

As Introduced

**127th General Assembly
Regular Session
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H. B. No. 499

Representative Oelslager

Cosponsors: Representatives McGregor, J., Hughes, Combs, Barrett

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A B I L L

To amend sections 2109.01, 5801.01, 5801.02, 5801.06, 1
5801.10, 5803.02, 5803.03, 5804.02, 5804.11, 2
5804.13, 5804.14, 5804.17, 5805.01, 5805.03, 3
5806.01, 5806.02, 5806.03, 5806.04, 5808.13, 4
5808.14, 5808.16, 5810.05, and 5810.13, to enact 5
section 5801.11, and to repeal section 2109.022 of 6
the Revised Code to modify the Ohio Trust Code. 7

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

Section 1. That sections 2109.01, 5801.01, 5801.02, 5801.06, 8
5801.10, 5803.02, 5803.03, 5804.02, 5804.11, 5804.13, 5804.14, 9
5804.17, 5805.01, 5805.03, 5806.01, 5806.02, 5806.03, 5806.04, 10
5808.13, 5808.14, 5808.16, 5810.05, and 5810.13 be amended and 11
section 5801.11 of the Revised Code be enacted to read as follows: 12

Sec. 2109.01. "Fiduciary," as used in Chapters 2101. to 2131. 13
of the Revised Code, ~~except as provided in section 2109.022 of the~~ 14
~~Revised Code,~~ means any person, other than an assignee or trustee 15
for an insolvent debtor or a guardian under sections 5905.01 to 16
5905.19 of the Revised Code, appointed by and accountable to the 17
probate court and acting in a fiduciary capacity for any person, 18
or charged with duties in relation to any property, interest, 19

trust, or estate for the benefit of another; and includes an 20
agency under contract with the department of mental retardation 21
and developmental disabilities for the provision of protective 22
service under sections 5123.55 to 5123.59 of the Revised Code, 23
appointed by and accountable to the probate court as guardian or 24
trustee with respect to mentally retarded or developmentally 25
disabled persons. 26

Sec. 5801.01. As used in Chapters 5801. to 5811. of the 27
Revised Code: 28

(A) "Action," with respect to an act of a trustee, includes a 29
failure to act. 30

(B) "Ascertainable standard" means a standard relating to an 31
individual's health, education, support, or maintenance within the 32
meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal 33
Revenue Code. 34

(C) "Beneficiary" means a person that has a present or future 35
beneficial interest in a trust, whether vested or contingent, or 36
that, in a capacity other than that of trustee, holds a power of 37
appointment over trust property, or a charitable organization that 38
is expressly designated in the terms of the trust to receive 39
distributions. "Beneficiary" does not include any charitable 40
organization that is not expressly designated in the terms of the 41
trust to receive distributions, but to whom the trustee may in its 42
discretion make distributions. 43

(D) "Beneficiary surrogate" means a person, other than a 44
trustee, designated by the settlor in the trust instrument to 45
receive notices, information, and reports otherwise required to be 46
provided to a current beneficiary under divisions (B)(8) and (9) 47
of section 5801.04 of the Revised Code. 48

(E) "Charitable trust" means a trust, or portion of a trust, 49

created for a charitable purpose described in division (A) of 50
section 5804.05 of the Revised Code. 51

(F) "Current beneficiary" means a beneficiary that, on the 52
date the beneficiary's qualification is determined, is a 53
distributee or permissible distributee of trust income or 54
principal. 55

(G) "Environmental law" means a federal, state, or local law, 56
rule, regulation, or ordinance relating to protection of the 57
environment. 58

(H) "Guardian of the estate" means a guardian appointed by a 59
court to administer the estate of any individual or to serve as 60
conservator of the property of an individual eighteen years of age 61
or older under section 2111.021 of the Revised Code. 62

(I) "Guardian of the person" means a guardian appointed by a 63
court to make decisions regarding the support, care, education, 64
health, and welfare of any individual or to serve as conservator 65
of the person of an individual eighteen years of age or older 66
under section 2111.021 of the Revised Code. "Guardian of the 67
person" does not include a guardian ad litem. 68

(J) "Internal Revenue Code" means the "Internal Revenue Code 69
of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended. 70

(K) "Interests of the beneficiaries" means the beneficial 71
interests provided in the terms of the trust. 72

(L) "Jurisdiction," with respect to a geographic area, 73
includes a state or country. 74

(M) "Mandatory distribution" means a distribution of income 75
or principal, including a distribution upon termination of the 76
trust, that the trustee is required to make to a beneficiary under 77
the terms of the trust. Mandatory distributions do not include 78
distributions that a trustee is directed or authorized to make 79

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

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

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

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

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

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

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

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

(R) "Revocable," as applied to a trust, means revocable at the time of determination by the settlor alone or by the settlor

with the consent of any person other than a person holding an 110
adverse interest. A trust's characterization as revocable is not 111
affected by the settlor's lack of capacity to exercise the power 112
of revocation, regardless of whether an agent of the settlor under 113
a power of attorney, or a guardian of the person or estate of the 114
settlor, is serving. 115

(S) "Settlor" means a person, including a testator, who 116
creates, or contributes property to, a trust. If more than one 117
person creates or contributes property to a trust, each person is 118
a settlor of the portion of the trust property attributable to 119
that person's contribution except to the extent another person has 120
the power to revoke or withdraw that portion. 121

(T) "Spendthrift provision" means a term of a trust that 122
restrains both voluntary and involuntary transfer of a 123
beneficiary's interest. 124

(U) "State" means a state of the United States, the District 125
of Columbia, the Commonwealth of Puerto Rico, a territory or 126
possession of the United States, or an Indian tribe or band 127
recognized by federal law or formally acknowledged by a state. 128

(V) "Terms of a trust" means the manifestation of the 129
settlor's intent regarding a trust's provisions as expressed in 130
the trust instrument or as may be established by other evidence 131
that would be admissible in a judicial proceeding. 132

(W) "Trust instrument" means an instrument executed by the 133
settlor that contains terms of the trust and any amendments to 134
that instrument. 135

