on the principal of a trust debt; 5160

(4) Expenses of a proceeding that concerns primarily 5161
principal, including a proceeding to construe the trust or to 5162

protect the trust or its property;	5163
(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;	5164 5165 5166
(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust;	5167 5168
(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.	5169 5170 5171 5172 5173 5174 5175 5176 5177 5178
(B) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.	5179 5180 5181 5182 5183
Sec. 1340.83 <u>5812.44</u>. (A) As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.	5184 5185 5186 5187
(B) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but shall not transfer any amount for depreciation under any of the following circumstances:	5188 5189 5190 5191
(1) Any amount for depreciation of that portion of real	5192

property used or available for use by a beneficiary as a residence	5193
or of tangible personal property held or made available for the	5194
personal use or enjoyment of a beneficiary;	5195
(2) Any amount for depreciation during the administration of	5196
a decedent's estate;	5197
(3) Any amount for depreciation under this section if the	5198
trustee is accounting under section 1340.59 <u>5812.20</u> of the Revised	5199
Code for the business or activity in which the asset is used.	5200
(C) An amount transferred to principal need not be held as a	5201
separate fund.	5202
Sec. 1340.84 <u>5812.45</u>. (A) If a trustee makes or expects to	5203
make a principal disbursement described in this section, the	5204
trustee may transfer an appropriate amount from income to	5205
principal in one or more accounting periods to reimburse principal	5206
or to provide a reserve for future principal disbursements.	5207
(B) Principal disbursements to which division (A) of this	5208
section applies include all of the following, but only to the	5209
extent that the trustee has not been and does not expect to be	5210
reimbursed by a third party:	5211
(1) An amount chargeable to income but paid from principal	5212
because it is unusually large, including extraordinary repairs;	5213
(2) A capital improvement to a principal asset, whether in	5214
the form of changes to an existing asset or the construction of a	5215
new asset, including special assessments;	5216
(3) Disbursements made to prepare property for rental,	5217
including tenant allowances, leasehold improvements, and broker's	5218
commissions;	5219
(4) Periodic payments on an obligation secured by a principal	5220
asset to the extent that the amount transferred from income to	5221

principal for depreciation is less than the periodic payments;	5222
(5) Disbursements described in division (A)(7) of section	5223
1340.82 <u>5812.43</u> of the Revised Code.	5224
(C) If the asset whose ownership gives rise to the	5225
disbursements becomes subject to a successive income interest	5226
after an income interest ends, a trustee may continue to transfer	5227
amounts from income to principal as provided in division (A) of	5228
this section.	5229
Sec. 1340.85 <u>5812.46</u>. (A) A tax required to be paid by a	5230
trustee based on receipts allocated to income shall be paid from	5231
income.	5232
(B) A tax required to be paid by a trustee based on receipts	5233
allocated to principal shall be paid from principal, even if the	5234
tax is called an income tax by the taxing authority.	5235
(C) A tax required to be paid by a trustee on the trust's	5236
share of an entity's taxable income shall be paid proportionately	5237
as follows:	5238
(1) From income, to the extent that receipts from the entity	5239
are allocated to income;	5240
(2) From principal, as follows:	5241
(a) To the extent that receipts from the entity are allocated	5242
to principal; and	5243
(b) To the extent that the trust's share of the entity's	5244
taxable income exceeds the total receipts described in divisions	5245
(C)(1) and (2)(a) of this section.	5246
(D) For purposes of this section, receipts allocated to	5247
principal or income shall be reduced by the amount distributed to	5248
a beneficiary from principal or income for which the trust	5249
receives a deduction in calculating the tax.	5250

Sec. ~~1340-86~~ 5812.47. (A) A fiduciary may make adjustments 5251
between principal and income to offset the shifting of economic 5252
interests or tax benefits between income beneficiaries and 5253
remainder beneficiaries that arise from any of the following: 5254

(1) Elections and decisions, other than those described in 5255
division (B) of this section, that the fiduciary makes from time 5256
to time regarding tax matters; 5257

(2) An income tax or any other tax that is imposed upon the 5258
fiduciary or a beneficiary as a result of a transaction involving 5259
or a distribution from the estate or trust; 5260

(3) The ownership by an estate or trust of an interest in an 5261
entity whose taxable income, whether or not distributed, is 5262
includable in the taxable income of the estate, trust, or 5263
beneficiary. 5264

(B) If the amount of an estate tax marital deduction or 5265
charitable contribution deduction is reduced because a fiduciary 5266
deducts an amount paid from principal for income tax purposes 5267
instead of deducting it for estate tax purposes, and as a result 5268
estate taxes paid from principal are increased and income taxes 5269
paid by an estate, trust, or beneficiary are decreased, each 5270
estate, trust, or beneficiary that benefits from the decrease in 5271
income tax shall reimburse the principal from which the increase 5272
in estate tax is paid. The total reimbursement shall equal the 5273
increase in the estate tax to the extent that the principal used 5274
to pay the increase would have qualified for a marital deduction 5275
or charitable contribution deduction but for the payment. The 5276
proportionate share of the reimbursement for each estate, trust, 5277
or beneficiary whose income taxes are reduced shall be the same as 5278
its proportionate share of the total decrease in income tax. An 5279
estate or trust shall reimburse principal from income. 5280

Sec. ~~1340.90~~ 5812.51. (A) Sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5281
5812.52 of the Revised Code may be cited as the "uniform principal 5282
and income act (1997)." 5283

(B) In applying and construing the "uniform principal and 5284
income act (1997)", consideration shall be given to the need to 5285
promote uniformity of the law with respect to its subject matter 5286
among states that enact the "uniform principal and income act 5287
(1997)". 5288

Sec. ~~1340.91~~ 5812.52. Sections ~~1340.40~~ 5812.01 to ~~1340.90~~ 5289
5812.51 of the Revised Code apply to every trust or decedent's 5290
estate existing on ~~the effective date of this section~~ January 1, 5291
2003, except as otherwise expressly provided in the will or terms 5292
of the trust or in sections ~~1340.40~~ 5812.01 to ~~1340.90~~ 5812.51 of 5293
the Revised Code. 5294

Sec. ~~1340.31~~ 5813.01. As used in sections ~~1340.31~~ 5813.01 to 5295
~~1340.37~~ 5813.07 of the Revised Code: 5296

(A) "Institution" means an incorporated or unincorporated 5297
organization that is organized and operated exclusively for 5298
educational, religious, charitable, or other eleemosynary purposes 5299
or a governmental organization to the extent that it holds funds 5300
exclusively for any of those purposes. 5301

(B) "Governing board" means the body responsible for the 5302
management of an institution. 5303

(C) "Institutional trust fund" means a trust fund, or a part 5304
of a trust fund, that is held by a trustee for the exclusive use, 5305
benefit, or purposes of one or more institutions and that is not 5306
wholly distributable to the institution or institutions on a 5307
current basis under the terms of the applicable trust instrument. 5308
"Institutional trust fund" does not include a fund in which a 5309

beneficiary that is not an institution has an interest other than 5310
a right that may arise upon a violation of a covenant under the 5311
terms of the applicable trust instrument or upon a violation of or 5312
the failure of the purposes of the fund. 5313

(D) "Applicable fund value" means for any particular fiscal 5314
year the sum of the month-end values of the net assets of an 5315
institutional trust fund for the prior fiscal year for those 5316
months in which the institutional trust fund has been in existence 5317
during such prior fiscal year divided by the number of those 5318
months. The month-end values shall be determined by the trustee in 5319
accordance with the trustee's records, and any such determination 5320
made by a trustee in good faith is conclusive. 5321

(E) "Trust instrument" means a testamentary or inter vivos 5322
trust under which the trustee of the trust holds an institutional 5323
trust fund. 5324

(F) "Trustee" means an individual, corporation, institution, 5325
or organization, including, but not limited to, a bank, trust 5326
company, or other financial institution, serving as a trustee or 5327
as sole trustee under a trust instrument. "Trustee" includes an 5328
original trustee and any successor or added trustee. 5329

Sec. ~~1340.32~~ 5813.02. (A) Subject to division (D) of this 5330
section and section ~~1340.33~~ 5813.03 of the Revised Code, during 5331
any fiscal year in which income may be or is required to be 5332
distributed to an institution from an institutional trust fund, 5333
income means the greater of the following: 5334

(1) The income from the assets of the institutional trust 5335
fund for the fiscal year as determined in accordance with the 5336
applicable trust instrument and applicable law without regard to 5337
sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the Revised Code; 5338

(2) The amount requested by the institution's governing board 5339

for the fiscal year pursuant to division (B) of this section. 5340

(B) An institution's governing board may request that an 5341
amount be distributed to the institution for the fiscal year, and 5342
that amount shall not exceed the sum of both of the following: 5343

(1) Five per cent of the applicable fund value for the 5344
institutional trust fund for the fiscal year; 5345

(2) If, in any prior fiscal year that is after ~~the effective~~ 5346
~~date of this section~~ September 15, 1999, the governing board 5347
requested less than five per cent of the applicable fund value for 5348
~~such that~~ prior fiscal year and if the amount the institution 5349
actually received from the institutional trust fund pursuant to 5350
division (A) of this section was less than five per cent for ~~such~~ 5351
that prior fiscal year, the aggregate difference between five per 5352
cent of the applicable fund value with respect to each such prior 5353
fiscal year and the amount the institution actually received 5354
pursuant to division (A) of this section for ~~such~~ each prior 5355
fiscal year. 5356

(C) If, under a trust instrument, more than one institution 5357
is a beneficiary of an institutional trust fund, the trustee shall 5358
take such actions that the trustee determines appropriate or 5359
necessary to allow for the distributions of income as contemplated 5360
by division (A) of this section, which actions may include 5361
dividing the institutional trust fund into separate shares 5362
according to the interest that each institution has in the total 5363
institutional trust fund held under the trust instrument. 5364

(D) This section does not limit the authority or obligation 5365
of a trustee to distribute, or the authority of a governing board 5366
to request, funds as permitted or required under the terms of the 5367
applicable trust instrument. 5368

Sec. ~~1340.33~~ 5813.03. (A) Division (A) of section ~~1340.32~~ 5369

5813.02 of the Revised Code does not apply if the applicable trust instrument expressly indicates the settlor's intention that income is to be otherwise than as defined in division (A) of section ~~1340.32~~ 5813.02 of the Revised Code.

(B) A restriction upon the definition of income in division (A) of section ~~1340.32~~ 5813.02 of the Revised Code may not be inferred from a designation of an institutional trust fund as an endowment; a direction or authorization in the applicable trust instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or a direction that contains other words of a similar import; a direction in a trust instrument that income and principal are to be determined by reference to certain statutory provisions; or, subject to division (A) of this section, the inclusion of specified provisions in a trust instrument setting forth the way in which income and principal are to be determined.

(C) The rule of construction set forth in division (B) of this section applies to trust instruments executed or in effect before, on, or after ~~the effective date of this section~~ September 15, 1999.

Sec. ~~1340.34~~ 5813.04. (A) In administering the powers to request amounts from a trustee of an institutional trust fund in accordance with divisions (A) and (B) of section ~~1340.32~~ 5813.02 of the Revised Code, members of a governing board of an institution shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision and shall make requests for amounts under divisions (A) and (B) of section ~~1340.32~~ 5813.02 of the Revised Code only as is prudent under this standard. In so doing, the governing board shall consider the long- and short-term needs of the institution in carrying out its educational, religious,

charitable, or other eleemosynary purposes; the institution's 5401
present and anticipated financial requirements; the expected total 5402
return on the investments held by the institution and held by the 5403
trustee under the applicable trust instrument; price level trends; 5404
and general economic conditions. 5405

(B) In determining the expected total return on the 5406
investments held by a trustee of an institutional trust fund under 5407
the applicable trust instrument, the members of the governing 5408
board of an institution may follow, and are not required to 5409
examine independently, the determination of the trustee regarding 5410
the expected total return on the investments held by the trustee. 5411

(C) A trustee of an institutional trust fund has no duty to 5412
inquire or ascertain whether the governing board of an institution 5413
has satisfied the standards set forth in divisions (A) and (B) of 5414
this section, and the trustee does not have any liability for the 5415
failure of the governing board to satisfy those standards. 5416

Sec. ~~1340.35~~ 5813.05. Nothing in sections ~~1340.40~~ 5812.01 to 5417
~~1340.91~~ 5812.52, or any other section of the Revised Code limits 5418
or restricts the definition of income in division (A) of section 5419
~~1340.32~~ 5813.02 of the Revised Code or limits or restricts a 5420
governing board of an institution from requesting, or a trustee 5421
from making, distributions from an institutional trust fund in 5422
accordance with sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the 5423
Revised Code. 5424

Sec. ~~1340.36~~ 5813.06. (A) Nothing in sections ~~1340.31~~ 5813.01 5425
to ~~1340.35~~ 5813.05 of the Revised Code affects the construction or 5426
interpretation of sections 1715.51 to 1715.59 of the Revised Code 5427
relating to the uniform management of institutional funds act. 5428
Specifically, neither the percentage set forth in division (B) of 5429
section 1340.32 of the Revised Code nor the amount actually 5430

requested by a governing board pursuant to section ~~1340.32~~ 5813.02 5431
of the Revised Code shall be construed or interpreted to limit or 5432
expand what is a prudent amount that can be expended by a 5433
governing board of an institution under sections 1715.51 to 5434
1715.59 of the Revised Code. 5435

(B) If an institutional trust fund is also an institutional 5436
fund as defined in division (B) of section 1715.51 of the Revised 5437
Code with the result that sections 1715.51 to 1715.59 of the 5438
Revised Code also are applicable to the institutional trust fund, 5439
then sections 1715.51 to 1715.59 of the Revised Code apply to the 5440
institutional trust fund, and sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5441
5813.07 of the Revised Code do not apply to the institutional 5442
trust fund. 5443

Sec. ~~1340.37~~ 5813.07. Sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5444
5813.07 of the Revised Code may be cited as the "institutional 5445
trust funds act." 5446

Sec. ~~1339.31~~ 5814.01. As used in sections ~~1339.31~~ 5814.01 to 5447
~~1339.39~~ 5814.09 of the Revised Code, unless the context otherwise 5448
requires: 5449

(A) "Benefit plan" means any plan of an employer for the 5450
benefit of any employee, any plan for the benefit of any partner, 5451
or any plan for the benefit of a proprietor, and includes, but is 5452
not limited to, any pension, retirement, death benefit, deferred 5453
compensation, employment agency, stock bonus, option, or 5454
profit-sharing contract, plan, system, account, or trust. 5455

