

**As Reported by the House Civil and Commercial Law Committee**

**127th General Assembly**

**Regular Session**

**2007-2008**

**Sub. H. B. No. 499**

**Representative Oelslager**

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

**Huffman, Mecklenborg**

**—**

**A BILL**

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, 5810.11, 5810.13, and 5  
5815.35, to enact section 5801.11, and to repeal 6  
section 2109.022 of the Revised Code to modify the 7  
Ohio Trust Code and the Fiduciary Law. 8

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

**Section 1.** That sections 2109.01, 5801.01, 5801.02, 5801.06, 9  
5801.10, 5803.02, 5803.03, 5804.02, 5804.11, 5804.13, 5804.14, 10  
5804.17, 5805.01, 5805.03, 5806.01, 5806.02, 5806.03, 5806.04, 11  
5808.13, 5808.14, 5808.16, 5810.05, 5810.11, 5810.13, and 5815.35 12  
be amended and section 5801.11 of the Revised Code be enacted to 13  
read as follows: 14

**Sec. 2109.01.** "Fiduciary," as used in Chapters 2101. to 2131. 15  
of the Revised Code, ~~except as provided in section 2109.022 of the~~ 16  
~~Revised Code,~~ means any person, other than an assignee or trustee 17  
for an insolvent debtor or a guardian under sections 5905.01 to 18

5905.19 of the Revised Code, appointed by and accountable to the probate court and acting in a fiduciary capacity for any person, or charged with duties in relation to any property, interest, trust, or estate for the benefit of another; and 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, appointed by and accountable to the probate court as guardian or trustee with respect to mentally retarded or developmentally disabled persons.

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

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

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

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

(D) "Beneficiary surrogate" means a person, other than a trustee, designated by the settlor in the trust instrument to receive notices, information, and reports otherwise required to be provided to a current beneficiary under divisions (B)(8) and (9)

of section 5801.04 of the Revised Code.	50
(E) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in division (A) of section 5804.05 of the Revised Code.	51 52 53
(F) "Current beneficiary" means a beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.	54 55 56 57
(G) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.	58 59 60
(H) "Guardian of the estate" means a guardian appointed by a court to administer the estate of any individual or to serve as conservator of the property of an individual eighteen years of age or older under section 2111.021 of the Revised Code.	61 62 63 64
(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.	65 66 67 68 69 70
(J) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended.	71 72
(K) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.	73 74
(L) "Jurisdiction," with respect to a geographic area, includes a state or country.	75 76
(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	77 78 79

the terms of the trust. Mandatory distributions do not include 80  
distributions that a trustee is directed or authorized to make 81  
pursuant to a support or other standard, regardless of whether the 82  
terms of the trust provide that the trustee "may" or "shall" make 83  
the distributions pursuant to a support or other standard. 84

(N) "Person" means an individual, corporation, business 85  
trust, estate, trust, partnership, limited liability company, 86  
association, joint venture, government, governmental agency or 87  
instrumentality, public corporation, or any other legal or 88  
commercial entity. 89

(O) "Power of withdrawal" means a presently exercisable 90  
general power of appointment other than a power exercisable by a 91  
trustee that is limited by an ascertainable standard or that is 92  
exercisable by another person only upon consent of the trustee or 93  
a person holding an adverse interest. 94

(P) "Property" means anything or any interest in anything 95  
that may be the subject of ownership. 96

(Q) "Qualified beneficiary" means a beneficiary to whom, on 97  
the date the beneficiary's qualification is determined, any of the 98  
following applies: 99

(1) The beneficiary is a distributee or permissible 100  
distributee of trust income or principal. 101

(2) The beneficiary would be a distributee or permissible 102  
distributee of trust income or principal if the interests of the 103  
distributees described in division (Q)(1) of this section 104  
terminated on that date, but the termination of those interests 105  
would not cause the trust to terminate. 106

(3) The beneficiary would be a distributee or permissible 107  
distributee of trust income or principal if the trust terminated 108  
on that date. 109

(R) "Revocable," as applied to a trust, means revocable at 110  
the time of determination by the settlor alone or by the settlor 111  
with the consent of any person other than a person holding an 112  
adverse interest. A trust's characterization as revocable is not 113  
affected by the settlor's lack of capacity to exercise the power 114  
of revocation, regardless of whether an agent of the settlor under 115  
a power of attorney, or a guardian of the person or estate of the 116  
settlor, is serving. 117

(S) "Settlor" means a person, including a testator, who 118  
creates, or contributes property to, a trust. If more than one 119  
person creates or contributes property to a trust, each person is 120  
a settlor of the portion of the trust property attributable to 121  
that person's contribution except to the extent another person has 122  
the power to revoke or withdraw that portion. 123

(T) "Spendthrift provision" means a term of a trust that 124  
restrains both voluntary and involuntary transfer of a 125  
beneficiary's interest. 126

(U) "State" means a state of the United States, the District 127  
of Columbia, the Commonwealth of Puerto Rico, a territory or 128  
possession of the United States, or an Indian tribe or band 129  
recognized by federal law or formally acknowledged by a state. 130

(V) "Terms of a trust" means the manifestation of the 131  
settlor's intent regarding a trust's provisions as expressed in 132  
the trust instrument or as may be established by other evidence 133  
that would be admissible in a judicial proceeding. 134

(W) "Trust instrument" means an instrument executed by the 135  
settlor that contains terms of the trust and any amendments to 136  
that instrument. 137

(X) "Trustee" includes an original, additional, and successor 138  
trustee and a cotrustee. 139

(Y)(1) "Wholly discretionary trust" means a trust to which 140

all of the following apply:	141
(a) The trust is irrevocable.	142
(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.	143 144 145
(c) The beneficiary does not have a power of withdrawal from the trust.	146 147
(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.	148 149 150 151
(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.	152 153 154
(f) The beneficiary is not the settlor, the trustee, or a cotrustee.	155 156
(g) The beneficiary does not have the power to become the trustee or a cotrustee.	157 158
(2) A trust may be a wholly discretionary trust with respect to one or more but less than all beneficiaries.	159 160
(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:	161 162 163 164 165
(a) The portion of the trust the beneficiary may withdraw may not be a wholly discretionary trust with respect to that beneficiary;	166 167 168
(b) The portion of the trust the beneficiary may not withdraw may be a wholly discretionary trust with respect to that	169 170

beneficiary. 171

(4) If the beneficiary and one or more others have made 172  
contributions to the trust, the portion of the trust attributable 173  
to the beneficiary's contributions may not be a wholly 174  
discretionary trust with respect to that beneficiary, but the 175  
portion of the trust attributable to the contributions of others 176  
may be a wholly discretionary trust with respect to that 177  
beneficiary. If a beneficiary has a power of withdrawal, then upon 178  
the lapse, release, or waiver of the power, the beneficiary is 179  
treated as having made contributions to the trust only to the 180  
extent the value of the property affected by the lapse, release, 181  
or waiver exceeds the greatest of the following amounts: 182

(a) The amount specified in section 2041(b)(2) or 2514(e) of 183  
the Internal Revenue Code; 184

(b) If the donor of the property subject to the beneficiary's 185  
power of withdrawal is not married at the time of the transfer of 186  
the property to the trust, the amount specified in section 2503(b) 187  
of the Internal Revenue Code; 188