(X) "Trustee" includes an original, additional, and successor 136
trustee and a cotrustee. 137

(Y)(1) "Wholly discretionary trust" means a trust to which 138
all of the following apply: 139

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|---|---------------------------------|
| (a) The trust is irrevocable. | 140 |
| (b) Distributions of income or principal from the trust may or shall be made to or for the benefit of the beneficiary only at the trustee's discretion. | 141 142 143 |
| (c) The beneficiary does not have a power of withdrawal from the trust. | 144 145 |
| (d) The terms of the trust use "sole," "absolute," "uncontrolled," or language of similar import to describe the trustee's discretion to make distributions to or for the benefit of the beneficiary. | 146 147 148 149 |
| (e) The terms of the trust do not provide any standards to guide the trustee in exercising its discretion to make distributions to or for the benefit of the beneficiary. | 150 151 152 |
| (f) The beneficiary is not the settlor, the trustee, or a cotrustee. | 153 154 |
| (g) The beneficiary does not have the power to become the trustee or a cotrustee. | 155 156 |
| (2) A trust may be a wholly discretionary trust with respect to one or more but less than all beneficiaries. | 157 158 |
| (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: | 159 160 161 162 163 |
| (a) The portion of the trust the beneficiary may withdraw may not be a wholly discretionary trust with respect to that beneficiary; | 164 165 166 |
| (b) The portion of the trust the beneficiary may not withdraw may be a wholly discretionary trust with respect to that beneficiary. | 167 168 169 |

(4) If the beneficiary and one or more others have made 170
contributions to the trust, the portion of the trust attributable 171
to the beneficiary's contributions may not be a wholly 172
discretionary trust with respect to that beneficiary, but the 173
portion of the trust attributable to the contributions of others 174
may be a wholly discretionary trust with respect to that 175
beneficiary. If a beneficiary has a power of withdrawal, then upon 176
the lapse, release, or waiver of the power, the beneficiary is 177
treated as having made contributions to the trust only to the 178
extent the value of the property affected by the lapse, release, 179
or waiver exceeds the greatest of the following amounts: 180

(a) The amount specified in section 2041(b)(2) or 2514(e) of 181
the Internal Revenue Code; 182

(b) If the donor of the property subject to the beneficiary's 183
power of withdrawal is not married at the time of the transfer of 184
the property to the trust, the amount specified in section 2503(b) 185
of the Internal Revenue Code; 186

(c) If the donor of the property subject to the beneficiary's 187
power of withdrawal is married at the time of the transfer of the 188
property to the trust, twice the amount specified in section 189
2503(b) of the Internal Revenue Code. 190

(5) Notwithstanding divisions (Y)(1)(f) and (g) of this 191
section, a trust may be a wholly discretionary trust if the 192
beneficiary is, or has the power to become, a trustee only with 193
respect to the management or the investment of the trust assets, 194
and not with respect to making discretionary distribution 195
decisions. With respect to a trust established for the benefit of 196
an individual who is blind or disabled as defined in 42 U.S.C. 197
1382c(a)(2) or (3), as amended, a wholly discretionary trust may 198
include either or both of the following: 199

(a) Precatory language regarding its intended purpose of 200

providing supplemental goods and services to or for the benefit of 201
the beneficiary, and not to supplant benefits from public 202
assistance programs; 203

(b) A prohibition against providing food, ~~clothing~~, and 204
shelter to the beneficiary. 205

Sec. 5801.02. Except as otherwise provided in any provision 206
of Chapters 5801. to 5811. of the Revised Code, those chapters 207
apply to charitable and noncharitable inter vivos express trusts 208
and to trusts created pursuant to a statute, judgment, or decree 209
that requires the trust to be administered in the manner of an 210
express trust. Chapters 5801. to 5811. of the Revised Code apply 211
to charitable and noncharitable testamentary trusts to the extent 212
provided by section 2109.69 of the Revised Code. 213

Sec. 5801.06. (A) The law of the jurisdiction designated in 214
the terms of a trust determines the meaning and effect of the 215
terms unless the designation of that jurisdiction's law is 216
contrary to a strong public policy of the jurisdiction having the 217
most significant relationship to the matter at issue. In the 218
absence of a controlling designation in the terms of the trust, 219
the law of the jurisdiction having the most significant 220
relationship to the matter at issue determines the meaning and 221
effect of the terms. 222

(B) The administration of a trust is governed by the law 223
designated in the terms of the trust to govern trust 224
administration. If the terms of the trust do not designate the 225
governing law, both of the following apply: 226

(1) The law of the trust's principal place of administration 227
governs the administration of the trust. 228

(2) If the trust's principal place of administration is 229
transferred to another jurisdiction under section 5801.07 of the 230

Revised Code, the law of the new principal place of administration 231
of the trust governs the administration of the trust from the time 232
of the transfer. 233

Sec. 5801.10. (A) As used in this section, "creditor" means 234
any of the following: 235

(1) A person holding a debt or security for a debt entered 236
into by a trustee on behalf of the trust; 237

(2) A person holding a debt secured by one or more assets of 238
the trust; 239

(3) A person having a claim against the trustee or the assets 240
of the trust under section 5805.06 of the Revised Code; 241

(4) A person who has attached through legal process a 242
beneficiary's interest in the trust. 243

(B) The parties to an agreement under this section shall be 244
all of the following, or their representatives under the 245
representation provisions of Chapter 5803. of the Revised Code, 246
except that only the settlor and any trustee are required to be 247
parties to an amendment of any revocable trust: 248

(1) The settlor if living and if no adverse income or 249
transfer tax results would arise from the settlor's participation; 250