(B) "Broker" means a person that is lawfully engaged in the 5456
business of effecting transactions in securities for the account 5457
of others. A "broker" includes a financial institution that 5458
effects such transactions and a person who is lawfully engaged in 5459
buying and selling securities for ~~his~~ the person's own account, 5460

through a broker or otherwise, as a part of a regular business. 5461

(C) "Court" means the probate court. 5462

(D) "The custodial property" includes: 5463

(1) All securities, money, life or endowment insurance 5464
policies, annuity contracts, benefit plans, real estate, tangible 5465
and intangible personal property, proceeds of a life or endowment 5466
insurance policy, an annuity contract, or a benefit plan, and 5467
other types of property under the supervision of the same 5468
custodian for the same minor as a consequence of a transfer or 5469
transfers made to the minor, a gift or gifts made to the minor, or 5470
a purchase made by the custodian for the minor, in a manner 5471
prescribed in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 5472
Revised Code; 5473

(2) The income from the custodial property; 5474

(3) The proceeds, immediate and remote, from the sale, 5475
exchange, conversion, investment, reinvestment, or other 5476
disposition of the securities, money, life or endowment insurance 5477
policies, annuity contracts, benefit plans, real estate, tangible 5478
and intangible personal property, proceeds of a life or endowment 5479
insurance policy, an annuity contract, or a benefit plan, other 5480
types of property, and income. 5481

(E) "Custodian" or "successor custodian" means a person so 5482
designated in a manner prescribed in sections ~~1339.31~~ 5814.01 to 5483
~~1339.39~~ 5814.09 of the Revised Code. 5484

(F) "Financial institution" means any bank, as defined in 5485
section 1101.01, any building and loan association, as defined in 5486
section 1151.01, any credit union as defined in section 1733.01 of 5487
the Revised Code, and any federal credit union, as defined in the 5488
"Federal Credit Union Act," 73 Stat. 628 (1959), 12 U.S.C.A. 1752, 5489
as amended. 5490

(G) "Guardian of the minor" includes the general guardian, 5491
guardian, tutor, or curator of the property, estate, or person of 5492
a minor. 5493

(H) "Issuer" means a person who places or authorizes the 5494
placing of ~~his~~ the person's name on a security, other than as a 5495
transfer agent, to evidence that it represents a share, 5496
participation, or other interest in ~~his~~ the person's property or 5497
in an enterprise, or to evidence ~~his~~ the person's duty or 5498
undertaking to perform an obligation that is evidenced by the 5499
security, or who becomes responsible for or in place of any such 5500
person. 5501

(I) "Legal representative" of a person means the executor, 5502
administrator, general guardian, guardian, committee, conservator, 5503
tutor, or curator of ~~his~~ the person's property or estate. 5504

(J) "Member of the minor's family" means a parent, 5505
stepparent, spouse, grandparent, brother, sister, uncle, or aunt 5506
of the minor, whether of the whole or half blood, or by adoption. 5507

(K) "Minor" means a person who has not attained the age of 5508
twenty-one years. 5509

(L) "Security" includes any note, stock, treasury stock, 5510
common trust fund, bond, debenture, evidence of indebtedness, 5511
certificate of interest or participation in an oil, gas, or mining 5512
title or lease or in payments out of production under an oil, gas, 5513
or mining title or lease, collateral trust certificate, 5514
transferable share, voting trust certificate, or, in general, any 5515
interest or instrument commonly known as a security, or any 5516
certificate of interest or participation in, any temporary or 5517
interim certificate, receipt or certificate of deposit for, or any 5518
warrant or right to subscribe to or purchase, any of the 5519
foregoing. A "security" does not include a security of which the 5520
donor or transferor is the issuer. A security is in "registered 5521

form" when it specifies a person who is entitled to it or to the
rights that it evidences and its transfer may be registered upon
books maintained for that purpose by or on behalf of the issuer.

(M) "Transfer" means a disposition, other than a gift, by a
person who is eighteen years of age or older that creates
custodial property under sections ~~1339.31~~ 5814.01 to ~~1339.39~~
5814.09 of the Revised Code.

(N) "Transfer agent" means a person who acts as
authenticating trustee, transfer agent, registrar, or other agent
for an issuer in the registration of transfers of its securities,
in the issue of new securities, or in the cancellation of
surrendered securities.

(O) "Transferor" means a person who is eighteen years of age
or older, who makes a transfer.

(P) "Trust company" means a financial institution that is
authorized to exercise trust powers.

(Q) "Administrator" includes an "administrator with the will
annexed."

Sec. ~~1339.32~~ 5814.02. (A) A person who is eighteen years of
age or older may, during ~~his~~ the person's lifetime, make a gift or
transfer of a security, money, a life or endowment insurance
policy, an annuity contract, a benefit plan, real estate, tangible
or intangible personal property, or any other property to, may
designate as beneficiary of a life or endowment insurance policy,
an annuity contract, or a benefit plan, or make a transfer by the
irrevocable exercise of a power of appointment in favor of, a
person who is a minor on the date of the gift or transfer:

(1) If the subject of the gift or transfer is a security in
registered form, by registering it in the name of the donor or
transferor, another person who is eighteen years of age or older,

or a trust company, followed, in substance, by the words: "as
custodian for (name of minor) under the Ohio
Transfers to Minors Act";

(2) If the subject of the gift or transfer is a security not
in registered form, by delivering it to the donor or transferor,
another person who is eighteen years of age or older, or a trust
company, accompanied by a statement of a gift or transfer in the
following form, in substance, signed by the donor or transferor
and the person or trust company designated as custodian:

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT

I, (name of donor or transferor), hereby
deliver to (name of custodian) as custodian for
..... (name of minor) under the Ohio Transfers to
Minors Act, the following security (ies): (insert an appropriate
description of the security or securities delivered, sufficient to
identify it or them).

.....
(signature of donor or transferor)

..... (name of custodian) hereby acknowledges
receipt of the above described security (ies) as custodian for the
above minor under the Ohio Transfers to Minors Act.

Dated:
(signature of custodian)"

(3) If the subject of the gift or transfer is money, by
paying or delivering it to a broker, or a financial institution
for credit to an account in the name of the donor or transferor,
another person who is eighteen years of age or older, or a trust
company, followed, in substance, by the words: "as custodian for
..... (name of minor) under the Ohio Transfers to
Minors Act."

(4) If the subject of the gift or transfer is a life or

endowment insurance policy, an annuity contract, or a benefit
plan, by assigning the policy, contract, or plan to the donor or
transferor, another person who is eighteen years of age or older,
or a trust company, followed, in substance by the words: "as
custodian for (name of minor) under the Ohio
Transfers to Minors Act."

(5) If the subject of the gift or transfer is an interest in
real estate, by executing and delivering in the appropriate manner
a deed, assignment, or similar instrument in the name of the donor
or transferor, another person who is eighteen years of age or
older, or a trust company, followed, in substance, by the words:
"as custodian for (name of minor) under the Ohio
Transfers to Minors Act."

(6) If the subject of the gift or transfer is tangible
personal property, by delivering it to the donor or transferor,
another person who is eighteen years of age or older, or a trust
company, accompanied by a statement of a gift or transfer in the
following form, in substance, signed by the donor or transferor
and the person or trust company designated as custodian:

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT

I, (name of donor or transferor), hereby
deliver to (name of custodian) as custodian for
..... (name of minor) under the Ohio Transfers to
Minors Act, the following property: (insert an appropriate
description of the property delivered, sufficient to identify it).

.....

(signature of donor or transferor)

..... (name of custodian) hereby acknowledges
receipt of the above described property as custodian for the above
minor under the Ohio Transfers to Minors Act.

Dated:

(signature of custodian)" 5614

(7) If the subject of the gift or transfer is tangible 5615
personal property, title to which is evidenced by a certificate of 5616
title issued by a department or agency of a state or of the United 5617
States, by issuing title to the donor or transferor, another 5618
person who is eighteen years of age or older, or a trust company, 5619
accompanied by a statement of a gift or transfer in the following 5620
form, in substance: "as custodian for 5621
(name of minor) under the Ohio Transfers to Minors Act"; or by 5622
delivering the title to another person who is eighteen years of 5623
age or older or a trust company, endorsed to that person followed 5624
in substance by the following words: "as custodian for 5625
..... under the Ohio Transfers to Minors Act." 5626

(8) If the subject of the gift or transfer is the designation 5627
of a minor as beneficiary of a life or endowment insurance policy, 5628
an annuity contract, or a benefit plan, by designating as 5629
beneficiary of the policy, contract, or plan the donor or 5630
transferor, another person who is eighteen years of age or older, 5631
or a trust company, followed, in substance, by the words: "as 5632
custodian for (name of minor) under the Ohio 5633
Transfers to Minors Act." 5634

(9) If the subject of the gift or transfer is an irrevocable 5635
exercise of a power of appointment in favor of a minor or is an 5636
interest in any property that is not described in divisions (A)(1) 5637
to (8) of this section, by causing the ownership of the property 5638
to be transferred by any written document in the name of the donor 5639
or transferor, another person who is eighteen years of age or 5640
older, or a trust company, followed, in substance, by the words: 5641
"as custodian for (name of minor) under the 5642
Ohio Transfers to Minors Act." 5643

(B) Trustees, inter vivos or testamentary, executors, and 5644
administrators having authority to distribute or pay any trust or 5645

estate property to or for the benefit of a minor, or having 5646
authority to distribute or pay any trust or estate property to any 5647
other person for the benefit of a minor may, if authorized by a 5648
will or trust instrument, distribute or pay trust or estate 5649
property of any type mentioned in division (A) of this section in 5650
the manner and form provided in that division, and may name the 5651
custodian or successor custodian of the property if the will or 5652
trust instrument does not name an eligible custodian, or if the 5653
will or trust does not name an eligible successor custodian and 5654
the naming of a successor custodian is necessary. A person who is 5655
eighteen years of age or older, in ~~his~~ the person's will or trust 5656
instrument, may provide that the fiduciary shall make any payment 5657
or distribution as provided in this division and may name the 5658
custodian and a successor custodian of the trust or estate 5659
property. As to any distribution or payment so made, the testator 5660
of a will, under the provisions of which a testamentary trust or 5661
estate is being administered, or the settlor of an inter vivos 5662
trust shall be deemed the donor or transferor. 5663

(C) Any gift, transfer, payment, or distribution that is made 5664
in a manner prescribed in division (A), (B), or (E) of this 5665
section may be made to only one minor and only one person may be 5666
the custodian. All gifts, transfers, payments, and distributions 5667
made by a person in a manner prescribed in sections ~~1339.31~~ 5668
5814.01 to ~~1339.39~~ 5814.09 of the Revised Code to the same 5669
custodian for the benefit of the same minor result in a single 5670
custodianship. 5671

(D) A donor or transferor who makes a gift or transfer to a 5672
minor in a manner prescribed in division (A) of this section and a 5673
trustee, executor, or administrator acting under division (B) or 5674
(E) of this section shall promptly do all things within ~~his~~ the 5675
donor's, transferor's, trustee's, executor's, or administrator's 5676
power to put the subject of the gift or transfer in the possession 5677

and control of the custodian, but neither the donor's, 5678
transferor's, trustee's, executor's, or administrator's failure to 5679
comply with this division, nor ~~his~~ the designation by the donor, 5680
transferor, trustee, executor, or administrator of an ineligible 5681
custodian, nor the renunciation by the person or trust company 5682
designated as custodian, affects the consummation of the gift or 5683
transfer. 5684

(E) If there is no will, or if a will, trust, or other 5685
governing instrument does not contain an authorization to make a 5686
transfer as described in this division, a trustee, executor, or 5687
administrator may make a transfer in a manner prescribed in 5688
division (A) of this section to ~~himself~~ self, another person who 5689
is eighteen years of age or older, or a trust company, as 5690
custodian, if all of the following apply: 5691

(1) Irrespective of the value of the property, the trustee, 5692
executor, or administrator considers the transfer to be in the 5693
best interest of the minor; 5694

(2) Irrespective of the value of the property, the transfer 5695
is not prohibited by or inconsistent with the applicable will, 5696
trust agreement, or other governing instrument; 5697

(3) If the value of the property exceeds ten thousand 5698
dollars, the transfer is authorized by the appropriate court. 5699

Sec. ~~1339.33~~ 5814.03. (A) A gift or transfer made in a manner 5700
prescribed in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 5701
Revised Code, is irrevocable and conveys to the minor indefeasibly 5702
vested legal title to the security, money, life or endowment 5703
insurance policy, annuity contract, benefit plan, real estate, 5704
tangible or intangible personal property, or other property given 5705
or, subject to the right of the owner of the policy, contract, or 5706
benefit plan to change the beneficiary if the custodian is not the 5707
owner, to the proceeds of a life or endowment insurance policy, an 5708

annuity contract, or a benefit plan given, but no guardian of the 5709
minor has any right, power, duty, or authority with respect to the 5710
custodial property except as provided in sections ~~1339.31~~ 5814.01 5711
to ~~1339.39~~ 5814.09 of the Revised Code. 5712

(B) By making a gift or transfer in a manner prescribed in 5714
sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, 5715
the donor or transferor incorporates in ~~his~~ the gift or transfer 5716
all the provisions of these sections and grants to the custodian, 5717
and to any issuer, transfer agent, financial institution, broker, 5718
or third person dealing with a person or trust company designated 5719
as custodian, the respective powers, rights, and immunities 5720
provided in these sections. 5721

Sec. ~~1339.34~~ 5814.04. (A) The custodian shall collect, hold, 5722
manage, invest, and reinvest the custodial property. 5723

(B) The custodian shall pay over to the minor for expenditure 5724
by the minor, or expend for the use or benefit of the minor, as 5725
much of or all the custodial property as the custodian considers 5726
advisable for the use and benefit of the minor in the manner, at 5727
the time or times, and to the extent that the custodian in ~~his~~ the 5728
custodian's discretion considers suitable and proper, with or 5729
without court order, with or without regard to the duty or ability 5730
of the custodian or of any other person to support the minor or 5731
~~his~~ the minor's ability to do so, and with or without regard to 5732
any other income or property of the minor that may be applicable 5733
or available for any purpose. Any payment or expenditure that is 5734
made under this division is in addition to, is not a substitute 5735
for, and does not affect the obligation of any person to support 5736
the minor for whom the payment or expenditure is made. 5737

(C) The court, on the petition of a parent or guardian of the 5738
minor or of the minor, if ~~he~~ the minor has attained the age of 5739

fourteen years, may order the custodian to pay over to the minor 5740
for expenditure by ~~him~~ the minor or to expend as much of or all 5741
the custodial property as is necessary for the use and benefit of 5742
the minor. 5743

(D)(1) Except as provided in division (D)(2) of this section, 5744
to the extent that the custodial property is not so expended, the 5745
custodian shall deliver or pay the custodial property over to the 5746
minor on ~~his~~ the minor's attaining the age of twenty-one years or, 5747
if the minor dies before attaining the age of twenty-one years, 5748
shall, upon the minor's death, deliver or pay the custodial 5749
property over to the estate of the minor. 5750