(c) If the donor of the property subject to the beneficiary's 189  
power of withdrawal is married at the time of the transfer of the 190  
property to the trust, twice the amount specified in section 191  
2503(b) of the Internal Revenue Code. 192

(5) Notwithstanding divisions (Y)(1)(f) and (g) of this 193  
section, a trust may be a wholly discretionary trust if the 194  
beneficiary is, or has the power to become, a trustee only with 195  
respect to the management or the investment of the trust assets, 196  
and not with respect to making discretionary distribution 197  
decisions. With respect to a trust established for the benefit of 198  
an individual who is blind or disabled as defined in 42 U.S.C. 199  
1382c(a)(2) or (3), as amended, a wholly discretionary trust may 200  
include either or both of the following: 201

(a) Precatory language regarding its intended purpose of 202  
providing supplemental goods and services to or for the benefit of 203  
the beneficiary, and not to supplant benefits from public 204  
assistance programs; 205

(b) A prohibition against providing food, ~~clothing~~, and 206  
shelter to the beneficiary. 207

**Sec. 5801.02.** Except as otherwise provided in any provision 208  
of Chapters 5801. to 5811. of the Revised Code, those chapters 209  
apply to charitable and noncharitable inter vivos express trusts 210  
and to trusts created pursuant to a statute, judgment, or decree 211  
that requires the trust to be administered in the manner of an 212  
express trust. Chapters 5801. to 5811. of the Revised Code apply 213  
to charitable and noncharitable testamentary trusts to the extent 214  
provided by section 2109.69 of the Revised Code. 215

**Sec. 5801.06. (A)** The law of the jurisdiction designated in 216  
the terms of a trust determines the meaning and effect of the 217  
terms unless the designation of that jurisdiction's law is 218  
contrary to a strong public policy of the jurisdiction having the 219  
most significant relationship to the matter at issue. In the 220  
absence of a controlling designation in the terms of the trust, 221  
the law of the jurisdiction having the most significant 222  
relationship to the matter at issue determines the meaning and 223  
effect of the terms. 224

(B) The administration of a trust is governed by the law 225  
designated in the terms of the trust to govern trust 226  
administration. If the terms of the trust do not designate the 227  
governing law, both of the following apply: 228

(1) The law of the trust's principal place of administration 229  
governs the administration of the trust. 230

(2) If the trust's principal place of administration is 231



transferred to another jurisdiction under section 5801.07 of the 232  
Revised Code, the law of the new principal place of administration 233  
of the trust governs the administration of the trust from the time 234  
of the transfer. 235

**Sec. 5801.10.** (A) As used in this section, "creditor" means 236  
any of the following: 237

(1) A person holding a debt or security for a debt entered 238  
into by a trustee on behalf of the trust; 239

(2) A person holding a debt secured by one or more assets of 240  
the trust; 241

(3) A person having a claim against the trustee or the assets 242  
of the trust under section 5805.06 of the Revised Code; 243

(4) A person who has attached through legal process a 244  
beneficiary's interest in the trust. 245

(B) The parties to an agreement under this section shall be 246  
all of the following, or their representatives under the 247  
representation provisions of Chapter 5803. of the Revised Code, 248  
except that only the settlor and any trustee are required to be 249  
parties to an amendment of any revocable trust: 250

(1) The settlor if living and if no adverse income or 251  
transfer tax results would arise from the settlor's participation; 252

(2) All beneficiaries; 253

(3) All currently serving trustees; 254

(4) Creditors, if their interest is to be affected by the 255  
agreement. 256

(C) The persons specified in division (B) of this section may 257  
by written instrument enter into an agreement with respect to any 258  
matter concerning the construction of, administration of, or 259  
distributions under the terms of the trust ~~instrument~~, the 260

investment of income or principal held by the trustee, or other 261  
matters. The agreement ~~is valid only to the extent that it does~~ 262  
may not effect a termination of the trust before the date 263  
specified for the trust's termination in the terms of the trust 264  
~~instrument, does not~~ change the interests of the beneficiaries in 265  
the trust except as necessary to effect a modification described 266  
in division (C)(5) or (6) of this section, ~~and includes or include~~ 267  
terms and conditions that could not be properly approved by the 268  
court under Chapters 5801. to 5811. of the Revised Code or other 269  
applicable law. The invalidity of any provision of the agreement 270  
does not affect the validity of other provisions of the agreement. 271  
Matters that may be resolved by a private settlement agreement 272  
include, but are not limited to, all of the following: 273

(1) Determining classes of creditors, beneficiaries, heirs, 274  
next of kin, or other persons; 275

(2) Resolving disputes arising out of the administration or 276  
distribution under the terms of the trust instrument, including 277  
disputes over the construction of the language of the trust 278  
instrument or construction of the language of other writings that 279  
affect the terms of the trust instrument; 280

(3) Granting to the trustee necessary or desirable powers not 281  
granted in the terms of the trust instrument or otherwise provided 282  
by law, to the extent that those powers either are not 283  
inconsistent with the express provisions or purposes of the terms 284  
of the trust instrument or, if inconsistent with the express 285  
provisions or purposes of the terms of the trust instrument, are 286  
necessary for the due administration of the terms of the trust 287  
~~instrument~~; 288

(4) Modifying the terms of the trust instrument, if the 289  
modification is not inconsistent with any dominant purpose or 290  
objective of the trust; 291

(5) Modifying the <u>terms of the</u> trust <del>instrument</del> in the manner	292
required to qualify the gift under the <u>terms of the</u> trust	293
<del>instrument</del> for the charitable estate or gift tax deduction	294
permitted by federal law, including the addition of mandatory	295
governing instrument requirements for a charitable remainder trust	296
as required by the Internal Revenue Code and regulations	297
promulgated under it in any case in which all parties interested	298
in the trust have submitted written agreements to the proposed	299
changes or written disclaimer of interest;	300
(6) Modifying the <u>terms of the</u> trust <del>instrument</del> in the manner	301
required to qualify any gift under the <u>terms of the</u> trust	302
<del>instrument</del> for the estate tax marital deduction available to	303
noncitizen spouses, including the addition of mandatory governing	304
instrument requirements for a qualified domestic trust under	305
section 2056A of the Internal Revenue Code and regulations	306
promulgated under it in any case in which all parties interested	307
in the trust have submitted written agreements to the proposed	308
changes or written disclaimer of interest;	309
(7) Resolving any other matter that arises under Chapters	310
5801. to 5811. of the Revised Code.	311
(D) No agreement shall be entered into under this section	312
affecting the rights of a creditor without the creditor's consent	313
or affecting the collection rights of federal, state, or local	314
taxing authorities.	315
(E) Any agreement entered into under this section that	316
complies with the requirements of division (C) of this section	317
shall be final and binding on the trustee, the settlor if living,	318
all beneficiaries, <u>creditors who are parties to the agreement</u> , and	319
their heirs, successors, and assigns.	320
(F) Notwithstanding anything in this section, in division (D)	321
of section 5803.03 of the Revised Code, or in any other rule of	322

law to the contrary, a trustee serving under the terms of the 323  
trust ~~instrument~~ shall only represent its own individual or 324  
corporate interests in negotiating or entering into an agreement 325  
subject to this section. No trustee serving under the terms of the 326  
trust ~~instrument~~ shall be considered to represent any settlor, 327  
beneficiary, or the interests of any settlor or beneficiary in 328  
negotiating or entering into an agreement subject to this section. 329

