

# AN ACT

To enact section 2109.361 of the Revised Code to require the probate court, upon application by an affected beneficiary, to determine the fairness of an agreement requiring a fiduciary or beneficiary to pay a percentage of an inheritance or a dollar amount to any person other than the beneficiary and to allow the probate court to approve, modify, or disapprove the agreement.

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

SECTION 1. That section 2109.361 of the Revised Code be enacted to read as follows:

Sec. 2109.361. (A) As used in this section, "third-party distribution" means the distribution by a fiduciary of an estate or trust of the assets of that estate or trust when both of the following apply:

(1) The fiduciary makes the distribution to either of the following persons:

(a) The transferee of a beneficiary;

(b) Any person pursuant to an agreement, request, or instruction of a beneficiary or pursuant to a legal claim against a beneficiary.

(2) The distribution is the subject of an agreement between a beneficiary and any person that requires the fiduciary or beneficiary to pay a percentage of an inheritance or a dollar amount to any person other than the beneficiary.

(B) Prior to making a third-party distribution, the affected beneficiary or the affected beneficiary's guardian or other legal representative of the beneficiary may file an application for the approval of a third-party distribution with the probate court. An application filed pursuant to this division shall identify the person to whom the third-party distribution is to be made, disclose the basis for making the third-party distribution, and include a copy of any written agreement between the affected beneficiary and the person to whom the third-party distribution is to be made.

(C) The probate court shall hold a hearing on an application filed under division (B) of this section. The applicant shall serve notice of the hearing

on all interested parties at least fifteen days prior to the hearing in accordance with Civil Rule 73. An interested party may waive notice of the hearing in accordance with Civil Rule 73.

(D) The probate court may approve the third-party distribution in whole or in part, as the court determines is just and equitable. To the extent that the application is approved, the court shall determine whether the third-party distribution is properly charged solely against the beneficiary's share of the estate or trust or whether some or all of the third-party distribution is properly charged against the residue of the affected estate or trust. The court may consider any relevant factors in evaluating the application, including, but not limited to, any of the following:

(1) The amount or percentage of the affected beneficiary's share that would be the subject of the proposed third-party distribution measured against the reasonable value of any goods or services the person to whom the third-party distribution would be made provided to the beneficiary or to the estate or trust;

(2) Whether the agreement, request, or instructions of the affected beneficiary were procured by duress, fraud, misrepresentation, undue influence, or other unfair means;

(3) Whether the amount of the proposed third-party distribution is fixed or contingent under the terms of the agreement between the affected beneficiary and the recipient of the proposed third-party distribution;

(4) Whether the beneficiary was represented by an attorney during the pendency of the probate action, or the beneficiary authorized the recipient of the proposed third-party distribution to retain an attorney who is licensed to practice law in Ohio for the beneficiary to formally represent the beneficiary in any proceeding regarding the decedent's estate, and the recipient of the proposed third-party distribution is responsible for paying the attorney's fees;

(5) The extent, if any, to which the recipient of the proposed third-party distribution incurred expenses in connection with the services provided to the affected beneficiary, estate, or trust;

(6) Whether the beneficiary was required to advance any payments for fees or expenses to the recipient of the proposed third-party distribution.

(E) Division (D)(4) of this section does not prohibit the beneficiary from retaining the beneficiary's own legal counsel.

(F) This section does not apply to third-party distributions to an attorney who represents a beneficiary and does not affect any other provision of law regarding the compensation of attorneys.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Sub. H. B. No. 83

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_