(2) If the donor or transferor, in the written instrument 5751
that makes or provides for the gift or transfer, directs the 5752
custodian to deliver or pay over the custodial property to the 5753
minor on ~~his~~ the minor's attaining any age between eighteen and 5754
twenty-one, the custodian shall deliver or pay over the custodial 5755
property to the minor on ~~his~~ the minor's attaining that age, or, 5756
if the minor dies before attaining that age, the custodian shall, 5757
upon the minor's death, deliver or pay the custodial property over 5758
to the estate of the minor. 5759

(E) The custodian, notwithstanding statutes restricting 5760
investments by fiduciaries, shall invest and reinvest the 5761
custodial property as would a prudent person of discretion and 5762
intelligence dealing with the property of another, except that the 5763
custodian may, in the discretion of the custodian and without 5764
liability to the minor or the estate of the minor, retain any 5765
custodial property received in a manner prescribed in sections 5766
~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code. If a 5767
custodian has special skills or is named custodian on the basis of 5768
representations of special skills or expertise, the custodian is 5769
under a duty to use those skills or that expertise. 5770

(F) The custodian may sell, exchange, convert, or otherwise 5771

dispose of custodial property in the manner, at the time or times, 5772
for the price or prices, and upon the terms ~~he~~ the custodian 5773
considers advisable. ~~He~~ The custodian may vote in person or by 5774
general or limited proxy a security that is custodial property. ~~He~~ 5775
The custodian may consent, directly or through a committee or 5776
other agent, to the reorganization, consolidation, merger, 5777
dissolution, or liquidation of an issuer of a security that is 5778
custodial property, and to the sale, lease, pledge, or mortgage of 5779
any property by or to such an issuer, and to any other action by 5780
such an issuer. ~~He~~ The custodian may purchase any life or 5781
endowment insurance policy or annuity contract on the life of the 5782
minor or any member of the family of the minor and pay, from funds 5783
in ~~his~~ the custodian's custody, any premiums on any life or 5784
endowment insurance policy or annuity contract held by ~~him~~ the 5785
custodian as custodial property. ~~He~~ The custodian may execute and 5786
deliver any and all instruments in writing that ~~he~~ the custodian 5787
considers advisable to carry out any of ~~his~~ the custodian's powers 5788
as custodian. 5789

(G) The custodian shall register each security that is 5790
custodial property and in registered form in the name of the 5791
custodian, followed, in substance, by the words: "as custodian for 5792
..... (name of minor) under the Ohio Transfers to Minors 5793
Act," or shall maintain each security that is custodial property 5794
and in registered form in an account with a broker or in a 5795
financial institution in the name of the custodian, followed, in 5796
substance, by the words: "as custodian for (name of 5797
minor) under the Ohio Transfers to Minors Act." A security held in 5798
account with a broker or in a financial institution in the name of 5799
the custodian may be held in the name of the broker or financial 5800
institution. A security that is custodial property and in 5801
registered form and that is held by a broker or in a financial 5802
institution in which the broker or financial institution does not 5803

have a lien for indebtedness due to it from a custodial account 5804
may not be pledged, lent, hypothecated, or disposed of except upon 5805
the specific instructions of the custodian. The custodian shall 5806
hold all money that is custodial property in an account with a 5807
broker or in a financial institution in the name of the custodian, 5808
followed, in substance, by the words: "as custodian for 5809
..... (name of minor) under the Ohio Transfers to Minors 5810
Act." The custodian shall hold all life or endowment insurance 5811
policies, annuity contracts, or benefit plans that are custodial 5812
property in the name of the custodian, followed, in substance, by 5813
the words "as custodian for (name of minor) under 5814
the Ohio Transfers to Minors Act." The custodian shall take title 5815
to all real estate that is custodial property in the name of the 5816
custodian, followed, in substance, by the words: "as custodian for 5817
..... (name of minor) under the Ohio Transfers to Minors 5818
Act." The custodian shall keep all other custodial property 5819
separate and distinct from ~~his~~ the custodian's own property in a 5820
manner to identify it clearly as custodial property. 5821

(H) The custodian shall keep records of all transactions with 5822
respect to the custodial property and make the records available 5823
for inspection at reasonable intervals by a parent or legal 5824
representative of the minor or by the minor, if ~~he~~ the minor has 5825
attained the age of fourteen years. 5826

(I) A custodian has, with respect to the custodial property, 5827
in addition to the rights and powers provided in sections ~~1339.31~~ 5828
5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, all the rights and 5829
powers that a guardian has with respect to property not held as 5830
custodial property. 5831

(J) The custodian may invest in or pay premiums on any life 5832
or endowment insurance policy or annuity contract on either of the 5833
following: 5834

(1) The life of the minor, if the minor or the estate of the minor is the sole beneficiary under the policy or contract;

(2) The life of any person in whom the minor has an insurable interest, if the minor, ~~his~~ the minor's estate, or the custodian in ~~his~~ the custodian's capacity as custodian is the sole beneficiary.

(K) All of the rights, powers, and authority of the custodian over custodial property, including all of the incidents of ownership in any life or endowment insurance policy, annuity contract, or benefit plan, are held only in the capacity of the custodian as custodian.

Sec. ~~1339.35~~ 5814.05. (A) A custodian is entitled to reimbursement from the custodial property for ~~his~~ reasonable expenses incurred in the performance of ~~his~~ the custodian's duties.

(B) A custodian may act without compensation for ~~his~~ the custodian's services.

(C) Unless ~~he~~ the custodian is a donor or transferor, a the custodian may receive from custodial property reasonable compensation for ~~his~~ the custodian's services determined by one of the following standards in the order stated:

(1) A direction by the donor or transferor when the gift or transfer is made;

(2) A statute of this state applicable to custodians;

(3) The statute of this state applicable to guardians;

(4) An order of the court.

(D) Except as otherwise provided in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, a custodian shall not be required to give a bond for the performance of ~~his~~ the custodian's

duties.	5864
(E) A custodian not compensated for his <u>the custodian's</u>	5865
services is not liable for losses to the custodial property unless	5866
they result from his <u>the custodian's</u> bad faith, intentional	5867
wrongdoing, or gross negligence or from his <u>the custodian's</u>	5868
failure to maintain the standard of prudence in investing the	5869
custodial property provided in sections 1339.31 <u>5814.01</u> to 1339.39	5870
<u>5814.09</u> of the Revised Code.	5871
Sec. 1339.36 <u>5814.06</u>. An issuer, transfer agent, financial	5872
institution, broker, life insurance company, or other person	5873
acting on the instructions of or otherwise dealing with any person	5874
purporting to act as a donor or transferor or dealing with any	5875
person or trust company purporting to act as a custodian is not	5876
required to do any of the following:	5877
(A) Determine either of the following:	5878
(1) Whether the person or trust company designated by the	5879
purported donor or transferor, or the person or trust company	5880
purporting to act as a custodian, has been duly designated;	5881
(2) Whether any purchase, sale, or transfer to or by, or any	5882
other act of, any person or trust company purporting to act as a	5883
custodian is in accordance with or authorized by sections 1339.31	5884
<u>5814.01</u> to 1339.39 <u>5814.09</u> of the Revised Code.	5885
(B) Inquire into the validity or propriety under sections	5886
1339.31 <u>5814.01</u> to 1339.39 <u>5814.09</u> of the Revised Code of any	5887
instrument or instructions executed or given by a person	5888
purporting to act as a donor or transferor or by a person or trust	5889
company purporting to act as a custodian;	5890
(C) See to the application by any person or trust company	5891
purporting to act as a custodian of any money or other property	5892
paid or delivered to the person or trust company.	5893

Sec. ~~1339.37~~ 5814.07. (A) Any person who is eighteen years of 5894
age or older or a trust company is eligible to become a successor 5895
custodian. A successor custodian has all the rights, powers, 5896
duties, and immunities of a custodian designated in a manner 5897
prescribed by sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 5898
Revised Code. 5899

(B) A custodian may resign and designate ~~his~~ the custodian's 5900
successor by doing all of the following: 5901

(1) Executing an instrument of resignation that designates 5902
the successor custodian; 5903

(2) Causing each security that is custodial property and in 5904
registered form to be registered in the name of the successor 5905
custodian followed, in substance, by the words: "as custodian for 5906
..... under the Ohio Transfers 5907

(name of minor) 5908
to Minors Act;" 5909

(3) Executing in the appropriate manner a deed, assignment, 5910
or similar instrument for all interest in real estate that is 5911
custodial property in the name of the successor custodian, 5912
followed, in substance, by the words: "as custodian for 5913
..... under the Ohio Transfers to 5914

(name of minor) 5915
Minors Act"; 5916

(4) Delivering to the successor custodian the instrument of 5917
resignation, each security registered in the name of the successor 5918
custodian, each deed, assignment, or similar instrument for all 5919
interest in real estate that is in the name of the successor 5920
custodian, and all other custodial property, together with any 5921
additional instruments that are required for the transfer of the 5922

custodial property.	5923
(C) A custodian may petition the court for permission to resign and for the designation of a successor custodian.	5924 5925
(D) A custodian may designate by his <u>the custodian's</u> will a successor custodian, which designation is effective at the custodian's death. Upon the custodian's death, the custodian's legal representative shall do each of the following:	5926 5927 5928 5929
(1) Cause each security that is custodial property and in registered form to be registered in the name of the successor custodian, followed, in substance, by the words: "as custodian for under the Ohio Transfers to (name of minor) Minors Act";	5930 5931 5932 5933 5934 5935
(2) Execute in the appropriate manner a deed, assignment, or similar instrument for all interest in real estate that is custodial property in the name of the successor custodian, followed, in substance, by the words: "as custodian for under the Ohio Transfers to Minors (name of minor) Act";	5936 5937 5938 5939 5940 5941 5942
(3) Deliver to the successor custodian each security registered in the name of the successor custodian, each deed, assignment, or similar instrument for all interest in real estate that is in the name of the successor custodian, and all other custodial property, together with any additional instruments that are required for the transfer of the custodial property.	5943 5944 5945 5946 5947 5948
(E) If no eligible successor custodian is designated by the donor or transferor in his <u>the donor's or transferor's</u> will or trust or by the custodian in his <u>the custodian's</u> will, or if the	5949 5950 5951

custodian dies intestate or is adjudged to be an incompetent by a 5952
court, the legal representative of the custodian may designate a 5953
successor custodian. If the court in which the estate or 5954
guardianship proceedings relative to the custodian are pending 5955
approves the designation, the designation shall be regarded as 5956
having been effective as of the date of the death of the custodian 5957
or as of the date ~~he~~ the custodian was adjudged to be an 5958
incompetent. Upon the approval of the court, the legal 5959
representative of the custodian shall cause the custodial property 5960
to be transferred or registered in the name of the successor 5961
custodian as provided in divisions (D)(1) to (3) of this section. 5962

(F) If a person or entity designated as successor custodian 5963
is not eligible, or renounces or dies before the minor attains the 5964
age of twenty-one years, or if the custodian dies without 5965
designating a successor custodian and division (E) of this section 5966
does not apply because the custodian does not have a legal 5967
representative, the guardian of the minor shall be the successor 5968
custodian. If the minor does not have a guardian, a donor or 5969
transferor, the legal representative of the donor or transferor, 5970
the legal representative of the custodian, a member of the minor's 5971
family who is eighteen years of age or older, or the minor, if ~~he~~ 5972
the minor has attained the age of fourteen years, may petition the 5973
court for the designation of a successor custodian. 5974

(G) A donor or transferor, the legal representative of a 5975
donor or transferor, a member of the minor's family who is 5976
eighteen years of age or older, a guardian of the minor, or the 5977
minor, if ~~he~~ the minor has attained the age of fourteen years, may 5978
petition the court that, for cause shown in the petition, the 5979
custodian be removed and a successor custodian be designated or, 5980
in the alternative, that the custodian be required to give bond 5981
for the performance of ~~his~~ the custodian's duties. 5982

(H) Upon the filing of a petition as provided in this 5983

section, the court shall grant an order, directed to the persons
and returnable on any notice that the court may require, to show
cause why the relief prayed for in the petition should not be
granted and, in due course, grant any relief that the court finds
to be in the best interests of the minor.

Sec. ~~1339.38~~ 5814.08. (A) The minor, if ~~he~~ the minor has
attained the age of fourteen years, or the legal representative of
the minor, a member of the minor's family who is eighteen years of
age or older, or a donor or transferor or ~~his~~ the donor's or
transferor's legal representative may petition the court for an
accounting by the custodian or ~~his~~ the custodian's legal
representative. A successor custodian may petition the court for
an accounting by the custodian that ~~he~~ the successor custodian
succeeded.

(B) The court, in a proceeding under sections ~~1339.31~~ 5814.01
to ~~1339.39~~ 5814.09 of the Revised Code, or otherwise, may require
or permit the custodian or ~~his~~ the custodian's legal
representative to account and, if the custodian is removed, shall
so require and order delivery of all custodial property to the
successor custodian and the execution of all instruments required
for the transfer of the custodial property.

Sec. ~~1339.39~~ 5814.09. (A) Sections ~~1339.31~~ 5814.01 to ~~1339.39~~
5814.09 of the Revised Code shall be ~~so~~ construed ~~as~~ to effectuate
their general purpose to make uniform the law of those states
~~which~~ that enact similar provisions.

(B) Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the
Revised Code shall not be construed as providing an exclusive
method for making gifts or transfers to minors.