(G) Any party to a private settlement agreement entered into 330  
under this section may request the court to approve the agreement, 331  
to determine whether the representation as provided in Chapter 332  
5803. of the Revised Code was adequate, and to determine whether 333  
the agreement contains terms and conditions the court could have 334  
properly approved. 335

(H) If an agreement entered into under this section contains 336  
a provision requiring binding arbitration of any disputes arising 337  
under the agreement, the provision is enforceable. 338

(I) Nothing in this section affects any of the following: 339

(1) The right of a beneficiary to disclaim under section 340  
5815.36 of the Revised Code; 341

(2) The termination or modification of a trust under section 342  
5804.10, 5804.11, 5804.12, 5804.13, 5804.14, 5804.15, or 5804.16 343  
of the Revised Code; 344

(3) The ability of a trustee to divide or consolidate a trust 345  
under section 5804.17 of the Revised Code. 346

(J) Nothing in this section restricts or limits the 347  
jurisdiction of any court to dispose of matters not covered by 348  
agreements under this section or to supervise the acts of trustees 349  
appointed by that court. 350

(K) This section shall be liberally construed to favor the 351  
validity and enforceability of agreements entered into under it. 352

(L) A trustee serving under the trust instrument is not 353  
liable to any third person arising from any loss due to that 354  
trustee's actions or inactions taken or omitted in good faith 355  
reliance on the terms of an agreement entered into under this 356  
section. 357

(M) This section does not apply to any of the following: 358

(1) A charitable trust that has one or more charitable 359  
organizations as qualified beneficiaries; 360

(2) A charitable trust the terms of which authorize or direct 361  
the trustee to distribute trust income or principal to one or more 362  
charitable organizations to be selected by the trustee, or for one 363  
or more charitable purposes described in division (A) of section 364  
5804.05 of the Revised Code, if any of the following apply: 365

(a) The distributions may be made on the date that an 366  
agreement under this section would be entered into. 367

(b) The distributions could be made on the date that an 368  
agreement under this section would be entered into if the 369  
interests of the current beneficiaries of the trust terminated on 370  
that date, but the termination of those interests would not cause 371  
the trust to terminate. 372

(c) The distributions could be made on the date that an 373  
agreement under this section would be entered into if the trust 374  
terminated on that date. 375

Sec. 5801.11. A guardian of the estate or person, in acting 376  
under Chapters 5801. to 5811. of the Revised Code, shall comply 377  
with the guardian's duties under Chapter 2111. of the Revised Code 378  
or other applicable law. 379

**Sec. 5803.02.** To the extent there is no conflict of interest 380  
between the holder of a general testamentary power of appointment 381

and the persons represented with respect to the particular 382  
question or dispute, the holder may represent and bind persons 383  
whose interests, as permissible appointees, takers in default, or 384  
otherwise, are subject to the power. The rights of the holder of a 385  
presently exercisable general power of appointment are governed by 386  
section 5806.03 of the Revised Code. 387

**Sec. 5803.03.** To the extent there is no conflict of interest 388  
between the representative and the person represented or among 389  
those being represented with respect to a particular question or 390  
dispute, all of the following apply: 391

(A) A guardian of the estate may represent and bind the 392  
estate that the guardian of the estate controls. 393

(B) A guardian of the person may represent and bind the ward 394  
if a guardian of the estate has not been appointed. 395

(C) An agent having authority to act with respect to the 396  
particular question or dispute may represent and bind the 397  
principal. 398

(D) Except as provided in division (F) of section 5801.10 of 399  
the Revised Code, a trustee may represent and bind the 400  
beneficiaries of the trust. 401

(E) A personal representative of a decedent's estate may 402  
represent and bind persons interested in the estate. 403

(F) A parent may represent and bind the parent's minor or 404  
unborn child if neither a guardian for the child's estate or a 405  
guardian of the person has been appointed. If a minor or unborn 406  
child is not represented by a parent under this division, another 407  
person may represent and bind the minor or unborn child under 408  
section 5803.04 of the Revised Code if the requirements of that 409  
section are met. 410

Sec. 5804.02. (A) A trust is created only if all of the	411
following apply:	412
(1) The settlor of the trust, other than the settlor of a	413
trust created by a court order, has capacity to create a trust.	414
(2) The settlor of the trust, other than the settlor of a	415
trust created by a court order, indicates an intention to create	416
the trust.	417
(3) The trust has a definite beneficiary or is one of the	418
following:	419
(a) A charitable trust;	420
(b) A trust for the care of an animal, as provided in section	421
5804.08 of the Revised Code;	422
(c) A trust for a noncharitable purpose, as provided in	423
section 5804.09 of the Revised Code.	424
(4) The trustee has duties to perform.	425
(5) The same person is not the sole trustee and sole	426
beneficiary.	427
(B) A beneficiary is definite if the beneficiary can be	428
ascertained now or in the future, subject to any applicable rule	429
against perpetuities.	430
(C) A power in a trustee <u>or other person</u> to select a	431
beneficiary from an indefinite class is valid. If the power is not	432
exercised within a reasonable time, the power fails, and the	433
property subject to the power passes to the persons who would have	434
taken the property had the power not been conferred.	435
(D) A trust is valid regardless of the existence, size, or	436
character of the corpus of the trust. This division applies to any	437
trust <u>instrument</u> that was executed prior to, or is executed on or	438
after, <del>the effective date of Chapters 5801. to 5811. of the</del>	439

~~Revised Code~~ January 1, 2007. 440

(E) A trust is not invalid because a person, including, but 441  
not limited to, the creator of the trust, is or may become the 442  
sole trustee and the sole holder of the present beneficial 443  
enjoyment of the corpus of the trust, provided that one or more 444  
other persons hold a vested, contingent, or expectant interest 445  
relative to the enjoyment of the corpus of the trust upon the 446  
cessation of the present beneficial enjoyment. A merger of the 447  
legal and equitable titles to the corpus of a trust described in 448  
this division does not occur in its creator, and, notwithstanding 449  
any contrary provision of Chapter 2107. of the Revised Code, the 450  
trust is not a testamentary trust that is required to comply with 451  
that chapter in order for its corpus to be legally distributed to 452  
other beneficiaries in accordance with the provisions of the trust 453  
upon the cessation of the present beneficial enjoyment. This 454  
division applies to any trust that satisfies the provisions of 455  
this division, whether the trust was executed prior to, on, or 456  
after October 10, 1991. 457