(2) All beneficiaries; 251

(3) All currently serving trustees; 252

(4) Creditors, if their interest is to be affected by the 253
agreement. 254

(C) The persons specified in division (B) of this section may 255
by written instrument enter into an agreement with respect to any 256
matter concerning the construction of, administration of, or 257
distributions under the terms of the trust ~~instrument~~, the 258
investment of income or principal held by the trustee, or other 259

matters. The agreement ~~is valid only to the extent that it does~~ 260
may not effect a termination of the trust before the date 261
specified for the trust's termination in the terms of the trust 262
~~instrument~~, ~~does not~~ change the interests of the beneficiaries in 263
the trust except as necessary to effect a modification described 264
in division (C)(5) or (6) of this section, ~~and includes or include~~ 265
terms and conditions that could not be properly approved by the 266
court under Chapters 5801. to 5811. of the Revised Code or other 267
applicable law. The invalidity of any provision of the agreement 268
does not affect the validity of other provisions of the agreement. 269
Matters that may be resolved by a private settlement agreement 270
include, but are not limited to, all of the following: 271

(1) Determining classes of creditors, beneficiaries, heirs, 272
next of kin, or other persons; 273

(2) Resolving disputes arising out of the administration or 274
distribution under the terms of the trust ~~instrument~~, including 275
disputes over the construction of the language of the trust 276
instrument or construction of the language of other writings that 277
affect the terms of the trust ~~instrument~~; 278

(3) Granting to the trustee necessary or desirable powers not 279
granted in the terms of the trust ~~instrument~~ or otherwise provided 280
by law, to the extent that those powers either are not 281
inconsistent with the express provisions or purposes of the terms 282
of the trust ~~instrument~~ or, if inconsistent with the express 283
provisions or purposes of the terms of the trust ~~instrument~~, are 284
necessary for the due administration of the terms of the trust 285
~~instrument~~; 286

(4) Modifying the terms of the trust ~~instrument~~, if the 287
modification is not inconsistent with any dominant purpose or 288
objective of the trust; 289

(5) Modifying the terms of the trust ~~instrument~~ in the manner 290

required to qualify the gift under the terms of the trust 291
~~instrument~~ for the charitable estate or gift tax deduction 292
permitted by federal law, including the addition of mandatory 293
governing instrument requirements for a charitable remainder trust 294
as required by the Internal Revenue Code and regulations 295
promulgated under it in any case in which all parties interested 296
in the trust have submitted written agreements to the proposed 297
changes or written disclaimer of interest; 298

(6) Modifying the terms of the trust ~~instrument~~ in the manner 299
required to qualify any gift under the terms of the trust 300
~~instrument~~ for the estate tax marital deduction available to 301
noncitizen spouses, including the addition of mandatory governing 302
instrument requirements for a qualified domestic trust under 303
section 2056A of the Internal Revenue Code and regulations 304
promulgated under it in any case in which all parties interested 305
in the trust have submitted written agreements to the proposed 306
changes or written disclaimer of interest; 307

(7) Resolving any other matter that arises under Chapters 308
5801. to 5811. of the Revised Code. 309

(D) No agreement shall be entered into under this section 310
affecting the rights of a creditor without the creditor's consent 311
or affecting the collection rights of federal, state, or local 312
taxing authorities. 313

(E) Any agreement entered into under this section that 314
complies with the requirements of division (C) of this section 315
shall be final and binding on the trustee, the settlor if living, 316
all beneficiaries, creditors who are parties to the agreement, and 317
their heirs, successors, and assigns. 318

(F) Notwithstanding anything in this section, in division (D) 319
of section 5803.03 of the Revised Code, or in any other rule of 320
law to the contrary, a trustee serving under the terms of the 321

trust ~~instrument~~ shall only represent its own individual or 322
corporate interests in negotiating or entering into an agreement 323
subject to this section. No trustee serving under the terms of the 324
trust ~~instrument~~ shall be considered to represent any settlor, 325
beneficiary, or the interests of any settlor or beneficiary in 326
negotiating or entering into an agreement subject to this section. 327

(G) Any party to a private settlement agreement entered into 328
under this section may request the court to approve the agreement, 329
to determine whether the representation as provided in Chapter 330
5803. of the Revised Code was adequate, and to determine whether 331
the agreement contains terms and conditions the court could have 332
properly approved. 333

(H) If an agreement entered into under this section contains 334
a provision requiring binding arbitration of any disputes arising 335
under the agreement, the provision is enforceable. 336

(I) Nothing in this section affects any of the following: 337

(1) The right of a beneficiary to disclaim under section 338
5815.36 of the Revised Code; 339

(2) The termination or modification of a trust under section 340
5804.10, 5804.11, 5804.12, 5804.13, 5804.14, 5804.15, or 5804.16 341
of the Revised Code; 342

(3) The ability of a trustee to divide or consolidate a trust 343
under section 5804.17 of the Revised Code. 344

(J) Nothing in this section restricts or limits the 345
jurisdiction of any court to dispose of matters not covered by 346
agreements under this section or to supervise the acts of trustees 347
appointed by that court. 348

(K) This section shall be liberally construed to favor the 349
validity and enforceability of agreements entered into under it. 350

(L) A trustee serving under the trust instrument is not 351

liable to any third person arising from any loss due to that 352
trustee's actions or inactions taken or omitted in good faith 353
reliance on the terms of an agreement entered into under this 354
section. 355

(M) This section does not apply to any of the following: 356

(1) A charitable trust that has one or more charitable 357
organizations as qualified beneficiaries; 358

(2) A charitable trust the terms of which authorize or direct 359
the trustee to distribute trust income or principal to one or more 360
charitable organizations to be selected by the trustee, or for one 361
or more charitable purposes described in division (A) of section 362
5804.05 of the Revised Code, if any of the following apply: 363

(a) The distributions may be made on the date that an 364
agreement under this section would be entered into. 365

(b) The distributions could be made on the date that an 366
agreement under this section would be entered into if the 367
interests of the current beneficiaries of the trust terminated on 368
that date, but the termination of those interests would not cause 369
the trust to terminate. 370

(c) The distributions could be made on the date that an 371
agreement under this section would be entered into if the trust 372
terminated on that date. 373

Sec. 5801.11. A guardian of the estate or person, in acting 374
under Chapters 5801. to 5811. of the Revised Code, shall comply 375
with the guardian's duties under Chapter 2111. of the Revised Code 376
or other applicable law. 377