(C) Nothing in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of
the Revised Code, shall affect gifts made under former sections

1339.19 to 1339.28 of the Revised Code, nor the powers, duties, 6014
and immunities conferred by gifts in such manner upon custodians 6015
and persons dealing with custodians. Sections ~~1339.31~~ 5814.01 to 6016
~~1339.39~~ 5814.09 of the Revised Code henceforth apply, however, to 6017
all gifts made in a manner and form prescribed in former sections 6018
1339.19 to 1339.28 of the Revised Code, except insofar as ~~such~~ the 6019
application impairs constitutionally vested rights. Sections 6020
~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code shall be 6021
construed as a continuation of the provisions of former sections 6022
1339.19 to 1339.28 of the Revised Code, according to the language 6023
employed, and not as a new enactment. 6024

(D) Nothing in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of 6025
the Revised Code, as of ~~the effective date of this amendment~~ May 6026
7, 1986, shall affect gifts made under those sections as they 6027
existed prior to ~~the effective date of this amendment~~ May 7, 1986, 6028
or the powers, duties, and immunities conferred by the gifts in 6029
any manner upon custodians and persons dealing with custodians. 6030
Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, 6031
as of ~~the effective date of this amendment~~ May 7, 1986, hereafter 6032
apply to all gifts made in a manner and form prescribed in those 6033
sections as they existed prior to ~~the effective date of this~~ 6034
~~amendment~~ May 7, 1986, except to the extent that the application 6035
of those sections, as of ~~the effective date of this amendment~~ May 6036
7, 1986, would impair constitutionally vested rights. 6037

Sec. ~~1339.031~~ 5815.01. Except when the intent of the settlor 6038
clearly is to the contrary, the following rules of construction 6039
shall apply in interpreting the terms "inheritance" and "bequest": 6040

(A) The term "inheritance," in addition to its meaning at 6041
common law or under any other section or sections of the Revised 6042
Code, includes any change of title to real property by reason of 6043
the death of the owner of that real property, regardless of 6044

whether the owner died testate or intestate. 6045

(B) The term "bequest," in addition to its meaning at common 6046
law or under any other section or sections of the Revised Code, 6047
includes any disposition of real property that occurs as a result 6048
of the death of the settlor. 6049

Sec. ~~1339.01~~ 5815.02. As used in sections ~~1339.01~~ 5815.02 and 6050
~~1339.02~~ 5815.03 of the Revised Code: 6051

(A) "Fiduciary" includes a trustee under any trust, 6052
expressed, implied, resulting, or constructive; an executor, 6053
administrator, public administrator, guardian, committee, 6054
conservator, curator, receiver, trustee in bankruptcy, assignee 6055
for the benefit of creditors, partner, agent, officer of a public 6056
or private corporation, or public officer; or any other person 6057
acting in a fiduciary capacity for any person, trust, or estate. 6058

(B) "Good faith" includes an act done honestly, whether it is 6059
done negligently or not. 6060

(C) "Issuer" includes domestic corporations, companies, 6061
associations, and trusts; foreign corporations, companies, 6062
associations, and trusts, to the extent that securities issued by 6063
them are held of record by persons in this state or are held on 6064
deposit in this state, and to the extent that such foreign 6065
corporation, company, association, or trust is a holder of record 6066
of, or otherwise interested in, securities of domestic 6067
corporations, companies, associations, or trusts; and also the 6068
transfer agents and registrars of the issuer and the depositories 6069
for its securities. 6070

(D) "Person" includes a corporation, partnership, 6071
association, or two or more persons having a joint or common 6072
interest. 6073

(E) "Securities" includes the items in the following 6074

enumeration, which, however, is not exclusive: 6075

(1) Shares, share certificates, and other certificates and 6076
evidences of ownership or participation in property, assets, or 6077
trust estate; bonds, notes, debentures, certificates, or evidences 6078
of indebtedness, certificates of interest or participation, 6079
collateral trust certificates, equipment-trust certificates, 6080
preorganization or subscription certificates or receipts, and 6081
voting-trust certificates; passbooks or certificates of deposit of 6082
money, securities, or other property; scrip certificates, 6083
fractional interests certificates, and, in general, interests or 6084
instruments commonly known as securities, and certificates of 6085
interest or participation in, temporary or interim certificates or 6086
receipts for, or warrants or rights to subscribe to, purchase, or 6087
receive, any of the foregoing, whether such securities were issued 6088
by the issuer in its corporate capacity, in its individual 6089
capacity, or in a fiduciary capacity; 6090

(2) Securities ~~which~~ that were issued originally by other 6091
corporations, companies, associations, or trusts, but have become 6092
the securities of the present issuer, individually or as a 6093
fiduciary. 6094

Sec. ~~1339.02~~ 5815.03. Unless there has been delivered to an 6095
issuer a certified copy of an order, judgment, or decree of a 6096
court, judge, or administrative body or official, the legal effect 6097
of which is to restrict, suspend, or remove such capacity or 6098
authority, ~~such~~ the issuer may treat all persons in whose names 6099
its securities are of record on its records as being of full age 6100
and competent and as having capacity and authority to exercise all 6101
rights of ownership in respect of ~~such~~ the securities, including 6102
the right to receive and to give receipts for payments and 6103
distributions, the right to transfer ~~said~~ the securities, and the 6104
right to vote or to give consent in person or by proxy, 6105

notwithstanding any description, limitation, or qualification 6106
appearing on ~~such~~ the securities or on ~~such~~ the records, any 6107
reference thereon to another instrument or to any fiduciary or 6108
pledgee or other relationship, or any knowledge or notice, actual 6109
or constructive, of the right, interest, or claim of any other 6110
person or of the infancy or lack of capacity or authority of the 6111
persons in whose names ~~such~~ the securities are of record. 6112

~~Such~~ The issuer may treat a fiduciary as having capacity and 6113
authority to exercise all ~~said~~ rights of ownership in respect of 6114
~~such~~ the securities that are of record in the name of a decedent 6115
holder, of a person in conservation, receivership, or bankruptcy, 6116
or of a minor, incompetent person, or person under disability, and 6117
~~such~~ the issuer shall be protected in any action taken or suffered 6118
by it in reliance upon any instrument showing the appointment of 6119
~~such~~ the fiduciary. 6120

~~Such~~ The issuer is not liable for loss caused by any act done 6121
or omitted by it under this section. ~~Such~~ The issuer need not see 6122
to the execution of any trust, or to the observance or performance 6123
of any obligation of a holder of record, a fiduciary, or a pledgee 6124
of ~~such~~ the securities, and it need not inquire or inform itself 6125
concerning ~~the same~~ those matters. 6126

This section does not enlarge the capacity, right, or 6127
authority of any holder of record of ~~such~~ the securities as 6128
against any person other than ~~such~~ the issuer, nor prevent any 6129
court of competent jurisdiction from enforcing or protecting any 6130
right, title, or interest in ~~such~~ the securities in any person who 6131
is not a holder of record ~~thereof~~ the securities. 6132

This section does not protect any ~~such~~ issuer who 6133
participates with a fiduciary in a breach of ~~his~~ the fiduciary's 6134
trust with knowledge of such facts that the action of ~~such~~ the 6135
issuer amounts to bad faith. 6136

Sec. ~~1339.03~~ 5815.04. As used in sections ~~1339.03~~ 5815.04 to 6137
~~1339.13, inclusive,~~ 5815.11 of the Revised Code: 6138

(A) "Bank" includes any person, carrying on the business of 6139
banking and any financial institution defined in section 5725.01 6140
of the Revised Code. 6141

(B) "Fiduciary" includes a trustee under any trust, 6142
expressed, implied, resulting, or constructive, an executor, 6143
~~adminstrator~~ administrator, guardian, conservator, curator, 6144
receiver, trustee in bankruptcy, assignee for the benefit of 6145
creditors, partner, agent, officer of a corporation, public or 6146
private, public officer, or any other person acting in a fiduciary 6147
capacity for any person, trust, or estate. 6148

(C) "Person" includes a corporation, partnership, 6149
association, or two or more persons having a joint or common 6150
interest. 6151

(D) "Principal" includes any person to whom a fiduciary as 6152
such owes an obligation. 6153

(E) "Good faith" includes an act when it is in fact done 6154
honestly. 6155

Sec. ~~1339.04~~ 5815.05. A person who in good faith pays or 6156
transfers to a fiduciary any money or other property ~~which that~~ 6157
the fiduciary as such is authorized to receive is not responsible 6158
for the proper application ~~thereof~~ of the money or other property 6159
by the fiduciary. Any right or title acquired from the fiduciary 6160
in consideration of ~~such~~ the payment or transfer is not invalid 6161
because of a misapplication by the fiduciary. 6162

Sec. ~~1339.08~~ 5815.06. If a deposit is made in a bank to the 6163
credit of a fiduciary as such, the bank may pay the amount of the 6164
deposit or any part thereof upon the check of the fiduciary, 6165

signed with the name in which ~~such~~ the deposit is entered, without 6166
being liable to the principal, unless the bank pays the check with 6167
actual knowledge that the fiduciary is committing a breach of ~~his~~ 6168
the obligation as fiduciary in drawing the check or with knowledge 6169
of such facts that its action in paying the check amounts to bad 6170
faith. 6171

If such a check is payable to the drawee bank and is 6172
delivered to it in payment of or as security for a personal debt 6173
of the fiduciary to it, the bank is liable to the principal if the 6174
fiduciary in fact commits a breach of ~~his~~ the obligation as 6175
fiduciary in drawing or delivering the check. 6176

Sec. ~~1339.09~~ 5815.07. If a check is drawn upon ~~his~~ the 6177
principal's account by a fiduciary who is empowered to do so, the 6178
bank may pay ~~such~~ the check without being liable to the principal, 6179
unless the bank pays the check with actual knowledge that the 6180
fiduciary is committing a breach of ~~his~~ the obligation as 6181
fiduciary in drawing ~~such~~ the check or with knowledge of such 6182
facts that its action in paying the check amounts to bad faith. 6183

If such a check is payable to the drawee bank and is 6184
delivered to it in payment of or as security for a personal debt 6185
of the fiduciary to it, the bank is liable to the principal if the 6186
fiduciary in fact commits a breach of ~~his~~ the obligation as 6187
fiduciary in drawing or delivering the check. 6188

Sec. ~~1339.10~~ 5815.08. If a fiduciary makes a deposit in a 6189
bank to ~~his~~ the fiduciary's personal credit of checks drawn by ~~him~~ 6190
the fiduciary upon an account in ~~his~~ the fiduciary's own name as 6191
fiduciary, checks payable to ~~him~~ the fiduciary as fiduciary, 6192
checks drawn by ~~him~~ the fiduciary upon an account in the name of 6193
~~his~~ the principal if ~~he~~ the fiduciary is empowered to draw checks 6194
thereon, checks payable to ~~his~~ the principal and indorsed by ~~him~~ 6195

~~the~~ the ~~fiduciary~~ if ~~he~~ the ~~fiduciary~~ is empowered to indorse ~~such~~ the 6196
checks, or if ~~he~~ the ~~fiduciary~~ otherwise makes a deposit of funds 6197
held by ~~him~~ the ~~fiduciary~~ as fiduciary, the bank receiving ~~such~~ 6198
the deposit is not bound to inquire whether the fiduciary is 6199
committing a breach of ~~his~~ the obligation as fiduciary. 6200

~~Such~~ The bank may pay the amount of the deposit or any part 6201
thereof upon the personal check of the fiduciary without being 6202
liable to the principal, unless the bank receives the deposit or 6203
pays the check with actual knowledge that the fiduciary is 6204
committing a breach of ~~his~~ the obligation as fiduciary in making 6205
~~such~~ the deposit or in drawing ~~such~~ the check, or with knowledge 6206
of such facts that the action of ~~such~~ the bank in receiving the 6207
deposit or paying the check amounts to bad faith. 6208

Sec. ~~1339.11~~ 5815.09. When a deposit is made in a bank in the 6209
name of two or more persons as trustees and a check is drawn upon 6210
the trust account by any trustee authorized to do so by the other, 6211
neither the payee or other holder nor the bank is bound to inquire 6212
whether it is a breach of trust to authorize ~~such~~ the trustee to 6213
draw checks upon the trust account and neither is liable unless 6214
the circumstances are such that the action of the payee or other 6215
holder or the bank amounts to bad faith. 6216

Sec. ~~1339.12~~ 5815.10. Sections ~~1339.03~~ 5815.04 to ~~1339.13,~~ 6217
~~inclusive,~~ 5815.11 of the Revised Code shall be ~~so~~ construed ~~so as~~ 6218
to effectuate their general purpose ~~which is to make~~ of making the 6219
law of this state uniform with the law of those states ~~which~~ that 6220
enact similar legislation. 6221

Sec. ~~1339.13~~ 5815.11. In any case not provided for in 6222
sections ~~1339.03~~ 5815.04 to ~~1339.13,~~ ~~inclusive,~~ 5815.11 of the 6223
Revised Code, the rules of law and equity, including the law 6224
merchant and those rules of law and equity relating to trusts, 6225

agency, negotiable instruments, and banking apply. 6226

Sec. ~~1339.15~~ 5815.12. As used in sections ~~1339.15~~ 5815.13, 6227
~~1339.16~~ 5815.14, and ~~1339.17~~ 5815.15 of the Revised Code, "power 6228
of appointment" means any power ~~which~~ that is in effect a power to 6229
appoint, however created, regardless of the nomenclature used in 6230
creating the power and regardless of connotations under the law of 6231
property, trusts, or wills. ~~Such~~ The power includes but is not 6232
limited to powers which are special, general, limited, absolute, 6233
in gross, appendant, appurtenant, or collateral. 6234

Sec. ~~1339.15~~ 5815.13. Any power of appointment ~~which~~ that is 6235
not subject to an express condition that it may be exercised only 6236
by a donee or holder of a greater age may be exercised by any 6237
donee or holder of the age of eighteen years~~7~~, or over. 6238

Sec. ~~1339.16~~ 5815.14. Any power of appointment may be 6239
released in whole or in part by the donee or holder of the power 6240
by an instrument in writing, signed and acknowledged in the manner 6241
prescribed for the execution of deeds. No such release is 6242
ineffective because it was given either for or without 6243
consideration, because it was signed and acknowledged before June 6244
3, 1943, or because no delivery is made of a copy of the release 6245
as provided for in section ~~1339.17~~ 5815.15 of the Revised Code. 6246

Sections ~~1339.16~~ 5815.14 and ~~1339.17~~ 5815.15 of the Revised 6247
Code do not affect the validity of a release of a power of 6248
appointment effected in any other form or manner. 6249

A donee or holder of a power of appointment may disclaim the 6250
same at any time, wholly or in part, in the same manner and to the 6251
same extent as ~~he~~ the donee or holder of the power might release 6252
it. 6253

Sec. ~~1339.17~~ 5815.15. No fiduciary or other person having the 6254

possession or control of any property subject to a power of 6255
appointment, other than the donee or holder of such power, has 6256
notice of a release of the power until a copy of the release is 6257
delivered to ~~him~~ the fiduciary or other person having possession 6258
or control. 6259

No purchaser or mortgagee of real property subject to a power 6260
of appointment has notice of a release of the power until a copy 6261
of the release is delivered to the officer charged by law with the 6262
recording of deeds in the county in which the property is 6263
situated. If the property is in this state the county recorder to 6264
whom a release is delivered shall record ~~such~~ the release in the 6265
record of powers of attorney and shall charge a fee computed in 6266
the same manner as the fee charged for recording deeds. 6267

Sec. ~~1339.18~~ 5815.16. (A) Absent an express agreement to the 6268
contrary, an attorney who performs legal services for a fiduciary, 6269
by reason of the attorney performing those legal services for the 6270
fiduciary, has no duty or obligation in contract, tort, or 6271
otherwise to any third party to whom the fiduciary owes fiduciary 6272
obligations. 6273

(B) As used in this section, "fiduciary" means a trustee 6274
under an express trust or an executor or administrator of a 6275
decedent's estate. 6276