**Sec. 5804.11.** (A) If upon petition the court finds that the 458  
settlor and all beneficiaries consent to the modification or 459  
termination of a noncharitable irrevocable trust, that all 460  
consents, including any given by representatives under Chapter 461  
5803. of the Revised Code, are valid, and that all parties giving 462  
consent are competent to do so, the court shall enter an order 463  
approving the modification or termination even if the modification 464  
or termination is inconsistent with a material purpose of the 465  
trust. An agent under a power of attorney may exercise a settlor's 466  
power to consent to a trust's modification or termination only to 467  
the extent expressly authorized by both the power of attorney and 468  
the terms of the trust. The settlor's guardian of the estate may 469  
exercise a settlor's power to consent to a trust's modification or 470  
termination with the approval of the court supervising the 471



guardianship if an agent is not so authorized. The guardian of the 472  
settlor's person may exercise a settlor's power to consent to a 473  
trust's modification or termination with the approval of the court 474  
supervising the guardianship if an agent is not so authorized and 475  
a guardian of the estate has not been appointed. ~~This division 476  
applies only to irrevocable trusts created on or after the 477  
effective date of Chapters 5801. to 5811. of the Revised Code and 478  
to revocable trusts that become irrevocable on or after the 479  
effective date of Chapters 5801. to 5811. of the Revised Code. 480~~  
This division does not apply to a noncharitable irrevocable trust 481  
described in 42 U.S.C. 1396p(d)(4). 482

(B) A noncharitable irrevocable trust may be terminated upon 484  
consent of all of the beneficiaries if the court concludes that 485  
continuance of the trust is not necessary to achieve any material 486  
purpose of the trust. A noncharitable irrevocable trust may be 487  
modified, but not to remove or replace the trustee, upon consent 488  
of all of the beneficiaries if the court concludes that 489  
modification is not inconsistent with a material purpose of the 490  
trust. A spendthrift provision in the terms of the trust may, but 491  
is not presumed to, constitute a material purpose of the trust. 492

(C) Upon termination of a trust under division (A) or (B) of 493  
this section, the trustee shall distribute the trust property as 494  
agreed by the beneficiaries. 495

(D) If not all of the beneficiaries consent to a proposed 496  
modification or termination of the trust under division (A) or (B) 497  
of this section, the court may approve the modification or 498  
termination if the court is satisfied of both of the following: 499

(1) That if all of the beneficiaries had consented, the trust 500  
could have been modified or terminated under this section; 501

(2) That the interests of a beneficiary who does not consent 502

will be adequately protected. 503

**Sec. 5804.13.** (A) Except as otherwise provided in division 504  
(B) of this section, if a particular charitable purpose becomes 505  
unlawful, impracticable, or impossible to achieve, all of the 506  
following apply: 507

(1) The trust does not fail in whole or in part. 508

(2) The trust property does not revert to the settlor or the 509  
settlor's successors in interest. 510

(3) The court may apply cy pres to modify or terminate the 511  
trust by directing that the trust property be applied or 512  
distributed, in whole or in part, in a manner consistent with the 513  
settlor's charitable purposes. In accordance with section 109.25 514  
of the Revised Code, the attorney general is a necessary party to 515  
a judicial proceeding brought under this section. 516

(B) A provision in the terms of a charitable trust for an 517  
alternative charitable purpose or for the distribution of the 518  
trust property to a noncharitable beneficiary prevails over the 519  
power of the court under division (A) of this section to apply cy 520  
pres to modify or terminate the trust. 521

**Sec. 5804.14.** (A)(1) Except as provided in division (A)(2) of 522  
this section, after notice to the qualified beneficiaries, the 523  
trustee of an inter vivos trust consisting of trust property 524  
having a total value of less than one hundred thousand dollars may 525  
terminate the trust if the trustee concludes that the value of the 526  
trust property is insufficient to justify the cost of 527  
administration. 528

(2) Division (A)(1) of this section does not apply to any of 529  
the following: 530

(a) A charitable trust that has one or more charitable 531

organizations as qualified beneficiaries; 532

(b) A charitable trust the terms of which authorize or direct 533  
the trustee to distribute trust income or principal to one or more 534  
charitable organizations to be selected by the trustee, or for one 535  
or more charitable purposes described in division (A) of section 536  
5804.05 of the Revised Code, if any of the following apply: 537

(i) The distributions may be made on the date that the trust 538  
would be terminated under division (A)(1) of this section. 539

(ii) The distributions could be made on the date that the 540  
trust would be terminated under division (A)(1) of this section if 541  
the interests of the current beneficiaries of the trust terminated 542  
on that date, but the termination of those interests would not 543  
cause the trust to terminate. 544

(iii) The distributions could be made on the date that the 545  
trust would be terminated under division (A)(1) of this section, 546  
if the trust terminated on that date but not under that division. 547

(B) If an inter vivos trust consists of trust property having 548  
a total value of less than one hundred thousand dollars, the court 549  
may modify or terminate the trust or remove the trustee and 550  
appoint a different trustee if it determines that the value of the 551  
trust property is insufficient to justify the cost of 552  
administration. 553

(C) Upon the termination of a trust pursuant to division 554  
(A)(1) of this section, the trustee shall distribute the trust 555  
estate in accordance with any provision specified in the terms of 556  
the trust instrument for the premature termination of the trust. 557  
If there is no provision of that nature in the terms of the trust 558  
instrument, the trustee shall distribute the trust estate among 559  
the beneficiaries of the trust in accordance with their respective 560  
beneficial interests and in a manner that the trustee determines 561  
to be equitable. For purposes of distributing the trust estate 562

among the beneficiaries of the trust under this division, the trustee shall consider all of the following:

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

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

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

(D) Upon the termination of a trust pursuant to division (B) of this section, the ~~probate~~ court shall order the distribution of 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 ~~probate~~ court shall order the distribution of the trust estate among the beneficiaries of the trust in accordance with their respective beneficial interests and in a manner that the court determines to be equitable. For purposes of ordering the distribution of the trust estate among the beneficiaries of the trust under this division, the court shall consider the three factors listed in division (C) of this section.

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

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

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

achievement of the purposes of the trust. 593

**Sec. 5805.01.** (A) A spendthrift provision is valid only if it 594  
restrains both voluntary and involuntary transfer of a 595  
beneficiary's interest or if it restrains involuntary transfer of 596  
a beneficiary's interest and permits voluntary transfer of a 597  
beneficiary's interest only with the consent of a trustee who is 598  
not the beneficiary. 599

(B) A term of a trust providing that the interest of a 600  
beneficiary is held subject to a "spendthrift trust," or words of 601  
similar import, is sufficient to restrain both voluntary and 602  
involuntary transfer of the beneficiary's interest. 603

(C) A beneficiary may not transfer an interest in a trust in 604  
violation of a valid spendthrift provision and, except as 605  
otherwise provided in this chapter and in section 5810.04 of the 606  
Revised Code, a creditor or assignee of the beneficiary may not 607  
reach the interest or a distribution by the trustee before its 608  
receipt by the beneficiary. Real property or tangible personal 609  
property that is owned by the trust but that is made available for 610  
a beneficiary's use or occupancy in accordance with the trustee's 611  
authority under the terms of the trust ~~instrument~~ shall not be 612  
considered to have been distributed by the trustee or received by 613  
the beneficiary for purposes of allowing a creditor or assignee of 614  
the beneficiary to reach the property. 615

**Sec. 5805.03.** Notwithstanding anything to the contrary in 616  
division (B) of section 5805.02 of the Revised Code, no creditor 617  
or assignee of a beneficiary of a wholly discretionary trust may 618  
reach the beneficiary's interest in the trust, or a distribution 619  
by the trustee before its receipt by the beneficiary, whether by 620  
attachment of present or future distributions to or for the 621  
benefit of the beneficiary, by judicial sale, by obtaining an 622

order compelling the trustee to make distributions from the trust, 623  
or by any other means, regardless of whether the terms of the 624  
trust ~~instrument includes~~ include a spendthrift provision. 625