Sec. 5803.02. To the extent there is no conflict of interest 378
between the holder of a general testamentary power of appointment 379
and the persons represented with respect to the particular 380

question or dispute, the holder may represent and bind persons 381
whose interests, as permissible appointees, takers in default, or 382
otherwise, are subject to the power. The rights of the holder of a 383
presently exercisable general power of appointment are governed by 384
section 5806.03 of the Revised Code. 385

Sec. 5803.03. To the extent there is no conflict of interest 386
between the representative and the person represented or among 387
those being represented with respect to a particular question or 388
dispute, all of the following apply: 389

(A) A guardian of the estate may represent and bind the 390
estate that the guardian of the estate controls. 391

(B) A guardian of the person may represent and bind the ward 392
if a guardian of the estate has not been appointed. 393

(C) An agent having authority to act with respect to the 394
particular question or dispute may represent and bind the 395
principal. 396

(D) Except as provided in division (F) of section 5801.10 of 397
the Revised Code, a trustee may represent and bind the 398
beneficiaries of the trust. 399

(E) A personal representative of a decedent's estate may 400
represent and bind persons interested in the estate. 401

(F) A parent may represent and bind the parent's minor or 402
unborn child if neither a guardian for the child's estate or a 403
guardian of the person has been appointed. If a minor or unborn 404
child is not represented by a parent under this division, another 405
person may represent and bind the minor or unborn child under 406
section 5803.04 of the Revised Code if the requirements of that 407
section are met. 408

Sec. 5804.02. (A) A trust is created only if all of the 409

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| following apply: | 410 |
| (1) The settlor of the trust, other than the settlor of a trust created by a court order, has capacity to create a trust. | 411 412 |
| (2) The settlor of the trust, other than the settlor of a trust created by a court order, indicates an intention to create the trust. | 413 414 415 |
| (3) The trust has a definite beneficiary or is one of the following: | 416 417 |
| (a) A charitable trust; | 418 |
| (b) A trust for the care of an animal, as provided in section 5804.08 of the Revised Code; | 419 420 |
| (c) A trust for a noncharitable purpose, as provided in section 5804.09 of the Revised Code. | 421 422 |
| (4) The trustee has duties to perform. | 423 |
| (5) The same person is not the sole trustee and sole beneficiary. | 424 425 |
| (B) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities. | 426 427 428 |
| (C) A power in a trustee <u>or other person</u> 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. | 429 430 431 432 433 |
| (D) A trust is valid regardless of the existence, size, or character of the corpus of the trust. This division applies to any trust <u>instrument</u> that was executed prior to, or is executed on or after, the effective date of Chapters 5801. to 5811. of the Revised Code <u>January 1, 2007.</u> | 434 435 436 437 438 |

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

Sec. 5804.11. (A) If upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust and that all consents, including any given by representatives under Chapter 5803. of the Revised Code, are valid, 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 471
termination with the approval of the court supervising the 472
guardianship if an agent is not so authorized and a guardian of 473
the estate has not been appointed. ~~This division applies only to~~ 474
~~irrevocable trusts created on or after the effective date of~~ 475
~~Chapters 5801. to 5811. of the Revised Code and to revocable~~ 476
~~trusts that become irrevocable on or after the effective date of~~ 477
~~Chapters 5801. to 5811. of the Revised Code.~~ This division does 478
not apply to a noncharitable irrevocable trust described in 42 479
U.S.C. 1396p(d)(4). 480

(B) A noncharitable irrevocable trust may be terminated upon 481
consent of all of the beneficiaries if the court concludes that 482
continuance of the trust is not necessary to achieve any material 483
purpose of the trust. A noncharitable irrevocable trust may be 484
modified, but not to remove or replace the trustee, upon consent 485
of all of the beneficiaries if the court concludes that 486
modification is not inconsistent with a material purpose of the 487
trust. A spendthrift provision in the terms of the trust may, but 488
is not presumed to, constitute a material purpose of the trust. 489

(C) Upon termination of a trust under division (A) or (B) of 490
this section, the trustee shall distribute the trust property as 491
agreed by the beneficiaries. 492

(D) If not all of the beneficiaries consent to a proposed 493
modification or termination of the trust under division (A) or (B) 494
of this section, the court may approve the modification or 495
termination if the court is satisfied of both of the following: 496

(1) That if all of the beneficiaries had consented, the trust 497
could have been modified or terminated under this section; 498

(2) That the interests of a beneficiary who does not consent 499
will be adequately protected. 500

Sec. 5804.13. (A) Except as otherwise provided in division 501
(B) of this section, if a particular charitable purpose becomes 502
unlawful, impracticable, or impossible to achieve, all of the 503
following apply: 504

(1) The trust does not fail in whole or in part. 505

(2) The trust property does not revert to the settlor or the 506
settlor's successors in interest. 507

(3) The court may apply cy pres to modify or terminate the 508
trust by directing that the trust property be applied or 509
distributed, in whole or in part, in a manner consistent with the 510
settlor's charitable purposes. In accordance with section 109.25 511
of the Revised Code, the attorney general is a necessary party to 512
a judicial proceeding brought under this section. 513

(B) A provision in the terms of a charitable trust for an 514
alternative charitable purpose or for the distribution of the 515
trust property to a noncharitable beneficiary prevails over the 516
power of the court under division (A) of this section to apply cy 517
pres to modify or terminate the trust. 518

Sec. 5804.14. (A)(1) Except as provided in division (A)(2) of 519
this section, after notice to the qualified beneficiaries, the 520
trustee of an inter vivos trust consisting of trust property 521
having a total value of less than one hundred thousand dollars may 522
terminate the trust if the trustee concludes that the value of the 523
trust property is insufficient to justify the cost of 524
administration. 525

(2) Division (A)(1) of this section does not apply to any of 526
the following: 527

(a) A charitable trust that has one or more charitable 528
organizations as qualified beneficiaries; 529

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

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

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

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

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

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

trustee shall consider all of the following: 561

(1) The existence of any agreement among the beneficiaries 562
with respect to their beneficial interests; 563

(2) The actuarial values of the separate beneficial interests 564
of the beneficiaries; 565