Sec. ~~1339.41~~ 5815.21. Whenever the executor of a will or the 6277
trustee of a testamentary or inter vivos trust is permitted or 6278
required to select assets in kind to satisfy a gift, devise, or 6279
bequest, whether outright or in trust, intended to qualify for the 6280
federal estate tax marital deduction prescribed by the United 6281
States "Internal Revenue Code of 1954," 68A Stat. 392, 26 U.S.C.A. 6282
2056, or any comparable federal statute enacted after July 20, 6283
1965, and the will or trust instrument empowers or requires the 6284

fiduciary to satisfy such gift, devise, or bequest by allocating 6285
assets thereto at any values other than market values at the date 6286
of satisfaction of such gift, devise, or bequest, the executor or 6287
trustee shall satisfy such gift, devise, or bequest by 6288
distribution of assets having a value fairly representative in the 6289
aggregate of appreciation or depreciation in the value of all 6290
property, including cash, available for distribution in 6291
satisfaction of such gift, devise, or bequest, unless the will or 6292
trust instrument expressly requires that distribution be made in a 6293
manner so as not to be fairly representative of such appreciation 6294
or depreciation. 6295

Sec. ~~1339.411~~ 5815.22. (A)(1) Except as provided in divisions 6296
(A)(2), (3), and (4) of this section, a spendthrift provision in 6297
an instrument that creates an inter vivos or testamentary trust 6298
shall not cause any forfeiture or postponement of any interest in 6299
property that satisfies both of the following: 6300

(a) It is granted to a surviving spouse of the testator or 6301
other settlor. 6302

(b) It qualifies for the federal estate tax marital deduction 6303
allowed by Subtitle B, Chapter 11, of the "Internal Revenue Code 6304
of 1986," 26 U.S.C.A. 2056, as amended, the estate tax marital 6305
deduction allowed by division (A) of section 5731.15 of the 6306
Revised Code, or the qualified terminable interest property 6307
deduction allowed by division (B) of section 5731.15 of the 6308
Revised Code. 6309

(2) Division (A)(1) of this section does not apply if an 6310
instrument that creates an inter vivos or testamentary trust 6311
expressly states the intention of the testator or other settlor 6312
that obtaining a marital deduction or a qualified terminable 6313
interest property deduction as described in division (A)(1)(b) of 6314
this section is less important than enforcing the forfeiture or 6315

postponement of the interest in property in accordance with the 6316
spendthrift provision in the instrument. 6317

(3) Division (A)(1) of this section applies only to the 6318
forfeiture or postponement portions of a spendthrift provision and 6319
does not apply to any portion of a spendthrift provision that 6320
prohibits a beneficiary from assigning, alienating, or otherwise 6321
disposing of any beneficial interest in a trust or prohibits a 6322
creditor of a beneficiary from attaching or otherwise encumbering 6323
the trust estate. 6324

(4) Division (A)(1) of this section does not apply to any 6325
beneficiary of an inter vivos or testamentary trust other than the 6326
surviving spouse of the testator or other settlor or to any inter 6327
vivos or testamentary trust of which the surviving spouse of the 6328
testator or other settlor is a beneficiary if an interest in 6329
property does not qualify for a marital deduction or a qualified 6330
terminable interest property deduction as described in division 6331
(A)(1)(b) of this section. 6332

(B)(1) Except as provided in divisions (B)(2) and (3) of this 6333
section, if an instrument creating an inter vivos or testamentary 6334
trust includes a spendthrift provision and the trust holds shares 6335
in an S corporation, the spendthrift provision shall not cause any 6336
forfeiture or postponement of any beneficial interest, income, 6337
principal, or other interest in the shares of the S corporation 6338
held by the trust. For purposes of division (B)(1) of this 6339
section, "S corporation" has the same meaning as in section 1361 6340
of the "Internal Revenue Code of 1986," 26 U.S.C. 1361. 6341

(2) Division (B)(1) of this section does not apply if an 6342
instrument that creates an inter vivos or testamentary trust 6343
expressly states the intention of the testator or other settlor 6344
that maintenance of the corporation's status as an S corporation 6345
is less important than enforcing the forfeiture or postponement of 6346

any beneficial interest, income, principal, or other interest in 6347
the S corporation shares in accordance with the spendthrift 6348
provision in the instrument. 6349

(3) Division (B)(1) of this section applies only to the 6350
forfeiture or postponement portions of a spendthrift provision and 6351
does not apply to any portion of a spendthrift provision that 6352
prohibits a beneficiary from assigning, alienating, or otherwise 6353
disposing of any beneficial interest in a trust or prohibits a 6354
creditor of a beneficiary from attaching or otherwise encumbering 6355
the trust estate. 6356

(C)(1) Except as provided in divisions (C)(2) and (3) of this 6357
section, a spendthrift provision in an instrument that creates an 6358
inter vivos or testamentary trust shall not cause any forfeiture 6359
or postponement of any interest in property that satisfies both of 6360
the following: 6361

(a) It is granted to a person who is a skip person under the 6362
federal generation-skipping transfer tax imposed by Subtitle B, 6363
Chapter 13, of the "Internal Revenue Code of 1986," 26 U.S.C.A. 6364
2601-2663, as amended. 6365

(b) It qualifies as a nontaxable gift under section 2642(c) 6366
of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2642(c). 6367

(2) Division (C)(1) of this section does not apply if an 6368
instrument that creates an inter vivos or testamentary trust 6369
expressly states the intention of the testator or other settlor 6370
that qualifying as a nontaxable trust gift as described in 6371
division (C)(1)(b) of this section is less important than 6372
enforcing the forfeiture or postponement of the interest in 6373
property in accordance with the spendthrift provision in the 6374
instrument. 6375

(3) Division (C)(1) of this section applies only to the 6376
forfeiture or postponement portions of a spendthrift provision and 6377

does not apply to any portion of a spendthrift provision that
prohibits a beneficiary from assigning, alienating, or otherwise
disposing of any beneficial interest in a trust or prohibits a
creditor of a beneficiary from attaching or otherwise encumbering
the trust estate.

(D) Divisions (A), (B), and (C) of this section are intended
to codify certain fiduciary and trust law principles relating to
the interpretation of a testator's or other settlor's intent with
respect to the provisions of a trust. Divisions (A), (B), and (C)
of this section apply to trust instruments executed prior to and
existing on August 29, 2000, and to trust instruments executed on
or after August 29, 2000.

Sec. ~~1339.412~~ 5815.23. (A) Except as provided in division (B)
of this section, an instrument that creates an inter vivos or
testamentary trust shall not require or permit the accumulation
for more than one year of any income of property that satisfies
both of the following:

(1) The property is granted to a surviving spouse of the
testator or other settlor.

(2) The property qualifies for the federal estate tax marital
deduction allowed by subtitle B, Chapter 11 of the "Internal
Revenue Code of 1986," 26 U.S.C. 2056, as amended, the estate tax
marital deduction allowed by division (A) of section 5731.15 of
the Revised Code, or the qualified terminable interest property
deduction allowed by division (B) of section 5731.15 of the
Revised Code.

(B)(1) Division (A) of this section does not apply if an
instrument that creates an inter vivos or testamentary trust
expressly states the intention of the testator or other settlor
that obtaining a marital deduction or a qualified terminable

interest property deduction as described in division (A)(2) of 6408
this section is less important than requiring or permitting the 6409
accumulation of income of property in accordance with a provision 6410
in the instrument that requires or permits the accumulation for 6411
more than one year of any income of property. 6412

(2) Division (A) of this section does not apply to any 6413
beneficiary of an inter vivos or testamentary trust other than the 6414
surviving spouse of the testator or other settlor or to any inter 6415
vivos or testamentary trust of which the surviving spouse of the 6416
testator or other settlor is a beneficiary if an interest in 6417
property does not qualify for a marital deduction or a qualified 6418
terminable interest property deduction as described in division 6419
(A)(2) of this section. 6420

(C)(1) The trustee of a trust that qualifies for an estate 6421
tax marital deduction for federal or Ohio estate tax purposes and 6422
that is the beneficiary of an individual retirement account has a 6423
fiduciary duty, in regard to the income distribution provision of 6424
the trust, to withdraw and distribute the income of the individual 6425
retirement account, at least annually, to the surviving spouse of 6426
the testator or other settlor. 6427

(2) A trustee's fiduciary duty as described in division 6428
(C)(1) of this section is satisfied if the terms of the trust 6429
instrument expressly provide the surviving spouse a right to 6430
withdraw all of the assets from the trust or a right to compel the 6431
trustee to withdraw and distribute the income of the individual 6432
retirement account to the surviving spouse. 6433

(D) Divisions (A), (B), and (C)(1) of this section are 6434
intended to codify existing fiduciary and trust law principles 6435
relating to the interpretation of a testator's or other settlor's 6436
intent with respect to the income provisions of a trust. Divisions 6437
(A), (B), and (C) of this section apply to trust instruments 6438

executed prior to and existing on October 1, 1996, or executed
thereafter. The trustee of a trust described in division (A) or
(B) of this section, in a written trust amendment, may elect to
not apply divisions (A) and (B) of this section to the trust. Any
election of that nature, when made, is irrevocable.

Sec. ~~1339.42~~ 5815.24. (A) As used in this section,
"fiduciary" means a trustee under any expressed, implied,
resulting, or constructive trust; an executor, administrator,
public administrator, committee, guardian, conservator, curator,
receiver, trustee in bankruptcy, or assignee for the benefit of
creditors; a partner, agent, officer of a public or private
corporation, or public officer; or any other person acting in a
fiduciary capacity for any person, trust, or estate.

(B) A fiduciary, or a custodian, who is a transferee of real
or personal property that is held by a fiduciary other than the
person or entity serving as the transferee, is not required to
inquire into any act, or audit any account, of the transferor
fiduciary, unless the transferee is specifically directed to do so
in the instrument governing ~~him~~ the transferee or unless the
transferee has actual knowledge of conduct of the transferor that
would constitute a breach of the transferor's fiduciary
responsibilities.

(C) If a trustee is authorized or directed in a trust
instrument to pay or advance all or any part of the trust property
to the personal representative of a decedent's estate for the
payment of the decedent's legal obligations, death taxes,
bequests, or expenses of administration, the trustee is not liable
for the application of the trust property paid or advanced to the
personal representative and is not liable for any act or omission
of the personal representative with respect to the trust property,
unless the trustee has actual knowledge, prior to the payment or

advancement of the trust property, that the personal 6470
representative does not intend to use the trust property for such 6471
purposes. 6472

Sec. ~~1339.43~~ 5815.25. (A) As used in this section, 6473
"fiduciary" means a trustee under any testamentary, inter vivos, 6474
or other trust, an executor or administrator, or any other person 6475
who is acting in a fiduciary capacity for any person, trust, or 6476
estate. 6477

(B) When an instrument under which a fiduciary acts reserves 6478
to the grantor, or vests in an advisory or investment committee or 6479
in one or more other persons, including one or more fiduciaries, 6480
to the exclusion of the fiduciary or of one or more of several 6481
fiduciaries, any power, including, but not limited to, the 6482
authority to direct the acquisition, disposition, or retention of 6483
any investment or the power to authorize any act that an excluded 6484
fiduciary may propose, any excluded fiduciary is not liable, 6485
either individually or as a fiduciary, for either of the 6486
following: 6487

(1) Any loss that results from compliance with an authorized 6488
direction of the grantor, committee, person, or persons; 6489

(2) Any loss that results from a failure to take any action 6490
proposed by an excluded fiduciary that requires a prior 6491
authorization of the grantor, committee, person, or persons if 6492
that excluded fiduciary timely sought but failed to obtain that 6493
authorization. 6494

(C) Any excluded fiduciary as described in division (B) of 6495
this section is relieved from any obligation to perform investment 6496
reviews and make recommendations with respect to any investments 6497
to the extent the grantor, an advisory or investment committee, or 6498
one or more other persons have authority to direct the 6499

acquisition, disposition, or retention of any investment. 6500

(D) This section does not apply to the extent that the 6501
instrument under which an excluded fiduciary as described in 6502
division (B) of this section acts contains provisions that are 6503
inconsistent with this section. 6504

Sec. ~~1339.44~~ 5815.26. (A) As used in this section: 6505

(1) "Fiduciary" means a trustee under any testamentary, inter 6506
vivos, or other trust, an executor or administrator, or any other 6507
person who is acting in a fiduciary capacity for a person, trust, 6508
or estate. 6509

(2) "Short term trust-quality investment fund" means a short 6510
term investment fund that meets both of the following conditions: 6511

(a) The fund may be either a collective investment fund 6512
established pursuant to section 1111.14 of the Revised Code or a 6513
registered investment company, including any affiliated investment 6514
company whether or not the fiduciary has invested other funds held 6515
by it in an agency or other nonfiduciary capacity in the 6516
securities of the same registered investment company or affiliated 6517
investment company. 6518

(b) The fund is invested in any one or more of the following 6519
manners: 6520

(i) In obligations of the United States or of its agencies; 6521

(ii) In obligations of one or more of the states of the 6522
United States or their political subdivisions; 6523

(iii) In variable demand notes, corporate money market 6524
instruments including, but not limited to, commercial paper rated 6525
at the time of purchase in either of the two highest 6526
classifications established by at least one nationally recognized 6527
standard rating service; 6528

(iv) In deposits in banks or savings and loan associations
whose deposits are insured by the federal deposit insurance
corporation, if the rate of interest paid on such deposits is at
least equal to the rate of interest generally paid by such banks
or savings and loan associations on deposits of similar terms or
amounts;

(v) In fully collateralized repurchase agreements or other
evidences of indebtedness that are of trust quality and are
payable on demand or have a maturity date consistent with the
purpose of the fund and the duty of fiduciary prudence.

(3) "Registered investment company" means any investment
company that is defined in and registered under sections 3 and 8
of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A.
80a-3 and 80a-8.

(4) "Affiliated investment company" has the same meaning as
in division (E)(1) of section 1111.10 of the Revised Code.

(B) A fiduciary is not required to invest cash that belongs
to the trust and may hold that cash for the period prior to
distribution if either of the following applies:

(1) The fiduciary reasonably expects to do either of the
following:

(a) Distribute the cash to beneficiaries of the trust on a
quarterly or more frequent basis;

(b) Use the cash for the payment of debts, taxes, or expenses
of administration within the ninety-day period following the
receipt of the cash by the fiduciary.