**Sec. 5806.01.** The capacity of a settlor required to create, 626  
amend, revoke, or add property to a revocable trust, or to direct 627  
the actions of the trustee of a revocable trust, is the same as 628  
that required to make a will. 629

**Sec. 5806.02.** (A) Unless the terms of a trust expressly 630  
provide that the trust is irrevocable, the settlor may revoke or 631  
amend the trust. This division does not apply to a trust created 632  
under an instrument executed before ~~the effective date of this~~ 633  
~~section~~ January 1, 2007. 634

(B) If a revocable trust is created or funded by more than 635  
one settlor, all of the following apply: 636

(1) To the extent the trust consists of community property, 637  
either spouse acting alone may revoke the trust, but the trust may 638  
be amended only by joint action of both spouses. 639

(2) To the extent the trust consists of property other than 640  
community property, each settlor may revoke or amend the trust 641  
with regard to the portion of the trust property attributable to 642  
that settlor's contribution. 643

(3) Upon the revocation or amendment of the trust by less 644  
than all of the settlors, the trustee shall promptly notify the 645  
other settlors of the revocation or amendment. 646

(C) The settlor may revoke or amend a revocable trust by 647  
substantial compliance with a method provided in the terms of the 648  
trust or, if the terms of the trust do not provide a method, by 649  
any ~~other~~ method manifesting clear and convincing evidence of the 650  
settlor's intent, provided that a revocable trust may not be 651

revoked or amended by a will or codicil, regardless of whether it 652  
refers to the trust or specifically devises property that would 653  
otherwise have passed according to the terms of the trust unless 654  
the terms of the trust expressly allow it to be revoked or amended 655  
by a will or codicil. 656

(D) Upon revocation of a revocable trust, the trustee shall 657  
deliver the trust property as the settlor directs. 658

(E) An agent under a power of attorney may exercise a 659  
settlor's powers with respect to revocation, amendment, or 660  
distribution of trust property only to the extent expressly 661  
authorized by both the terms of the trust and the power. 662

(F) A guardian of the estate of the settlor or, if no 663  
guardian of the estate has been appointed, a guardian of the 664  
person of the settlor may exercise a settlor's powers with respect 665  
to revocation, amendment, or distribution of trust property only 666  
with the approval of the court supervising the guardianship. 667

(G) A trustee who does not know that a trust has been revoked 668  
or amended is not liable to the settlor or settlor's successors in 669  
interest for distributions made and other actions taken on the 670  
assumption that the trust had not been amended or revoked. 671

**Sec. 5806.03.** (A) During the lifetime of the settlor of a 672  
revocable trust, whether or not the settlor has capacity to revoke 673  
the trust, the rights of the beneficiaries are subject to the 674  
control of the settlor, and the duties of the trustee, including 675  
the duties to inform and report under section 5808.13 of the 676  
Revised Code, are owed exclusively to the settlor. If the trustee 677  
breaches its duty during the lifetime of the settlor, any recovery 678  
obtained from the trustee after the settlor becomes incapacitated 679  
or dies shall be apportioned by the court. If the settlor is 680  
living when the recovery is obtained, the court shall apportion 681  
the recovery between the settlor and the trust, or allocate the 682

entire recovery to the settlor or the trust, as it determines to 683  
be equitable under the circumstances. If the settlor is not living 684  
when the recovery is obtained, the court shall apportion the 685  
recovery between the settlor's estate and the trust, or allocate 686  
the entire recovery to the settlor's estate or the trust, as it 687  
determines to be equitable under the circumstances. 688

(B) During the period the power may be exercised, the holder 689  
of a power of withdrawal has the rights of a settlor of a 690  
revocable trust under this section to the extent of the property 691  
subject to the power. 692

**Sec. 5806.04.** (A) Any of the following actions pertaining to 693  
a revocable trust that is made irrevocable by the death of the 694  
settlor of the trust shall be commenced ~~within~~ by the earlier of 695  
the date that is two years after the date of the death of the 696  
settlor of the trust or that is six months from the date on which 697  
the trustee sends the person bringing the action a copy of the 698  
trust instrument and a notice informing the person of the trust's 699  
existence, of the trustee's name and address, and of the time 700  
allowed under this division for commencing an action: 701

(1) An action to contest the validity of the trust; 702

(2) An action to contest the validity of any amendment to the 703  
trust that was made during the lifetime of the settlor of the 704  
trust; 705

(3) An action to contest the revocation of the trust during 706  
the lifetime of the settlor of the trust; 707

(4) An action to contest the validity of any transfer made to 708  
the trust during the lifetime of the settlor of the trust. 709

(B) Upon the death of the settlor of a revocable trust that 710  
was made irrevocable by the death of the settlor, the trustee, 711  
without liability, may proceed to distribute the trust property in 712



accordance with the terms of the trust unless either of the 713  
following applies: 714

(1) The trustee has actual knowledge of a pending action to 715  
contest the validity of the trust, any amendment to the trust, the 716  
revocation of the trust, or any transfer made to the trust during 717  
the lifetime of the settlor of the trust. 718

(2) The trustee receives written notification from a 719  
potential contestant of a potential action to contest the validity 720  
of the trust, any amendment to the trust, the revocation of the 721  
trust, or any transfer made to the trust during the lifetime of 722  
the settlor of the trust, and the action is actually filed within 723  
ninety days after the written notification was given to the 724  
trustee. 725

(C) If a distribution of trust property is made pursuant to 726  
division (B) of this section, a beneficiary of the trust shall 727  
return any distribution to the extent that it exceeds the 728  
distribution to which the beneficiary is entitled if the trust, an 729  
amendment to the trust, or a transfer made to the trust later is 730  
determined to be invalid. 731

(D) This section applies only to revocable trusts that are 732  
made irrevocable by the death of the settlor of the trust if the 733  
grantor dies on or after July 23, 2002. 734

**Sec. 5808.13.** (A) A trustee shall keep the current 735  
beneficiaries of the trust reasonably informed about the 736  
administration of the trust and of the material facts necessary 737  
for them to protect their interests. Unless unreasonable under the 738  
circumstances, a trustee shall promptly respond to a beneficiary's 739  
request for information related to the administration of the 740  
trust. 741

(B) A trustee shall do all of the following: 742

(1) Upon the request of a beneficiary, promptly furnish to 743  
the beneficiary a copy of the trust instrument. Unless the 744  
beneficiary expressly requests a copy of the entire trust 745  
instrument, the trustee may furnish to the beneficiary a copy of a 746  
redacted trust instrument that includes only those provisions of 747  
the trust instrument that the trustee determines are relevant to 748  
the beneficiary's interest in the trust. If the beneficiary 749  
requests a copy of the entire trust instrument after receiving a 750  
copy of a redacted trust instrument, the trustee shall furnish a 751  
copy of the entire trust instrument to the beneficiary. If the 752  
settlor of a revocable trust that has become irrevocable has 753  
completely restated the terms of the trust, the trust instrument 754  
furnished by the trustee shall be the restated trust instrument, 755  
including any amendments to the restated trust instrument. Nothing 756  
in division (B)(1) of this section limits the ability of a 757  
beneficiary to obtain a copy of the original trust instrument, any 758  
other restatements of the original trust instrument, or amendments 759  
to the original trust instrument and any other restatements of the 760  
original trust instrument in a judicial proceeding with respect to 761  
the trust. 762