(3) Any expression of preference of the beneficiaries that is 566
contained in the terms of the trust instrument. 567

(D) Upon the termination of a trust pursuant to division (B) 568
of this section, the ~~probate~~ court shall order the distribution of 569
the trust estate in accordance with any provision specified in the 570
terms of the trust instrument for the premature termination of the 571
trust. If there is no provision of that nature in the terms of the 572
trust ~~instrument~~, the ~~probate~~ court shall order the distribution 573
of the trust estate among the beneficiaries of the trust in 574
accordance with their respective beneficial interests and in a 575
manner that the court determines to be equitable. For purposes of 576
ordering the distribution of the trust estate among the 577
beneficiaries of the trust under this division, the court shall 578
consider the three factors listed in division (C) of this section. 579

(E) The existence of a spendthrift or similar provision in 580
the terms of a trust ~~instrument~~ or will does not preclude the 581
termination of a trust pursuant to this section. 582

(F) This section does not apply to an easement for 583
conservation or preservation. 584

Sec. 5804.17. After notice to the qualified beneficiaries, a 585
trustee may combine two or more trusts into a single trust or 586
divide a trust into two or more separate trusts if the result does 587
not substantially impair the rights of any beneficiary or 588
~~adversely affect~~ have a materially adverse effect on the 589
achievement of the purposes of the trust. 590

Sec. 5805.01. (A) A spendthrift provision is valid only if it 591
restrains both voluntary and involuntary transfer of a 592
beneficiary's interest or if it restrains involuntary transfer of 593
a beneficiary's interest and permits voluntary transfer of a 594
beneficiary's interest only with the consent of a trustee who is 595
not the beneficiary. 596

(B) A term of a trust providing that the interest of a 597
beneficiary is held subject to a "spendthrift trust," or words of 598
similar import, is sufficient to restrain both voluntary and 599
involuntary transfer of the beneficiary's interest. 600

(C) A beneficiary may not transfer an interest in a trust in 601
violation of a valid spendthrift provision and, except as 602
otherwise provided in this chapter and in section 5810.04 of the 603
Revised Code, a creditor or assignee of the beneficiary may not 604
reach the interest or a distribution by the trustee before its 605
receipt by the beneficiary. Real property or tangible personal 606
property that is owned by the trust but that is made available for 607
a beneficiary's use or occupancy in accordance with the trustee's 608
authority under the terms of the trust instrument shall not be 609
considered to have been distributed by the trustee or received by 610
the beneficiary for purposes of allowing a creditor or assignee of 611
the beneficiary to reach the property. 612

Sec. 5805.03. Notwithstanding anything to the contrary in 613
division (B) of section 5805.02 of the Revised Code, no creditor 614
or assignee of a beneficiary of a wholly discretionary trust may 615
reach the beneficiary's interest in the trust, or a distribution 616
by the trustee before its receipt by the beneficiary, whether by 617
attachment of present or future distributions to or for the 618
benefit of the beneficiary, by judicial sale, by obtaining an 619
order compelling the trustee to make distributions from the trust, 620
or by any other means, regardless of whether the terms of the 621

trust ~~instrument includes~~ include a spendthrift provision. 622

Sec. 5806.01. The capacity of a settlor required to create, 623
amend, revoke, or add property to a revocable trust, or to direct 624
the actions of the trustee of a revocable trust, is the same as 625
that required to make a will. 626

Sec. 5806.02. (A) Unless the terms of a trust expressly 627
provide that the trust is irrevocable, the settlor may revoke or 628
amend the trust. This division does not apply to a trust created 629
under an instrument executed before ~~the effective date of this~~ 630
~~section~~ January 1, 2007. 631

(B) If a revocable trust is created or funded by more than 632
one settlor, all of the following apply: 633

(1) To the extent the trust consists of community property, 634
either spouse acting alone may revoke the trust, but the trust may 635
be amended only by joint action of both spouses. 636

(2) To the extent the trust consists of property other than 637
community property, each settlor may revoke or amend the trust 638
with regard to the portion of the trust property attributable to 639
that settlor's contribution. 640

(3) Upon the revocation or amendment of the trust by less 641
than all of the settlors, the trustee shall promptly notify the 642
other settlors of the revocation or amendment. 643

(C) The settlor may revoke or amend a revocable trust by 644
substantial compliance with a method provided in the terms of the 645
trust or, if the terms of the trust do not provide a method, by 646
any ~~other~~ method manifesting clear and convincing evidence of the 647
settlor's intent, provided that a revocable trust may not be 648
revoked or amended by a will or codicil, regardless of whether it 649
refers to the trust or specifically devises property that would 650

otherwise have passed according to the terms of the trust unless 651
the terms of the trust expressly allow it to be revoked or amended 652
by a will or codicil. 653

(D) Upon revocation of a revocable trust, the trustee shall 654
deliver the trust property as the settlor directs. 655

(E) An agent under a power of attorney may exercise a 656
settlor's powers with respect to revocation, amendment, or 657
distribution of trust property only to the extent expressly 658
authorized by both the terms of the trust and the power. 659

(F) A guardian of the estate of the settlor or, if no 660
guardian of the estate has been appointed, a guardian of the 661
person of the settlor may exercise a settlor's powers with respect 662
to revocation, amendment, or distribution of trust property only 663
with the approval of the court supervising the guardianship. 664

(G) A trustee who does not know that a trust has been revoked 665
or amended is not liable to the settlor or settlor's successors in 666
interest for distributions made and other actions taken on the 667
assumption that the trust had not been amended or revoked. 668

Sec. 5806.03. (A) During the lifetime of the settlor of a 669
revocable trust, whether or not the settlor has capacity to revoke 670
the trust, the rights of the beneficiaries are subject to the 671
control of the settlor, and the duties of the trustee, including 672
the duties to inform and report under section 5808.13 of the 673
Revised Code, are owed exclusively to, the settlor. If the trustee 674
breaches its duty during the lifetime of the settlor, any recovery 675
obtained from the trustee after the settlor becomes incapacitated 676
or dies shall be apportioned by the court. If the settlor is 677
living when the recovery is obtained, the court shall apportion 678
the recovery between the settlor and the trust, or allocate the 679
entire recovery to the settlor or the trust, as it determines to 680
be equitable under the circumstances. If the settlor is not living 681

when the recovery is obtained, the court shall apportion the 682
recovery between the settlor's estate and the trust, or allocate 683
the entire recovery to the settlor's estate or the trust, as it 684
determines to be equitable under the circumstances. 685