(2) Determined on the basis of the facilities available to
the fiduciary and the amount of the income that reasonably could
be earned by the investment of the cash, the amount of the cash
does not justify the administrative burden or expense associated

with its investment. 6559

(C) If a fiduciary wishes to hold funds that belong to the 6560
trust in liquid form and division (B) of this section does not 6561
apply, the fiduciary may so hold the funds as long as they are 6562
temporarily invested as described in division (D) of this section. 6563

(D)(1) A fiduciary may make a temporary investment of cash 6564
that ~~he may hold~~ be held uninvested in accordance with division 6565
(B) of this section, and shall make a temporary investment of 6566
funds held in liquid form pursuant to division (C) of this 6567
section, in any of the following investments, unless the governing 6568
instrument provides for other investments in which the temporary 6569
investment of cash or funds is permitted: 6570

(a) A short term trust-quality investment fund; 6571

(b) Direct obligations of the United States or of its 6572
agencies; 6573

(c) A deposit with a bank or savings and loan association, 6574
including a deposit with the fiduciary itself or any bank 6575
subsidiary corporation owned or controlled by the bank holding 6576
company that owns or controls the fiduciary, whose deposits are 6577
insured by the federal deposit insurance corporation, if the rate 6578
of interest paid on that deposit is at least equal to the rate of 6579
interest generally paid by that bank or savings and loan 6580
association on deposits of similar terms or amounts. 6581

(2) A fiduciary that makes a temporary investment of cash or 6582
funds pursuant to division (D)(1) of this section may charge a 6583
reasonable fee for the services associated with that investment. 6584
The fee shall be in addition to the compensation to which the 6585
fiduciary is entitled for his ordinary fiduciary services. 6586

(3) Fiduciaries that make one or more temporary investments 6587
of cash or funds pursuant to division (D)(1) of this section shall 6588

provide to the beneficiaries of the trusts involved, that are
currently receiving income or have a right to receive income, a
written disclosure of their temporary investment practices and, if
applicable, the method of computing reasonable fees for their
temporary investment services pursuant to division (D)(2) of this
section. Fiduciaries may comply with this requirement in any
appropriate written document, including, but not limited to, any
periodic statement or account.

(4) A fiduciary that makes a temporary investment of cash or
funds in an affiliated investment company pursuant to division
(D)(1)(a) of this section shall, when providing any periodic
account statements of its temporary investment practices, report
the net asset value of the shares comprising the investment in the
affiliated investment company.

(5) If a fiduciary that makes a temporary investment of cash
or funds in an affiliated investment company pursuant to division
(D)(1)(a) of this section invests in any mutual fund, the
fiduciary shall provide to the beneficiaries of the trust
involved, that are currently receiving income or have a right to
receive income, a written disclosure, in at least ten-point
boldface type, that the mutual fund is not insured or guaranteed
by the federal deposit insurance corporation or by any other
government agency or government-sponsored agency of the federal
government or of this state.

Sec. ~~1339.45~~ 5815.27. (A) A provision in a will or trust
agreement, which provision pertains to the payment of any taxes
that are imposed by reason of the testator's or trust creator's
death, does not include the payment of any portion of any tax that
is imposed on any transfer under any other will or trust agreement
by Chapter 13 of subtitle B of the "Internal Revenue Code of
1986," 100 Stat. 2718, 26 U.S.C. 2601-2624, as amended, unless the

provision of the will or trust agreement specifically states, 6620
using the words "generation-skipping transfer tax," that the 6621
payment of the tax imposed under that chapter is included within 6622
the provision of the will or trust agreement. 6623

(B) This section applies to wills and trust agreements that 6624
are executed before or after March 14, 1979. 6625

Sec. ~~1339.51~~ 5815.28. (A) As used in this section: 6626

(1) "Ascertainable standard" includes a standard in a trust 6627
instrument requiring the trustee to provide for the care, comfort, 6628
maintenance, welfare, education, or general well-being of the 6629
beneficiary. 6630

(2) "Disability" means any substantial, medically 6631
determinable impairment that can be expected to result in death or 6632
that has lasted or can be expected to last for a continuous period 6633
of at least twelve months, except that "disability" does not 6634
include an impairment that is the result of abuse of alcohol or 6635
drugs. 6636

(3) "Political subdivision" and "state" have the same 6637
meanings as in section 2744.01 of the Revised Code. 6638

(4) "Supplemental services" means services specified by rule 6639
of the department of mental health under section 5119.01 of the 6640
Revised Code or the department of mental retardation and 6641
developmental disabilities under section 5123.04 of the Revised 6642
Code that are provided to an individual with a disability in 6643
addition to services the individual is eligible to receive under 6644
programs authorized by federal or state law. 6645

(B) Any person may create a trust under this section to 6646
provide funding for supplemental services for the benefit of 6647
another individual who meets either of the following conditions: 6648

(1) The individual has a physical or mental disability and is 6649

eligible to receive services through the department of mental 6650
retardation and developmental disabilities or a county board of 6651
mental retardation and developmental disabilities; 6652

(2) The individual has a mental disability and is eligible to 6653
receive services through the department of mental health or a 6654
board of alcohol, drug addiction, and mental health services. 6655

The trust may confer discretion upon the trustee and may 6656
contain specific instructions or conditions governing the exercise 6657
of the discretion. 6658

(C) The general division of the court of common pleas and the 6659
probate court of the county in which the beneficiary of a trust 6660
authorized by division (B) of this section resides or is confined 6661
have concurrent original jurisdiction to hear and determine 6662
actions pertaining to the trust. In any action pertaining to the 6663
trust in a court of common pleas or probate court and in any 6664
appeal of the action, all of the following apply to the trial or 6665
appellate court: 6666

(1) The court shall render determinations consistent with the 6667
testator's or other settlor's intent in creating the trust, as 6668
evidenced by the terms of the trust instrument. 6669

(2) The court may order the trustee to exercise discretion 6670
that the trust instrument confers upon the trustee only if the 6671
instrument contains specific instructions or conditions governing 6672
the exercise of that discretion and the trustee has failed to 6673
comply with the instructions or conditions. In issuing an order 6674
pursuant to this division, the court shall require the trustee to 6675
exercise the trustee's discretion only in accordance with the 6676
instructions or conditions. 6677

(3) The court may order the trustee to maintain the trust and 6678
distribute assets in accordance with rules adopted by the director 6679
of mental health under section 5119.01 of the Revised Code or the 6680

director of mental retardation and developmental disabilities 6681
under section 5123.04 of the Revised Code if the trustee has 6682
failed to comply with such rules. 6683

(D) To the extent permitted by federal law and subject to the 6684
provisions of division (C)(2) of this section pertaining to the 6685
enforcement of specific instructions or conditions governing a 6686
trustee's discretion, a trust authorized by division (B) of this 6687
section that confers discretion upon the trustee shall not be 6688
considered an asset or resource of the beneficiary, the 6689
beneficiary's estate, the settlor, or the settlor's estate and 6690
shall be exempt from the claims of creditors, political 6691
subdivisions, the state, other governmental entities, and other 6692
claimants against the beneficiary, the beneficiary's estate, the 6693
settlor, or the settlor's estate, including claims based on 6694
provisions of Chapters 5111., 5121., or 5123. of the Revised Code 6695
and claims sought to be satisfied by way of a civil action, 6696
subrogation, execution, garnishment, attachment, judicial sale, or 6697
other legal process, if all of the following apply: 6698

(1) At the time the trust is created, the trust principal 6699
does not exceed the maximum amount determined under division (E) 6700
of this section; 6701

(2) The trust instrument contains a statement of the 6702
settlor's intent, or otherwise clearly evidences the settlor's 6703
intent, that the beneficiary does not have authority to compel the 6704
trustee under any circumstances to furnish the beneficiary with 6705
minimal or other maintenance or support, to make payments from the 6706
principal of the trust or from the income derived from the 6707
principal, or to convert any portion of the principal into cash, 6708
whether pursuant to an ascertainable standard specified in the 6709
instrument or otherwise; 6710

(3) The trust instrument provides that trust assets can be 6711

used only to provide supplemental services, as defined by rule of
the director of mental health under section 5119.01 of the Revised
Code or the director of mental retardation and developmental
disabilities under section 5123.04 of the Revised Code, to the
beneficiary;

(4) The trust is maintained and assets are distributed in
accordance with rules adopted by the director of mental health
under section 5119.01 of the Revised Code or the director of
mental retardation and developmental disabilities under section
5123.04 of the Revised Code;

(5) The trust instrument provides that on the death of the
beneficiary, a portion of the remaining assets of the trust, which
shall be not less than fifty per cent of such assets, will be
deposited to the credit of the services fund for individuals with
mental illness created by section 5119.17 of the Revised Code or
the services fund for individuals with mental retardation and
developmental disabilities created by section 5123.40 of the
Revised Code.

(E) In 1994, the trust principal maximum amount for a trust
created under this section shall be two hundred thousand dollars.
The maximum amount for a trust created under this section prior to
November 11, 1994, may be increased to two hundred thousand
dollars.

In 1995, the maximum amount for a trust created under this
section shall be two hundred two thousand dollars. Each year
thereafter, the maximum amount shall be the prior year's amount
plus two thousand dollars.

(F) This section does not limit or otherwise affect the
creation, validity, interpretation, or effect of any trust that is
not created under this section.

(G) Once a trustee takes action on a trust created by a

settlor under this section and disburses trust funds on behalf of 6743
the beneficiary of the trust, then the trust may not be terminated 6744
or otherwise revoked by a particular event or otherwise without 6745
payment into the services fund created pursuant to section 5119.17 6746
or 5123.40 of the Revised Code of an amount that is equal to the 6747
disbursements made on behalf of the beneficiary for medical care 6748
by the state from the date the trust vests but that is not more 6749
than fifty per cent of the trust corpus. 6750

Sec. ~~1339.62~~ 5815.31. Unless the trust or separation 6751
agreement provides otherwise, if, after executing a trust in which 6752
~~he~~ the grantor reserves to ~~himself~~ self a power to alter, amend, 6753
revoke, or terminate the provisions of the trust, a grantor is 6754
divorced, obtains a dissolution of marriage, has ~~his~~ the grantor's 6755
marriage annulled, or, upon actual separation from ~~his~~ the 6756
grantor's spouse, enters into a separation agreement pursuant to 6757
which the parties intend to fully and finally settle their 6758
prospective property rights in the property of the other, whether 6759
by expected inheritance or otherwise, the spouse or former spouse 6760
of the grantor shall be deemed to have predeceased the grantor and 6761
any provision in the trust conferring a general or special power 6762
of appointment on the spouse or former spouse or nominating the 6763
spouse or former spouse as trustee or trust advisor shall be 6764
revoked. If the grantor remarries ~~his~~ the grantor's former spouse 6765
or if the separation agreement is terminated, the spouse shall not 6766
be deemed to have predeceased the grantor and any provision in the 6767
trust conferring a general or special power of appointment on the 6768
spouse or former spouse or nominating the spouse or former spouse 6769
as trustee or trust advisor shall not be revoked. 6770

Sec. ~~1339.621~~ 5815.32. If a principal executes a power of 6771
attorney designating the principal's spouse as the attorney in 6772
fact for the principal and if after executing the power of 6773

attorney, the principal and the principal's spouse are divorced, 6774
obtain a dissolution or annulment of their marriage, or enter into 6775
a separation agreement pursuant to which they intend to fully and 6776
finally settle each spouse's prospective property rights in the 6777
property of the other, the designation in the power of attorney of 6778
the spouse or former spouse of the principal to act as attorney in 6779
fact for the principal is revoked, unless the power of attorney 6780
provides otherwise. The subsequent remarriage of the principal to 6781
the principal's former spouse, or the termination of a separation 6782
agreement between the principal and the principal's spouse, does 6783
not revive a power of attorney that is revoked under this section. 6784

Sec. ~~1339.63~~ 5815.33. (A) As used in this section: 6785

(1) "Beneficiary" means a beneficiary of a life insurance 6786
policy, an annuity, a payable on death account, an individual 6787
retirement plan, an employer death benefit plan, or another right 6788
to death benefits arising under a contract. 6789

(2) "Employer death benefit plan" means any funded or 6790
unfunded plan or program, or any fund, that is established to 6791
provide the beneficiaries of an employee participating in the 6792
plan, program, or fund with benefits that may be payable upon the 6793
death of that employee. 6794

(3) "Individual retirement plan" means an individual 6795
retirement account or individual retirement annuity as defined in 6796
section 408 of the "Internal Revenue Code of 1986," 100 Stat. 6797
2085, 26 U.S.C.A. 408, as amended. 6798

(B)(1) Unless the designation of beneficiary or the judgment 6799
or decree granting the divorce, dissolution of marriage, or 6800
annulment specifically provides otherwise, and subject to division 6801
(B)(2) of this section, if a spouse designates the other spouse as 6802
a beneficiary or if another person having the right to designate a 6803

beneficiary on behalf of the spouse designates the other spouse as
a beneficiary, and if, after either type of designation, the
spouse who made the designation or on whose behalf the designation
was made, is divorced from the other spouse, obtains a dissolution
of marriage, or has the marriage to the other spouse annulled,
then the other spouse shall be deemed to have predeceased the
spouse who made the designation or on whose behalf the designation
was made, and the designation of the other spouse as a beneficiary
is revoked as a result of the divorce, dissolution of marriage, or
annulment.

(2) If the spouse who made the designation or on whose behalf
the designation was made remarries the other spouse, then, unless
the designation no longer can be made, the other spouse shall not
be deemed to have predeceased the spouse who made the designation
or on whose behalf the designation was made, and the designation
of the other spouse as a beneficiary is not revoked because of the
previous divorce, dissolution of marriage, or annulment.

(C) An agent, bank, broker, custodian, issuer, life insurance
company, plan administrator, savings and loan association,
transfer agent, trustee, or other person is not liable in damages
or otherwise in a civil or criminal action or proceeding for
distributing or disposing of property in reliance on and in
accordance with a designation of beneficiary as described in
division (B)(1) of this section, if both of the following apply:

(1) The distribution or disposition otherwise is proper;

(2) The agent, bank, broker, custodian, issuer, life
insurance company, plan administrator, savings and loan
association, transfer agent, trustee, or other person did not have
any notice of the facts that resulted in the revocation of the
beneficiary designation by operation of division (B)(1) of this
section.