(2) Within sixty days after accepting a trusteeship, notify 763  
the current beneficiaries of the acceptance and of the trustee's 764  
name, address, and telephone number; 765

(3) Within sixty days after the date the trustee acquires 766  
knowledge of the creation of an irrevocable trust, or the date the 767  
trustee acquires knowledge that a formerly revocable trust has 768  
become irrevocable, whether by the death of the settlor or 769  
otherwise, notify the current beneficiaries of the trust's 770  
existence, of the identity of the settlor or settlors, of the 771  
right to request a copy of the trust instrument, and of the right 772  
to a trustee's report as provided in division (C) of this section; 773

(4) Notify the current beneficiaries in advance of any change 774

in the method or rate of the trustee's compensation. 775

(C) A trustee of a trust that has a fiscal year ending on or 776  
after January 1, 2007, shall send to the current beneficiaries, 777  
and to other beneficiaries who request it, at least annually and 778  
at the termination of the trust, a report of the trust property, 779  
liabilities, receipts, and disbursements, including the source and 780  
amount of the trustee's compensation, a listing of the trust 781  
assets, and, if feasible, the trust assets' respective market 782  
values. Upon a vacancy in a trusteeship, unless a cotrustee 783  
remains in office, a report for the period during which the former 784  
trustee served must be sent to the current beneficiaries by the 785  
former trustee. A personal representative or guardian may send the 786  
current beneficiaries a report on behalf of a deceased or 787  
incapacitated trustee. 788

(D) A beneficiary may waive the right to a trustee's report 789  
or other information otherwise required to be furnished under this 790  
section. A beneficiary, with respect to future reports and other 791  
information, may withdraw a waiver previously given. 792

(E) The trustee may provide information and reports to 793  
beneficiaries to whom the provided information and reports are not 794  
required to be provided under this section. 795

(F) Divisions (B)(2) and (3) of this section apply only to a 796  
trustee who accepts a trusteeship on or after ~~the effective date~~ 797  
~~of this section~~ January 1, 2007, to an irrevocable trust created 798  
on or after ~~the effective date of this section~~ January 1, 2007, 799  
and to a revocable trust that becomes irrevocable on or after ~~the~~ 800  
~~effective date of this section~~ January 1, 2007. 801

(G) During the lifetime of the settlor of a revocable trust, 802  
whether or not the settlor has capacity to revoke the trust, the 803  
trustee's duties under this section are owed exclusively to the 804  
settlor. 805

Sec. 5808.14. (A) The judicial standard of review for 806  
discretionary trusts is that the trustee shall exercise a 807  
discretionary power reasonably, in good faith, and in accordance 808  
with the terms and purposes of the trust and the interests of the 809  
beneficiaries, except that with respect to distribution decisions 810  
a reasonableness standard shall not be applied to the exercise of 811  
discretion by the trustee of a wholly discretionary trust. The 812  
greater the grant of discretion by the settlor to the trustee, the 813  
broader the range of permissible conduct by the trustee in 814  
exercising it. 815

(B) Subject to division (D) of this section, and unless the 816  
terms of the trust expressly indicate that a rule in this division 817  
does not apply: 818

(1) A person other than a settlor who is a beneficiary and 819  
trustee of a trust that confers on the trustee a power to make 820  
discretionary distributions to or for the trustee's personal 821  
benefit may exercise the power only in accordance with an 822  
ascertainable standard. 823

(2) A trustee may not exercise a power to make discretionary 824  
distributions to satisfy a legal obligation of support that the 825  
trustee personally owes another person. 826

(C) A power whose exercise is limited or prohibited by 827  
division (B) of this section may be exercised by a majority of the 828  
remaining trustees whose exercise of the power is not so limited 829  
or prohibited. If the power of all trustees is so limited or 830  
prohibited, the court may appoint a special fiduciary with 831  
authority to exercise the power. 832

(D) Division (B) of this section does not apply to any of the 833  
following: 834

(1) A power held by the settlor's spouse who is the trustee 835

of a trust for which a marital deduction, as defined in section 836  
2056(b)(5) or 2523(e) of the Internal Revenue Code, was previously 837  
allowed; 838

(2) Any trust during any period that the trust may be revoked 839  
or amended by its settlor; 840

(3) A trust if contributions to the trust qualify for the 841  
annual exclusion under section 2503(c) of the Internal Revenue 842  
Code. 843

**Sec. 5808.16.** Without limiting the authority conferred by 844  
section 5808.15 of the Revised Code, a trustee may do all of the 845  
following: 846

(A) Collect trust property and accept or reject additions to 847  
the trust property from a settlor or any other person; 848

(B) Acquire or sell property, for cash or on credit, at 849  
public or private sale; 850

(C) Exchange, partition, or otherwise change the character of 851  
trust property; 852

(D) Deposit trust money in an account in a regulated 853  
financial-service institution; 854

(E) Borrow money, with or without security, and mortgage or 855  
pledge trust property for a period within or extending beyond the 856  
duration of the trust; 857

(F) With respect to an interest in a proprietorship, 858  
partnership, limited liability company, business trust, 859  
corporation, or other form of business or enterprise, continue the 860  
business or other enterprise and take any action that may be taken 861  
by shareholders, members, or property owners, including merging, 862  
dissolving, or otherwise changing the form of business 863  
organization or contributing additional capital; 864

(G) With respect to stocks or other securities, exercise the	865
rights of an absolute owner, including the right to do any of the	866
following:	867
(1) Vote, or give proxies to vote, with or without power of	868
substitution, or enter into or continue a voting trust agreement;	869
(2) Hold a security in the name of a nominee or in other form	870
without disclosure of the trust so that title may pass by	871
delivery;	872
(3) Pay calls, assessments, and other sums chargeable or	873
accruing against the securities and sell or exercise stock	874
subscription or conversion rights;	875
(4) Deposit the securities with a depository or other	876
regulated financial-service institution.	877
(H) With respect to an interest in real property, construct,	878
or make ordinary or extraordinary repairs to, alterations to, or	879
improvements in, buildings or other structures, demolish	880
improvements, raze existing or erect new party walls or buildings,	881
subdivide or develop land, dedicate land to public use or grant	882
public or private easements, and make or vacate plats and adjust	883
boundaries;	884
(I) Enter into a lease for any purpose as lessor or lessee,	885
including a lease or other arrangement for exploration and removal	886
of natural resources, with or without the option to purchase or	887
renew, for a period within or extending beyond the duration of the	888
trust;	889
(J) Grant an option involving a sale, lease, or other	890
disposition of trust property or acquire an option for the	891
acquisition of property, including an option exercisable beyond	892
the duration of the trust, and exercise an option so acquired;	893
(K) Insure the property of the trust against damage or loss	894