(B) During the period the power may be exercised, the holder 686
of a power of withdrawal has the rights of a settlor of a 687
revocable trust under this section to the extent of the property 688
subject to the power. 689

Sec. 5806.04. (A) Any of the following actions pertaining to 690
a revocable trust that is made irrevocable by the death of the 691
settlor of the trust shall be commenced ~~within~~ by the earlier of 692
the date that is two years after the date of the death of the 693
settlor of the trust or that is six months from the date on which 694
the trustee sends the person bringing the action a copy of the 695
trust instrument and a notice informing the person of the trust's 696
existence, of the trustee's name and address, and of the time 697
allowed under this division for commencing an action: 698

(1) An action to contest the validity of the trust; 699

(2) An action to contest the validity of any amendment to the 700
trust that was made during the lifetime of the settlor of the 701
trust; 702

(3) An action to contest the revocation of the trust during 703
the lifetime of the settlor of the trust; 704

(4) An action to contest the validity of any transfer made to 705
the trust during the lifetime of the settlor of the trust. 706

(B) Upon the death of the settlor of a revocable trust that 707
was made irrevocable by the death of the settlor, the trustee, 708
without liability, may proceed to distribute the trust property in 709
accordance with the terms of the trust unless either of the 710
following applies: 711

(1) The trustee has actual knowledge of a pending action to 712
contest the validity of the trust, any amendment to the trust, the 713
revocation of the trust, or any transfer made to the trust during 714
the lifetime of the settlor of the trust. 715

(2) The trustee receives written notification from a 716
potential contestant of a potential action to contest the validity 717
of the trust, any amendment to the trust, the revocation of the 718
trust, or any transfer made to the trust during the lifetime of 719
the settlor of the trust, and the action is actually filed within 720
ninety days after the written notification was given to the 721
trustee. 722

(C) If a distribution of trust property is made pursuant to 723
division (B) of this section, a beneficiary of the trust shall 724
return any distribution to the extent that it exceeds the 725
distribution to which the beneficiary is entitled if the trust, an 726
amendment to the trust, or a transfer made to the trust later is 727
determined to be invalid. 728

(D) This section applies only to revocable trusts that are 729
made irrevocable by the death of the settlor of the trust if the 730
grantor dies on or after July 23, 2002. 731

Sec. 5808.13. (A) A trustee shall keep the current 732
beneficiaries of the trust reasonably informed about the 733
administration of the trust and of the material facts necessary 734
for them to protect their interests. Unless unreasonable under the 735
circumstances, a trustee shall promptly respond to a beneficiary's 736
request for information related to the administration of the 737
trust. 738

(B) A trustee shall do all of the following: 739

(1) Upon the request of a beneficiary, promptly furnish to 740
the beneficiary a copy of the trust instrument. Unless the 741

beneficiary expressly requests a copy of the entire trust 742
instrument, the trustee may furnish to the beneficiary a copy of a 743
redacted trust instrument that includes only those provisions of 744
the trust instrument that the trustee determines are relevant to 745
the beneficiary's interest in the trust. If the beneficiary 746
requests a copy of the entire trust instrument after receiving a 747
copy of a redacted trust instrument, the trustee shall furnish a 748
copy of the entire trust instrument to the beneficiary. If the 749
settlor of a revocable trust that has become irrevocable has 750
completely restated the terms of the trust, the trust instrument 751
furnished by the trustee shall be the restated trust instrument, 752
including any amendments to the restated trust instrument. Nothing 753
in division (B)(1) of this section limits the ability of a 754
beneficiary to obtain a copy of the original trust instrument, any 755
other restatements of the original trust instrument, or amendments 756
to the original trust instrument and any other restatements of the 757
original trust instrument in a judicial proceeding with respect to 758
the trust. 759

(2) Within sixty days after accepting a trusteeship, notify 760
the current beneficiaries of the acceptance and of the trustee's 761
name, address, and telephone number; 762

(3) Within sixty days after the date the trustee acquires 763
knowledge of the creation of an irrevocable trust, or the date the 764
trustee acquires knowledge that a formerly revocable trust has 765
become irrevocable, whether by the death of the settlor or 766
otherwise, notify the current beneficiaries of the trust's 767
existence, of the identity of the settlor or settlors, of the 768
right to request a copy of the trust instrument, and of the right 769
to a trustee's report as provided in division (C) of this section; 770

(4) Notify the current beneficiaries in advance of any change 771
in the method or rate of the trustee's compensation. 772

(C) A trustee of a trust that has a fiscal year ending on or 773

after January 1, 2007, shall send to the current beneficiaries, 774
and to other beneficiaries who request it, at least annually and 775
at the termination of the trust, a report of the trust property, 776
liabilities, receipts, and disbursements, including the source and 777
amount of the trustee's compensation, a listing of the trust 778
assets, and, if feasible, the trust assets' respective market 779
values. Upon a vacancy in a trusteeship, unless a cotrustee 780
remains in office, a report for the period during which the former 781
trustee served must be sent to the current beneficiaries by the 782
former trustee. A personal representative or guardian may send the 783
current beneficiaries a report on behalf of a deceased or 784
incapacitated trustee. 785

(D) A beneficiary may waive the right to a trustee's report 786
or other information otherwise required to be furnished under this 787
section. A beneficiary, with respect to future reports and other 788
information, may withdraw a waiver previously given. 789

(E) The trustee may provide information and reports to 790
beneficiaries to whom the provided information and reports are not 791
required to be provided under this section. 792