Sec. ~~1339.64~~ 5815.34. (A)(1) Unless the judgment or decree 6835
granting the divorce, dissolution of marriage, or annulment 6836
specifically provides otherwise, and subject to division (A)(2) of 6837
this section, if the title to any personal property is held by two 6838
persons who are married to each other, if the title is so held for 6839
the joint lives of the spouses and then to the survivor of them, 6840
and if the marriage of the spouses subsequently is terminated by a 6841
judgment or decree granting a divorce, dissolution of marriage, or 6842
annulment, then the survivorship rights of the spouses terminate, 6843
and each spouse shall be deemed the owner of an undivided interest 6844
in common in the title to the personal property, that is in 6845
proportion to ~~his~~ the spouse's net contributions to the personal 6846
property. 6847

(2) If the spouses described in division (A)(1) of this 6848
section remarry each other and the title to the personal property 6849
continues to be held by them in accordance with that division, 6850
then the survivorship rights of the spouses are not terminated, 6851
and the spouses again hold title in the personal property for 6852
their joint lives and then to the survivor of them. 6853

(B)(1) Unless the judgment or decree granting the divorce, 6854
dissolution of marriage, or annulment specifically provides 6855
otherwise, and subject to division (B)(2) of this section, if the 6856
title to any personal property is held by more than two persons 6857
and at least two of the persons are married to each other, if the 6858
title is so held for the joint lives of the titleholders and then 6859
to the survivor or survivors of them, and if the marriage of any 6860
of the titleholders who are married to each other subsequently is 6861
terminated by a judgment or decree granting a divorce, dissolution 6862
of marriage, or annulment, then the survivorship rights of the 6863
titleholders who were married to each other terminate, the 6864
survivorship rights of the other titleholders are not affected, 6865

and each of the titleholders who were married to each other shall
be deemed to be the owner of an undivided interest in common in
the personal property, that is in proportion to ~~his~~ the net
contributions of the titleholders who were married to each other
to the personal property.

(2) If the titleholders who were married to each other as
described in division (B)(1) of this section remarry each other,
and if the title to the personal property continues to be held by
them, and the other titleholders whose survivorship rights
continued unaffected, in accordance with that division, then the
survivorship rights of the remarried titleholders are not
terminated, and the remarried and other titleholders again hold
title in the personal property for their joint lives and then to
the survivor or survivors of them.

(C) An agent, bank, broker, custodian, issuer, life insurance
company, plan administrator, savings and loan association,
transfer agent, trustee, or other person is not liable in damages
or otherwise in a civil or criminal action or proceeding for
distributing or disposing of personal property in reliance on and
in accordance with a registration in the form of a joint ownership
for life, with rights of survivorship, as described in division
(A)(1) or (B)(1) of this section, if both of the following apply:

(1) The distribution or disposition otherwise is proper;

(2) The agent, bank, broker, custodian, issuer, life
insurance company, plan administrator, savings and loan
association, transfer agent, trustee, or other person did not have
any notice of the facts that resulted in the termination of the
rights of survivorship by operation of division (A)(1) or (B)(1)
of this section.

Sec. ~~1339.65~~ 5815.35. (A)(1) As used in this division: 6895

(a) ~~"Fiduciary, fiduciary"~~ means any person, association, or corporation, other than a trustee of a testamentary trust, an assignee or trustee for an insolvent debtor, or a guardian under Chapter 5905. of the Revised Code, that is appointed by and accountable to the probate court, and that is acting in a fiduciary capacity for another or charged with duties in relation to any property, interest, ~~trust,~~ or estate for another's benefit. A fiduciary also includes an agency under contract with the department of mental retardation and developmental disabilities for the provision of protective service under sections 5123.55 to 5123.59 of the Revised Code, when appointed by ~~an~~ and accountable to the probate court as a guardian or trustee for a mentally retarded or developmentally disabled person.

~~(b) "Trustee" means a trustee of an inter vivos trust.~~

(2) A ~~trustee or~~ fiduciary who enters a contract as ~~trustee or~~ fiduciary on or after March 22, 1984, is not personally liable on that contract, unless the contract otherwise specifies, if the contract is within the ~~trustee's or~~ fiduciary's authority and the ~~trustee or~~ fiduciary discloses that the contract is being entered into in ~~his trustee or~~ a fiduciary capacity. In a contract, the words ~~"trustee," "as trustee,"~~ "fiduciary," or "as fiduciary" or other words that indicate one's ~~trustee or~~ fiduciary capacity following the name or signature of a ~~trustee or~~ fiduciary ~~shall be~~ are sufficient disclosure for purposes of this division.

(B)(1) As used in this division:

~~(a) "Partnership, "partnership"~~ includes a partnership composed of only general partners and a partnership composed of general and limited partners.

~~(b) "Revocable trust" means only a revocable trust that, by its terms, becomes irrevocable upon the death of the settlor of the trust.~~

(2) Subject to division (D) of this section, an executor, or 6927
administrator, ~~or trustee~~ who acquires, in ~~his~~ a fiduciary 6928
capacity, a general partnership interest upon the death of a 6929
general partner of a partnership, ~~or a trustee of a revocable~~ 6930
~~trust who, in his fiduciary capacity, is a general partner of a~~ 6931
~~partnership,~~ is not personally liable for any debt, obligation, or 6932
liability of the partnership that arises from ~~his~~ the executor's 6933
or administrator's actions, except as provided in this division, 6934
as a general partner, or for any debt, obligation, or liability of 6935
the partnership for which ~~he~~ the executor or administrator 6936
otherwise would be personally liable because ~~he~~ the executor or 6937
administrator holds the general partnership interest, if ~~he~~ the 6938
executor or administrator discloses that the general partnership 6939
interest is held by ~~him~~ the executor or administrator in a 6940
fiduciary capacity. This immunity does not apply if an executor, 6941
or administrator, ~~or trustee~~ causes loss or injury to a person who 6942
is not a partner in the partnership, by a wrongful act or 6943
omission. This immunity is not available to an executor, or 6944
administrator, ~~or trustee~~ who holds a general partnership interest 6945
in ~~his~~ a fiduciary capacity if ~~his~~ the spouse or any ~~of his~~ lineal 6946
descendants of the executor or administrator, or the executor, or 6947
administrator, ~~or trustee himself~~ other than in ~~his~~ a fiduciary 6948
capacity, holds any interest in the partnership. 6949

A partnership certificate that is filed pursuant to Chapter 6950
1777. or another chapter of the Revised Code and that indicates 6951
that an executor, or administrator, ~~or trustee~~ holds a general 6952
partnership interest in a fiduciary capacity by the use following 6953
the name or signature of the executor, or administrator, ~~or~~ 6954
~~trustee~~ of the words "executor under the will of (name of 6955
decedent)," or "administrator of the estate of (name of 6956
decedent)," ~~or "trustee under the (will or trust) of (name of~~ 6957
~~decedent or settlor),"~~ or other words that indicate the 6958

~~or~~ administrator's, ~~or trustee's~~ fiduciary capacity, constitutes 6959
a sufficient disclosure for purposes of this division. 6960

If a partnership certificate is not required to be filed 6961
pursuant to Chapter 1777. or another chapter of the Revised Code, 6962
a sufficient disclosure for purposes of this division can be made 6963
by an executor, or administrator, ~~or trustee~~ if a certificate that 6964
satisfies the following requirements is filed with the recorder of 6965
the county in which the partnership's principal office or place of 6966
business is situated and with the recorder of each county in which 6967
the partnership owns real estate: 6968

(a) The certificate shall state in full the names of all 6969
persons holding interests in the partnership and their places of 6970
residence; 6971

(b) The certificate shall be signed by all persons who are 6972
general partners in the partnership, and shall be acknowledged by 6973
a person authorized to take acknowledgements of deeds; 6974

(c) The certificate shall use the words "executor under the 6975
will of (name of decedent), or "administrator of the estate of 6976
(name of decedent), ~~or "trustee under the (will or trust) of~~ 6977
~~(name of decedent or settlor),"~~ or other words that indicate the 6978
executor's, or administrator's, ~~or trustee's~~ fiduciary capacity, 6979
following ~~his~~ the name or signature of the executor or 6980
administrator. 6981

A contract or other written instrument delivered to a party 6982
that contracts with the partnership in which an executor, or 6983
administrator, ~~or trustee~~ holds a general partnership interest in 6984
a fiduciary capacity, which indicates that the executor, or 6985
administrator, ~~or trustee~~ so holds the interest, constitutes a 6986
disclosure for purposes of this division with respect to 6987
transactions between the party and the partnership. If a 6988
disclosure has been made by a certificate in accordance with this 6989

division, a disclosure for purposes of this division with respect 6990
to such transactions exists regardless of whether a contract or 6991
other instrument indicates the executor, or administrator, ~~or~~ 6992
~~trustee~~ holds the general partnership interest in a fiduciary 6993
capacity. 6994

~~If a trustee of a revocable trust, in his fiduciary capacity,~~ 6995
~~is a general partner in a partnership, the settlor of the trust is~~ 6996
~~personally liable for any debt, obligation, or liability of the~~ 6997
~~partnership as if he were the general partner. If an executor, or~~ 6998
~~administrator, ~~or~~ trustee acquires, in his a fiduciary capacity, a~~ 6999
general partnership interest, the decedent's estate ~~or the trust~~ 7000
is liable for debts, obligations, or liabilities of the 7001
partnership. 7002

(C) An estate ~~or trust~~ that includes a general partnership 7003
interest is not liable for the debts, obligations, or liabilities 7004
of a partnership in which another estate ~~or trust~~ has a general 7005
partnership interest, merely because the executor, or 7006
administrator, ~~or trustee~~ of the estates ~~or trusts~~ holds a general 7007
partnership interest in both of the partnerships in ~~his the~~ 7008
executor's or administrator's fiduciary capacities. 7009

(D) Divisions (B) and (C) of this section apply to general 7010
partnership interests held by executors, or administrators, ~~or~~ 7011
~~trustees~~ in their fiduciary capacities prior to and on or after 7012
the effective date of this section. If an appropriate disclosure 7013
is made pursuant to division (B) of this section, the immunity 7014
acquired under that division extends only to debts, obligations, 7015
and liabilities of the partnership arising on and after the date 7016
of the disclosure and to debts, obligations, and liabilities of 7017
the partnership that arose prior to the acquisition of the general 7018
partnership interest by the executor, or administrator, ~~or trustee~~ 7019
~~or prior to the trustee of a revocable trust~~ becoming a general 7020
partner. 7021

~~Sec. 1339-68~~ 5815.36. (A) As used in this section: 7022

(1) "Disclaimant" means any person, any guardian or personal 7023
representative of a person or estate of a person, or any 7024
attorney-in-fact or agent of a person having a general or specific 7025
authority to act granted in a written instrument, who is any of 7026
the following: 7027

(a) With respect to testamentary instruments and intestate 7028
succession, an heir, next of kin, devisee, legatee, donee, person 7029
succeeding to a disclaimed interest, surviving joint tenant, 7030
surviving tenant by the entirety, surviving tenant of a tenancy 7031
with a right of survivorship, beneficiary under a testamentary 7032
instrument, or person designated to take pursuant to a power of 7033
appointment exercised by a testamentary instrument; 7034

(b) With respect to nontestamentary instruments, a grantee, 7035
donee, person succeeding to a disclaimed interest, surviving joint 7036
tenant, surviving tenant by the entirety, surviving tenant of a 7037
tenancy with a right of survivorship, beneficiary under a 7038
nontestamentary instrument, or person designated to take pursuant 7039
to a power of appointment exercised by a nontestamentary 7040
instrument; 7041

(c) With respect to fiduciary rights, privileges, powers, and 7042
immunities, a fiduciary under a testamentary or nontestamentary 7043
instrument. This section does not authorize a fiduciary to 7044
disclaim the rights of beneficiaries unless the instrument 7045
creating the fiduciary relationship authorizes such a disclaimer. 7046

(d) Any person entitled to take an interest in property upon 7047
the death of a person or upon the occurrence of any other event. 7048

(2) "Property" means all forms of property, real and 7049
personal, tangible and intangible. 7050

(B)(1) A disclaimant, other than a fiduciary under an 7051

instrument who is not authorized by the instrument to disclaim the
interest of a beneficiary, may disclaim, in whole or in part, the
succession to any property by executing and by delivering, filing,
or recording a written disclaimer instrument in the manner
provided in this section.

(2) A disclaimant who is a fiduciary under an instrument may
disclaim, in whole or in part, any right, power, privilege, or
immunity, by executing and by delivering, filing, or recording a
written disclaimer instrument in the manner provided in this
section.

(3) The written instrument of disclaimer shall be signed and
acknowledged by the disclaimant and shall contain all of the
following:

(a) A reference to the donative instrument;

(b) A description of the property, part of property, or
interest disclaimed, and of any fiduciary right, power, privilege,
or immunity disclaimed;

(c) A declaration of the disclaimer and its extent.

(4) The guardian of the estate of a minor or an incompetent,
or the personal representative of a deceased person, with the
consent of the probate division of the court of common pleas, may
disclaim, in whole or in part, the succession to any property, or
interest in property, that the ward, if an adult and competent, or
the deceased, if living, might have disclaimed. The guardian or
personal representative, or any interested person may file an
application with the probate division of the court of common pleas
that has jurisdiction of the estate, asking that the court order
the guardian or personal representative to execute and deliver,
file, or record the disclaimer on behalf of the ward or estate.
The court shall order the guardian or personal representative to
execute and deliver, file, or record the disclaimer if the court

finds, upon hearing after notice to interested parties and such other persons as the court shall direct, that:

(a) It is in the best interests of those interested in the estate of the person and of those who will take the disclaimed interest;

(b) It would not materially, adversely affect the minor or incompetent, or the beneficiaries of the estate of the decedent, taking into consideration other available resources and the age, probable life expectancy, physical and mental condition, and present and reasonably anticipated future needs of the minor or incompetent or the beneficiaries of the estate of the decedent.

A written instrument of disclaimer ordered by the court under this division shall be executed and be delivered, filed, or recorded within the time and in the manner in which the person could have disclaimed if the person were living, an adult, and competent.

(C) A partial disclaimer of property that is subject to a burdensome interest created by the donative instrument is not effective unless the disclaimed property constitutes a gift that is separate and distinct from undisclaimed gifts.