and insure the trustee, the trustee's agents, and beneficiaries	895
against liability arising from the administration of the trust;	896
(L) Abandon or decline to administer property of no value or	897
of insufficient value to justify its collection or continued	898
administration;	899
(M) With respect to possible liability for violation of	900
environmental law, do any of the following:	901
(1) Inspect or investigate property the trustee holds or has	902
been asked to hold, or property owned or operated by an	903
organization in which the trustee holds or has been asked to hold	904
an interest, for the purpose of determining the application of	905
environmental law with respect to the property;	906
(2) Take action to prevent, abate, or otherwise remedy any	907
actual or potential violation of any environmental law affecting	908
property held directly or indirectly by the trustee, whether taken	909
before or after the assertion of a claim or the initiation of	910
governmental enforcement;	911
(3) Decline to accept property into trust or disclaim any	912
power with respect to property that is or may be burdened with	913
liability for violation of environmental law;	914
(4) Compromise claims against the trust that may be asserted	915
for an alleged violation of environmental law;	916
(5) Pay the expense of any inspection, review, abatement, or	917
remedial action to comply with environmental law.	918
(N) Pay or contest any claim, settle a claim by or against	919
the trust, and release, in whole or in part, a claim belonging to	920
the trust;	921
(O) Pay taxes, assessments, compensation of the trustee and	922
of employees and agents of the trust, and other expenses incurred	923
in the administration of the trust;	924

(P) Exercise elections with respect to federal, state, and 925  
local taxes; 926

(Q) Select a mode of payment under any employee benefit or 927  
retirement plan, annuity, or life insurance policy payable to the 928  
trustee, exercise rights under any employee benefit or retirement 929  
plan, annuity, or life insurance policy payable to the trustee, 930  
including the right to indemnification for expenses and against 931  
liabilities, and take appropriate action to collect the proceeds; 932

(R) Make loans out of trust property, including loans to a 933  
beneficiary on terms and conditions the trustee considers to be 934  
fair and reasonable under the circumstances, and the trustee has a 935  
lien on future distributions for repayment of those loans; 936

(S) ~~Pledge the property of a revocable trust to guarantee~~ 937  
Guarantee loans made by others to the settlor of ~~the a~~ a revocable 938  
trust, ~~or and~~, if the settlor so directs, ~~to~~ guarantee loans made 939  
by others to a third party and mortgage, pledge, or grant a 940  
security interest in the property of a revocable trust to secure 941  
the payment of loans made by others to the settlor of the 942  
revocable trust and, if the settlor so directs, loans made by 943  
others to a third party; 944

(T) Appoint a trustee to act in another jurisdiction with 945  
respect to trust property located in the other jurisdiction, 946  
confer upon the appointed trustee all of the powers and duties of 947  
the appointing trustee, require that the appointed trustee furnish 948  
security, and remove any trustee so appointed; 949

(U) Pay an amount distributable to a beneficiary who is under 950  
a legal disability or who the trustee reasonably believes is 951  
incapacitated, by paying it directly to the beneficiary or 952  
applying it for the beneficiary's benefit, or by doing any of the 953  
following: 954

(1) Paying it to the beneficiary's guardian of the estate, 955



or, if the beneficiary does not have a guardian of the estate, the	956
beneficiary's guardian of the person;	957
(2) Paying it to the beneficiary's custodian under sections	958
5814.01 to 5814.09 of the Revised Code and, for that purpose,	959
creating a custodianship;	960
(3) If the trustee does not know of a guardian of the person	961
or estate, or custodian, paying it to an adult relative or other	962
person having legal or physical care or custody of the	963
beneficiary, to be expended on the beneficiary's behalf;	964
(4) Managing it as a separate fund on the beneficiary's	965
behalf, subject to the beneficiary's continuing right to withdraw	966
the distribution.	967
(V) On distribution of trust property or the division or	968
termination of a trust, make distributions in divided or undivided	969
interests, allocate particular assets in proportionate or	970
disproportionate shares, value the trust property for those	971
purposes, and adjust for resulting differences in valuation;	972
(W) Resolve a dispute concerning the interpretation of the	973
trust or its administration by mediation, arbitration, or other	974
procedure for alternative dispute resolution;	975
(X) Prosecute or defend an action, claim, or judicial	976
proceeding in any jurisdiction to protect trust property and the	977
trustee in the performance of the trustee's duties;	978
(Y) Sign and deliver contracts and other instruments that are	979
useful to achieve or facilitate the exercise of the trustee's	980
powers;	981
(Z) On termination of the trust, exercise the powers	982
appropriate to wind up the administration of the trust and	983
distribute the trust property to the persons entitled to it;	984
<u>(AA) Employ agents, attorneys, accountants, investment</u>	985

advisors, and other professionals. 986

**Sec. 5810.05.** (A) A beneficiary may not commence a proceeding 987  
against a trustee for breach of trust more than two years after 988  
the date the beneficiary, a representative of the beneficiary, or 989  
a beneficiary surrogate is sent a report that adequately discloses 990  
the existence of a potential claim for breach of trust and informs 991  
the beneficiary, the representative of the beneficiary, or the 992  
beneficiary surrogate of the time allowed for commencing a 993  
proceeding against a trustee. 994

(B) A report adequately discloses the existence of a 995  
potential claim for breach of trust if it provides sufficient 996  
information so that the beneficiary or the representative of the 997  
beneficiary knows of the potential claim or should know of the 998  
existence of the potential claim. 999

(C) If division (A) of this section does not apply, 1000  
notwithstanding section 2305.09 of the Revised Code, a judicial 1001  
proceeding by a beneficiary against a trustee for breach of trust 1002  
must be commenced within four years after the first of the 1003  
following to occur: 1004

(1) The removal, resignation, or death of the trustee; 1005

(2) The termination of the beneficiary's interest in the 1006  
trust; 1007

(3) The termination of the trust; 1008

(4) The time at which the beneficiary knew or should have 1009  
known of the breach of trust. 1010

(D) Nothing in Chapters 5801. to 5811. of the Revised Code 1011  
limits the operation of any principle of law or equity, including 1012  
the doctrines of laches, unclean hands, estoppel, and waiver, that 1013  
can bar claims. 1014

**Sec. 5810.11.** (A)(1) Except as otherwise provided in division 1015  
(C) of this section or unless personal liability is imposed in the 1016  
contract, a trustee who holds an interest as a general partner in 1017  
a general or limited partnership is not personally liable on a 1018  
contract entered into by the partnership after the trust's 1019  
acquisition of the interest if the fiduciary capacity was 1020  
disclosed. A partnership certificate that is filed pursuant to 1021  
Chapter 1777. or another chapter of the Revised Code and that 1022  
indicates that a trustee holds a general partnership interest in a 1023  
fiduciary capacity by the use following the name or signature of 1024  
the trustee of the words "as trustee" or other words that indicate 1025  
the trustee's fiduciary capacity constitutes a sufficient 1026  
disclosure for purposes of this division. 1027

(2) If a partnership certificate is not required to be filed 1028  
pursuant to Chapter 1777. or another chapter of the Revised Code, 1029  
a sufficient disclosure for purposes of division (A) of this 1030  
section can be made by a trustee if a certificate that is filed 1031  
with the recorder of the county in which the partnership's 1032  
principal office or place of business is situated and with the 1033  
recorder of each county in which the partnership owns real estate 1034  
satisfies all of the following requirements: 1035

(a) The certificate states in full the names of all persons 1036  
holding interests in the partnership and their places of 1037  
residence. 1038