(F) Divisions (B)(2) and (3) of this section apply only to a 793
trustee who accepts a trusteeship on or after ~~the effective date~~ 794
~~of this section~~ January 1, 2007, to an irrevocable trust created 795
on or after ~~the effective date of this section~~ January 1, 2007, 796
and to a revocable trust that becomes irrevocable on or after ~~the~~ 797
~~effective date of this section~~ January 1, 2007. 798

(G) During the lifetime of the settlor of a revocable trust, 799
whether or not the settlor has capacity to revoke the trust, the 800
trustee's duties under this section are owed exclusively to the 801
settlor. 802

Sec. 5808.14. (A) The judicial standard of review for 803
discretionary trusts is that the trustee shall exercise a 804

discretionary power reasonably, in good faith, and in accordance 805
with the terms and purposes of the trust and the interests of the 806
beneficiaries, except that with respect to distribution decisions 807
a reasonableness standard shall not be applied to the exercise of 808
discretion by the trustee of a wholly discretionary trust. The 809
greater the grant of discretion by the settlor to the trustee, the 810
broader the range of permissible conduct by the trustee in 811
exercising it. 812

(B) Subject to division (D) of this section, and unless the 813
terms of the trust expressly indicate that a rule in this division 814
does not apply: 815

(1) A person other than a settlor who is a beneficiary and 816
trustee of a trust that confers on the trustee a power to make 817
discretionary distributions to or for the trustee's personal 818
benefit may exercise the power only in accordance with an 819
ascertainable standard. 820

(2) A trustee may not exercise a power to make discretionary 821
distributions to satisfy a legal obligation of support that the 822
trustee personally owes another person. 823

(C) A power whose exercise is limited or prohibited by 824
division (B) of this section may be exercised by a majority of the 825
remaining trustees whose exercise of the power is not so limited 826
or prohibited. If the power of all trustees is so limited or 827
prohibited, the court may appoint a special fiduciary with 828
authority to exercise the power. 829

(D) Division (B) of this section does not apply to any of the 830
following: 831

(1) A power held by the settlor's spouse who is the trustee 832
of a trust for which a marital deduction, as defined in section 833
2056(b)(5) or 2523(e) of the Internal Revenue Code, was previously 834

| | |
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| allowed; | 835 |
| (2) Any trust during any period that the trust may be revoked or amended by its settlor; | 836 837 |
| (3) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code. | 838 839 840 |
| Sec. 5808.16. Without limiting the authority conferred by section 5808.15 of the Revised Code, a trustee may do all of the following: | 841 842 843 |
| (A) Collect trust property and accept or reject additions to the trust property from a settlor or any other person; | 844 845 |
| (B) Acquire or sell property, for cash or on credit, at public or private sale; | 846 847 |
| (C) Exchange, partition, or otherwise change the character of trust property; | 848 849 |
| (D) Deposit trust money in an account in a regulated financial-service institution; | 850 851 |
| (E) Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust; | 852 853 854 |
| (F) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital; | 855 856 857 858 859 860 861 |
| (G) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to do any of the | 862 863 |

| | |
|--|---|
| following: | 864 |
| (1) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement; | 865 866 |
| (2) Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery; | 867 868 869 |
| (3) Pay calls, assessments, and other sums chargeable or accruing against the securities and sell or exercise stock subscription or conversion rights; | 870 871 872 |
| (4) Deposit the securities with a depository or other regulated financial-service institution. | 873 874 |
| (H) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries; | 875 876 877 878 879 880 881 |
| (I) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust; | 882 883 884 885 886 |
| (J) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired; | 887 888 889 890 |
| (K) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust; | 891 892 893 |

| | |
|--|-----|
| (L) Abandon or decline to administer property of no value or | 894 |
| of insufficient value to justify its collection or continued | 895 |
| administration; | 896 |
| (M) With respect to possible liability for violation of | 897 |
| environmental law, do any of the following: | 898 |
| (1) Inspect or investigate property the trustee holds or has | 899 |
| been asked to hold, or property owned or operated by an | 900 |
| organization in which the trustee holds or has been asked to hold | 901 |
| an interest, for the purpose of determining the application of | 902 |
| environmental law with respect to the property; | 903 |
| (2) Take action to prevent, abate, or otherwise remedy any | 904 |
| actual or potential violation of any environmental law affecting | 905 |
| property held directly or indirectly by the trustee, whether taken | 906 |
| before or after the assertion of a claim or the initiation of | 907 |
| governmental enforcement; | 908 |
| (3) Decline to accept property into trust or disclaim any | 909 |
| power with respect to property that is or may be burdened with | 910 |
| liability for violation of environmental law; | 911 |
| (4) Compromise claims against the trust that may be asserted | 912 |
| for an alleged violation of environmental law; | 913 |
| (5) Pay the expense of any inspection, review, abatement, or | 914 |
| remedial action to comply with environmental law. | 915 |
| (N) Pay or contest any claim, settle a claim by or against | 916 |
| the trust, and release, in whole or in part, a claim belonging to | 917 |
| the trust; | 918 |
| (O) Pay taxes, assessments, compensation of the trustee and | 919 |
| of employees and agents of the trust, and other expenses incurred | 920 |
| in the administration of the trust; | 921 |
| (P) Exercise elections with respect to federal, state, and | 922 |
| local taxes; | 923 |

(Q) Select a mode of payment under any employee benefit or 924
retirement plan, annuity, or life insurance policy payable to the 925
trustee, exercise rights under any employee benefit or retirement 926
plan, annuity, or life insurance policy payable to the trustee, 927
including the right to indemnification for expenses and against 928
liabilities, and take appropriate action to collect the proceeds; 929

(R) Make loans out of trust property, including loans to a 930
beneficiary on terms and conditions the trustee considers to be 931
fair and reasonable under the circumstances, and the trustee has a 932
lien on future distributions for repayment of those loans; 933

(S) ~~Pledge the property of a revocable trust to guarantee~~ 934
Guarantee loans made by others to the settlor of ~~the~~ a revocable 935
trust, ~~or~~ and, if the settlor so directs, ~~to~~ guarantee loans made 936
by others to a third party and mortgage, pledge, or grant a 937
security interest in the property of a revocable trust to secure 938
the payment of loans made by others to the settlor of the 939
revocable trust and, if the settlor so directs, loans made by 940
others to a third party; 941