(D) The disclaimant shall deliver, file, or record the disclaimer, or cause the same to be done, not later than nine months after the latest of the following dates:

(1) The effective date of the donative instrument if both the taker and the taker's interest in the property are finally ascertained on that date;

(2) The date of the occurrence of the event upon which both the taker and the taker's interest in the property become finally ascertainable;

(3) The date on which the disclaimant attains twenty-one

years of age or is no longer an incompetent, without tendering or 7113
repaying any benefit received while the disclaimant was under 7114
twenty-one years of age or an incompetent, and even if a guardian 7115
of a minor or incompetent had filed an application pursuant to 7116
division (B)(4) of this section and the probate division of the 7117
court of common pleas involved did not consent to the guardian 7118
executing a disclaimer. 7119

(E) No disclaimer instrument is effective under this section 7120
if either of the following applies under the terms of the 7121
disclaimer instrument: 7122

(1) The disclaimant has power to revoke the disclaimer. 7123

(2) The disclaimant may transfer, or direct to be 7124
transferred, to self the entire legal and equitable ownership of 7125
the property subject to the disclaimer instrument. 7126

(F)(1) Subject to division (F)(2) of this section, if the 7127
interest disclaimed is created by a nontestamentary instrument, 7128
the disclaimer instrument shall be delivered personally or by 7129
certified mail to the trustee or other person who has legal title 7130
to, or possession of, the property disclaimed. 7131

(2) If the interest disclaimed is created by a testamentary 7132
instrument, by intestate succession, by a transfer on death deed 7133
pursuant to section 5302.22 of the Revised Code, or by a 7134
certificate of title to a motor vehicle, watercraft, or outboard 7135
motor that evidences ownership of the motor vehicle, watercraft, 7136
or outboard motor that is transferable on death pursuant to 7137
section 2131.13 of the Revised Code, the disclaimer instrument 7138
shall be filed in the probate division of the court of common 7139
pleas in the county in which proceedings for the administration of 7140
the decedent's estate have been commenced, and an executed copy of 7141
the disclaimer instrument shall be delivered personally or by 7142
certified mail to the personal representative of the decedent's 7143

estate. 7144

(3) If no proceedings for the administration of the 7145
decedent's estate have been commenced, the disclaimer instrument 7146
shall be filed in the probate division of the court of common 7147
pleas in the county in which proceedings for the administration of 7148
the decedent's estate might be commenced according to law. The 7149
disclaimer instrument shall be filed and indexed, and fees 7150
charged, in the same manner as provided by law for an application 7151
to be appointed as personal representative to administer the 7152
decedent's estate. The disclaimer is effective whether or not 7153
proceedings thereafter are commenced to administer the decedent's 7154
estate. If proceedings thereafter are commenced for the 7155
administration of the decedent's estate, they shall be filed 7156
under, or consolidated with, the case number assigned to the 7157
disclaimer instrument. 7158

(4) If an interest in real estate is disclaimed, an executed 7159
copy of the disclaimer instrument also shall be recorded in the 7160
office of the recorder of the county in which the real estate is 7161
located. The disclaimer instrument shall include a description of 7162
the real estate with sufficient certainty to identify it, and 7163
shall contain a reference to the record of the instrument that 7164
created the interest disclaimed. If title to the real estate is 7165
registered under Chapters 5309. and 5310. of the Revised Code, the 7166
disclaimer interest shall be entered as a memorial on the last 7167
certificate of title. A spouse of a disclaimant has no dower or 7168
other interest in the real estate disclaimed. 7169

(G) Unless the donative instrument expressly provides that, 7170
if there is a disclaimer, there shall not be any acceleration of 7171
remainders or other interests, the property, part of property, or 7172
interest in property disclaimed, and any future interest that is 7173
to take effect in possession or enjoyment at or after the 7174
termination of the interest disclaimed, shall descend, be 7175

distributed, or otherwise be disposed of, and shall be	7176
accelerated, in the following manner:	7177
(1) If intestate or testate succession is disclaimed, as if	7178
the disclaimant had predeceased the decedent;	7179
(2) If the disclaimant is one designated to take pursuant to	7180
a power of appointment exercised by a testamentary instrument, as	7181
if the disclaimant had predeceased the donee of the power;	7182
(3) If the donative instrument is a nontestamentary	7183
instrument, as if the disclaimant had died before the effective	7184
date of the nontestamentary instrument;	7185
(4) If the disclaimer is of a fiduciary right, power,	7186
privilege, or immunity, as if the right, power, privilege, or	7187
immunity was never in the donative instrument.	7188
(H) A disclaimer pursuant to this section is effective as of,	7189
and relates back for all purposes to, the date upon which the	7190
taker and the taker's interest have been finally ascertained.	7191
(I) A disclaimant who has a present and future interest in	7192
property, and disclaims the disclaimant's present interest in	7193
whole or in part, is considered to have disclaimed the	7194
disclaimant's future interest to the same extent, unless a	7195
contrary intention appears in the disclaimer instrument or the	7196
donative instrument. A disclaimant is not precluded from	7197
receiving, as an alternative taker, a beneficial interest in the	7198
property disclaimed, unless a contrary intention appears in the	7199
disclaimer instrument or in the donative instrument.	7200
(J) The disclaimant's right to disclaim under this section is	7201
barred if, before the expiration of the period within which the	7202
disclaimant may disclaim the interest, the disclaimant does any of	7203
the following:	7204
(1) Assigns, conveys, encumbers, pledges, or transfers, or	7205

contracts to assign, convey, encumber, pledge, or transfer, the	7206
property or any interest in it;	7207
(2) Waives in writing the disclaimant's right to disclaim and	7208
executes and delivers, files, or records the waiver in the manner	7209
provided in this section for a disclaimer instrument;	7210
(3) Accepts the property or an interest in it;	7211
(4) Permits or suffers a sale or other disposition of the	7212
property pursuant to judicial action against the disclaimant.	7213
(K) A fiduciary's application for appointment or assumption	7214
of duties as a fiduciary does not waive or bar the disclaimant's	7215
right to disclaim a right, power, privilege, or immunity.	7216
(L) The right to disclaim under this section exists	7217
irrespective of any limitation on the interest of the disclaimant	7218
in the nature of a spendthrift provision or similar restriction.	7219
(M) A disclaimer instrument or written waiver of the right to	7220
disclaim that has been executed and delivered, filed, or recorded	7221
as required by this section is final and binding upon all persons.	7222
(N) The right to disclaim and the procedures for disclaimer	7223
established by this section are in addition to, and do not exclude	7224
or abridge, any other rights or procedures existing under any	7225
other section of the Revised Code or at common law to assign,	7226
convey, release, refuse to accept, renounce, waive, or disclaim	7227
property.	7228
(O)(1) No person is liable for distributing or disposing of	7229
property in a manner inconsistent with the terms of a valid	7230
disclaimer if the distribution or disposition is otherwise proper	7231
and the person has no actual knowledge of the disclaimer.	7232
(2) No person is liable for distributing or disposing of	7233
property in reliance upon the terms of a disclaimer that is	7234
invalid because the right of disclaimer has been waived or barred	7235

if the distribution or disposition is otherwise proper and the 7236
person has no actual knowledge of the facts that constitute a 7237
waiver or bar to the right to disclaim. 7238

(P)(1) A disclaimant may disclaim pursuant to this section 7239
any interest in property that is in existence on September 27, 7240
1976, if either the interest in the property or the taker of the 7241
interest in the property is not finally ascertained on that date. 7242

(2) No disclaimer executed pursuant to this section destroys 7243
or diminishes an interest in property that exists on September 27, 7244
1976, in any person other than the disclaimant. 7245

Sec. ~~1339.71~~ 5815.41. As used in sections ~~1339.71~~ 5815.41 to 7246
~~1339.78~~ 5815.48 of the Revised Code: 7247

(A) "Art dealer" means a person engaged in the business of 7248
selling works of art, other than a person exclusively engaged in 7249
the business of selling goods at public auction. 7250

(B) "Artist" means the creator of a work of art. 7251

(C) "On consignment" means delivered to an art dealer for the 7252
purpose of sale or exhibition, or both, to the public by the art 7253
dealer other than at a public auction. 7254

(D) "Work of art" means an original art work that is any of 7255
the following: 7256

(1) A visual rendition including, but not limited to, a 7257
painting, drawing, sculpture, mosaic, or photograph; 7258

(2) A work of calligraphy; 7259

(3) A work of graphic art, including, but not limited to, an 7260
etching, lithograph, offset print, or silk screen; 7261

(4) A craft work in materials, including, but not limited to, 7262
clay, textile, fiber, wood, metal, plastic, or glass; 7263

(5) A work in mixed media, including, but not limited to, a collage or a work consisting of any combination of the items listed in divisions (D)(1) to (4) of this section.

Sec. ~~1339.72~~ 5815.42. If an art dealer accepts a work of art, on a fee, commission, or other compensation basis, on consignment from the artist who created the work of art, the following consequences attach:

(A) The art dealer is, with respect to that work of art, the agent of the artist.

(B) The work of art is trust property and the art dealer is a trustee for the benefit of the artist until the work of art is sold to a bona fide third party or returned to the artist.

(C) The proceeds of the sale of the work of art are trust property and the art dealer is a trustee for the benefit of the artist until the amount due the artist from the sale is paid.

(D) The art dealer is strictly liable for the loss of, or damage to, the work of art while it is in the art dealer's possession or control. The value of the work of art is, for the purpose of this division, the value established in the written contract between the artist and art dealer entered into pursuant to section ~~1339.75~~ 5815.45 of the Revised Code.

Sec. ~~1339.73~~ 5815.43. (A) If a work of art is trust property under section ~~1339.72~~ 5815.42 of the Revised Code when it is initially received by the art dealer, it remains trust property, notwithstanding the subsequent purchase of the work of art by the art dealer directly or indirectly for the art dealer's own account, until the purchase price specified pursuant to division (A)(3) of section ~~1339.75~~ 5815.45 of the Revised Code is paid in full to the artist.

(B) If an art dealer resells a work of art that ~~he~~ the art dealer purchased for ~~his~~ the art dealer's own account to a bona fide third party before the artist has been paid in full, the work of art ceases to be trust property and the proceeds of the resale are trust funds in the possession or control of the art dealer for the benefit of the artist to the extent necessary to pay any balance still due to the artist. The trusteeship of the proceeds continues until the artist is paid in full under the contract entered into pursuant to section ~~1339.75~~ 5815.45 of the Revised Code.

Sec. ~~1339.74~~ 5815.44. A work of art that is trust property under section ~~1339.72~~ 5815.42 or ~~1339.73~~ 5815.43 of the Revised Code is not subject to the claims, liens, or security interests of the creditors of the art dealer, notwithstanding Chapters 1301. to 1310. of the Revised Code.

Sec. ~~1339.75~~ 5815.45. (A) An art dealer shall not accept a work of art, on a fee, commission, or other compensation basis, on consignment from the artist who created the work of art unless, prior to or at the time of acceptance, the art dealer enters into a written contract with the artist that contains all of the following:

(1) The value of the work of art and whether it may be sold;

(2) The time within which the proceeds of the sale are to be paid to the artist, if the work of art is sold;

(3) The minimum price for the sale of the work of art;

(4) The fee or percentage of the sale price that is to be paid to the art dealer for displaying or selling the work of art.

(B) If an art dealer violates this section, a court, at the request of the artist, may void the obligation of the artist to

that art dealer or to a person to whom the obligation is 7322
transferred, other than a holder in due course. 7323

Sec. ~~1339.76~~ 5815.46. An art dealer who accepts a work of 7324
art, on a fee, commission, or other compensation basis, on 7325
consignment from the artist who created the work of art shall not 7326
use or display the work of art or a photograph of the work of art, 7327
or permit the use or display of the work of art or a photograph of 7328
the work of art, unless both of the following occur: 7329

~~(1)~~(A) Notice is given to users or viewers that the work of 7330
art is the work of the artist; 7331

~~(2)~~(B) The artist gives prior written consent to the 7332
particular use or display. 7333

Sec. ~~1339.77~~ 5815.47. Any portion of an agreement that waives 7334
any provision of sections ~~1339.71~~ 5815.41 to ~~1339.78~~ 5815.48 of 7335
the Revised Code is void. 7336

Sec. ~~1339.78~~ 5815.48. Any art dealer who violates section 7337
~~1339.75~~ 5815.45 or ~~1339.76~~ 5815.46 of the Revised Code is liable 7338
to the artist for ~~his~~ the artist's reasonable attorney's fees and 7339
in an amount equal to the greater of either of the following: 7340

(A) Fifty dollars; 7341

(B) The actual damages, if any, including the incidental and 7342
consequential damages, sustained by the artist by reason of the 7343
violation. 7344

Section 2. That existing sections 1111.13, 1111.15, 1151.191, 7345
1161.24, 1319.12, 1339.01, 1339.02, 1339.03, 1339.031, 1339.04, 7346
1339.08, 1339.09, 1339.10, 1339.11, 1339.12, 1339.13, 1339.15, 7347
1339.151, 1339.16, 1339.17, 1339.18, 1339.31, 1339.32, 1339.33, 7348
1339.34, 1339.35, 1339.36, 1339.37, 1339.38, 1339.39, 1339.41, 7349

1339.411, 1339.412, 1339.42, 1339.43, 1339.44, 1339.45, 1339.51, 7350
1339.52, 1339.53, 1339.54, 1339.55, 1339.56, 1339.57, 1339.58, 7351
1339.59, 1339.60, 1339.61, 1339.62, 1339.621, 1339.63, 1339.64, 7352
1339.65, 1339.68, 1339.71, 1339.72, 1339.73, 1339.74, 1339.75, 7353
1339.76, 1339.77, 1339.78, 1340.31, 1340.32, 1340.33, 1340.34, 7354
1340.35, 1340.36, 1340.37, 1340.40, 1340.41, 1340.42, 1340.46, 7355
1340.47, 1340.51, 1340.52, 1340.53, 1340.57, 1340.58, 1340.59, 7356
1340.63, 1340.64, 1340.65, 1340.66, 1340.70, 1340.71, 1340.72, 7357
1340.73, 1340.74, 1340.75, 1340.76, 1340.77, 1340.81, 1340.82, 7358
1340.83, 1340.84, 1340.85, 1340.86, 1340.90, 1340.91, 1775.03, 7359
1775.14, 1775.15, 1775.17, 1775.33, 1782.24, 2101.24, 2107.33, 7360
2109.24, 2109.37, 2109.62, 2109.68, 2111.131, 2113.861, 2305.121, 7361
2305.22, 5111.15, 5111.151, 5119.01, 5119.17, 5121.04, 5121.10, 7362
5121.30, 5121.52, 5123.04, 5123.28, and 5123.40 and sections 7363
1335.01, 1339.14, 1339.66, 1339.67, 1339.69, 1340.21, 1340.22, and 7364
1340.23 of the Revised Code are hereby repealed. 7365

Section 3. Sections 1 and 2 of this act shall take effect on 7366
January 1, 2007. 7367

Section 4. In enacting divisions (B) to (D) of section 7368
5808.14 of the Revised Code in Section 1 of this act, the General 7369
Assembly hereby declares its intent to codify certain fiduciary 7370
and trust law principles, previously codified in sections 1340.21 7371
to 1340.23 of the Revised Code, relating to a fiduciary's conflict 7372
of interests and, in general, to provide for the exercise of 7373
certain discretionary powers to distribute either principal or 7374
income to a beneficiary by a beneficially interested fiduciary for 7375
the beneficially interested fiduciary's own benefit to the extent 7376
of an ascertainable standard. 7377

Section 5. Section 5123.04 of the Revised Code is presented 7378
in this act as a composite of the section as amended by both Sub. 7379

H.B. 670 and Am. Sub. S.B. 285 of the 121st General Assembly. The 7380
General Assembly, applying the principle stated in division (B) of 7381
section 1.52 of the Revised Code that amendments are to be 7382
harmonized if reasonably capable of simultaneous operation, finds 7383
that the composite is the resulting version of the section in 7384
effect prior to the effective date of the section as presented in 7385
this act. 7386