(T) Appoint a trustee to act in another jurisdiction with 942
respect to trust property located in the other jurisdiction, 943
confer upon the appointed trustee all of the powers and duties of 944
the appointing trustee, require that the appointed trustee furnish 945
security, and remove any trustee so appointed; 946

(U) Pay an amount distributable to a beneficiary who is under 947
a legal disability or who the trustee reasonably believes is 948
incapacitated, by paying it directly to the beneficiary or 949
applying it for the beneficiary's benefit, or by doing any of the 950
following: 951

(1) Paying it to the beneficiary's guardian of the estate, 952
or, if the beneficiary does not have a guardian of the estate, the 953
beneficiary's guardian of the person; 954

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

(3) If the trustee does not know of a guardian of the person or estate, or custodian, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf;

(4) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

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

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

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

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

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

(AA) Employ agents, attorneys, accountants, investment advisors, and other professionals.

Sec. 5810.05. (A) A beneficiary may not commence a proceeding

against a trustee for breach of trust more than two years after 985
the date the beneficiary, a representative of the beneficiary, or 986
a beneficiary surrogate is sent a report that adequately discloses 987
the existence of a potential claim for breach of trust and informs 988
the beneficiary, the representative of the beneficiary, or the 989
beneficiary surrogate of the time allowed for commencing a 990
proceeding against a trustee. 991

(B) A report adequately discloses the existence of a 992
potential claim for breach of trust if it provides sufficient 993
information so that the beneficiary or the representative of the 994
beneficiary knows of the potential claim or should know of the 995
existence of the potential claim. 996

(C) If division (A) of this section does not apply, 997
notwithstanding section 2305.09 of the Revised Code, a judicial 998
proceeding by a beneficiary against a trustee for breach of trust 999
must be commenced within four years after the first of the 1000
following to occur: 1001

(1) The removal, resignation, or death of the trustee; 1002

(2) The termination of the beneficiary's interest in the 1003
trust; 1004

(3) The termination of the trust; 1005

(4) The time at which the beneficiary knew or should have 1006
known of the breach of trust. 1007

(D) Nothing in Chapters 5801. to 5811. of the Revised Code 1008
limits the operation of any principle of law or equity, including 1009
the doctrines of laches, unclean hands, estoppel, and waiver, that 1010
can bar claims. 1011

(E) The liability limitations in this section apply to 1012
trustees as partners notwithstanding the broader personal 1013
liabilities otherwise imposed by any partnership law. 1014

(F) When a trust is identified as a partner, the reference is 1015
deemed to be to, and the partner is, the current trustee or 1016
trustees of the trust and their successors as trustees. 1017

Sec. 5810.13. (A) Instead of furnishing a copy of the trust 1018
instrument to a person other than a beneficiary, the trustee may 1019
furnish to the person a certification of trust containing all of 1020
the following information: 1021

(1) A statement that the trust exists and the date the trust 1022
instrument was executed; 1023

(2) The identity of the settlor; 1024

(3) The identity and address of the currently acting trustee; 1025

(4) The powers of the trustee; 1026

(5) The revocability or irrevocability of the trust and the 1027
identity of any person holding a power to revoke the trust; 1028

(6) The authority of cotrustees to sign or otherwise 1029
authenticate and whether all or less than all are required in 1030
order to exercise powers of the trustee; 1031

~~(7) The trust's taxpayer identification number;~~ 1032

~~(8) The manner of taking title to trust property.~~ 1033

(B) Any trustee may sign or otherwise authenticate a 1034
certification of trust. 1035

(C) A certification of trust shall state that the trust has 1036
not been revoked, modified, or amended in any manner that would 1037
cause the representations contained in the certification of trust 1038
to be incorrect. 1039

(D) A certification of trust is not required to contain the 1040
dispositive terms of a trust. 1041

(E) A recipient of a certification of trust may require the 1042

trustee to furnish copies of those excerpts from the original 1043
trust instrument and later amendments that designate the trustee 1044
and confer upon the trustee the power to act in the pending 1045
transaction. 1046

(F) A person who acts in reliance upon a certification of 1047
trust without knowledge that the representations contained in the 1048
certification are incorrect is not liable to any person for so 1049
acting and may assume without inquiry the existence of the facts 1050
contained in the certification. Knowledge of the terms of the 1051
trust may not be inferred solely from the fact that a copy of all 1052
or part of the trust instrument is held by the person relying upon 1053
the certification. 1054

(G) A person who in good faith enters into a transaction in 1055
reliance upon a certification of trust may enforce the transaction 1056
against the trust property as if the representations contained in 1057
the certification were correct. 1058

~~(H) A person making a demand for the trust instrument in 1059
addition to a certification of trust or excerpts is liable for 1060
damages if the court determines that the person did not act in 1061
good faith in demanding the This section does not affect the use 1062
or validity of a memorandum of trust instrument under section 1063
5301.255 of the Revised Code. 1064~~

(I) This section does not limit the right of a person to 1065
obtain a copy of the trust instrument in a judicial proceeding 1066
concerning the trust. 1067

(J) The liability limitations in this section apply to 1068
fiduciaries as partners notwithstanding the broader personal 1069
liabilities otherwise imposed by any partnership law. 1070

(K) When an estate or other fund held by a fiduciary is 1071
identified as a partner, the reference is deemed to be to, and the 1072
partner is, the current executor, administrator, or other 1073

fiduciary of the estate or other fund and their successors as 1074
executors, administrators, or other fiduciaries. 1075

Section 2. That existing sections 2109.01, 5801.01, 5801.02, 1076
5801.06, 5801.10, 5803.02, 5803.03, 5804.02, 5804.11, 5804.13, 1077
5804.14, 5804.17, 5805.01, 5805.03, 5806.01, 5806.02, 5806.03, 1078
5806.04, 5808.13, 5808.14, 5808.16, 5810.05, and 5810.13 and 1079
section 2109.022 of the Revised Code are hereby repealed. 1080