(b) The certificate is signed by all persons who are general 1039  
partners in the partnership and is acknowledged by a person 1040  
authorized to take acknowledgements of deeds. 1041

(c) The certificate uses the words "trustee under the (will 1042  
or trust) of (name of decedent or settlor)," or other words that 1043  
indicate the trustee's fiduciary capacity, following the trustee's 1044  
name or signature. 1045

(3) A contract or other written instrument that is delivered 1046  
to a party that contracts with the partnership in which a trustee 1047  
holds a general partnership interest in a fiduciary capacity and 1048  
that indicates that the trustee so holds the interest constitutes 1049  
a disclosure for purposes of division (A)(1) of this section with 1050  
respect to transactions between the party and the partnership. If 1051  
a disclosure has been made by a certificate in accordance with 1052  
division (A) of this section, a disclosure for purposes of 1053  
division (A) of this section with respect to such transactions 1054  
exists regardless of whether a contract or other instrument 1055  
indicates the trustee holds the general partnership interest in a 1056  
fiduciary capacity. 1057

(B) Except as otherwise provided in division (C) of this 1058  
section, a trustee who holds an interest as a general partner in a 1059  
general or limited partnership is not personally liable for torts 1060  
committed by the partnership or for obligations arising from 1061  
ownership or control of the interest unless the trustee is 1062  
personally at fault. 1063

(C) The immunity provided by this section does not apply if 1064  
an interest in the partnership is held by the trustee in a 1065  
capacity other than that of trustee or is held by the trustee's 1066  
spouse or one or more of the trustee's descendants, siblings, or 1067  
parents, or the spouse of any of them. 1068

(D) If the trustee of a revocable trust holds an interest as 1069  
a general partner in a general or limited partnership, the settlor 1070  
is personally liable for contracts and other obligations of the 1071  
partnership as if the settlor were a general partner. 1072

(E) The liability limitations in this section apply to 1073  
trustees as partners notwithstanding the broader personal 1074  
liabilities otherwise imposed by any partnership law. 1075

(F) If a trust is identified as a partner, the reference is 1076

deemed to be to, and the partner is, the current trustee or 1077  
trustees of the trust and their successors as trustees. 1078

**Sec. 5810.13.** (A) Instead of furnishing a copy of the trust 1079  
instrument to a person other than a beneficiary, the trustee may 1080  
furnish to the person a certification of trust containing all of 1081  
the following information: 1082

(1) A statement that the trust exists and the date the trust 1083  
instrument was executed; 1084

(2) The identity of the settlor; 1085

(3) The identity and address of the currently acting trustee; 1086

(4) The powers of the trustee; 1087

(5) The revocability or irrevocability of the trust and the 1088  
identity of any person holding a power to revoke the trust; 1089

(6) The authority of cotrustees to sign or otherwise 1090  
authenticate and whether all or less than all are required in 1091  
order to exercise powers of the trustee; 1092

~~(7) The trust's taxpayer identification number;~~ 1093

~~(8) The manner of taking title to trust property.~~ 1094

(B) Any trustee may sign or otherwise authenticate a 1095  
certification of trust. 1096

(C) A certification of trust shall state that the trust has 1097  
not been revoked, modified, or amended in any manner that would 1098  
cause the representations contained in the certification of trust 1099  
to be incorrect. 1100

(D) A certification of trust is not required to contain the 1101  
dispositive terms of a trust. 1102

(E) A recipient of a certification of trust may require the 1103  
trustee to furnish copies of those excerpts from the original 1104

trust instrument and later amendments that designate the trustee 1105  
and confer upon the trustee the power to act in the pending 1106  
transaction. 1107

(F) A person who acts in reliance upon a certification of 1108  
trust without knowledge that the representations contained in the 1109  
certification are incorrect is not liable to any person for so 1110  
acting and may assume without inquiry the existence of the facts 1111  
contained in the certification. Knowledge of the terms of the 1112  
trust may not be inferred solely from the fact that a copy of all 1113  
or part of the trust instrument is held by the person relying upon 1114  
the certification. 1115

(G) A person who in good faith enters into a transaction in 1116  
reliance upon a certification of trust may enforce the transaction 1117  
against the trust property as if the representations contained in 1118  
the certification were correct. 1119

~~(H) A person making a demand for the trust instrument in 1120  
addition to a certification of trust or excerpts is liable for 1121  
damages if the court determines that the person did not act in 1122  
good faith in demanding the~~ This section does not affect the use 1123  
or validity of a memorandum of trust instrument under section 1124  
5301.255 of the Revised Code. 1125

(I) This section does not limit the right of a person to 1126  
obtain a copy of the trust instrument in a judicial proceeding 1127  
concerning the trust. 1128

**Sec. 5815.35.** (A)(1) As used in this division, "fiduciary" 1129  
means any person, association, or corporation, other than a 1130  
trustee of a testamentary trust, an assignee or trustee for an 1131  
insolvent debtor, or a guardian under Chapter 5905. of the Revised 1132  
Code, that is appointed by and accountable to the probate court, 1133  
and that is acting in a fiduciary capacity for another or charged 1134  
with duties in relation to any property, interest, or estate for 1135

another's benefit. A fiduciary also includes an agency under 1136  
contract with the department of mental retardation and 1137  
developmental disabilities for the provision of protective service 1138  
under sections 5123.55 to 5123.59 of the Revised Code, when 1139  
appointed by and accountable to the probate court as a guardian or 1140  
trustee for a mentally retarded or developmentally disabled 1141  
person. 1142

(2) A fiduciary who enters a contract as fiduciary on or 1143  
after March 22, 1984, is not personally liable on that contract, 1144  
unless the contract otherwise specifies, if the contract is within 1145  
the fiduciary's authority and the fiduciary discloses that the 1146  
contract is being entered into in a fiduciary capacity. In a 1147  
contract, the words "fiduciary" or "as fiduciary" or other words 1148  
that indicate one's fiduciary capacity following the name or 1149  
signature of a fiduciary are sufficient disclosure for purposes of 1150  
this division. 1151

(B)(1) As used in this division, "partnership" includes a 1152  
partnership composed of only general partners and a partnership 1153  
composed of general and limited partners. 1154

(2) Subject to division (D) of this section, an executor or 1155  
administrator who acquires, in a fiduciary capacity, a general 1156  
partnership interest upon the death of a general partner of a 1157  
partnership is not personally liable for any debt, obligation, or 1158  
liability of the partnership that arises from the executor's or 1159  
administrator's actions, except as provided in this division, as a 1160  
general partner, or for any debt, obligation, or liability of the 1161  
partnership for which the executor or administrator otherwise 1162  
would be personally liable because the executor or administrator 1163  
holds the general partnership interest, if the executor or 1164  
administrator discloses that the general partnership interest is 1165  
held by the executor or administrator in a fiduciary capacity. 1166  
This immunity does not apply if an executor or administrator 1167

causes loss or injury to a person who is not a partner in the 1168  
partnership by a wrongful act or omission. This immunity is not 1169  
available to an executor or administrator who holds a general 1170  
partnership interest in a fiduciary capacity if the spouse or any 1171  
lineal descendants of the executor or administrator, or the 1172  
executor or administrator other than in a fiduciary capacity, 1173  
holds any interest in the partnership. 1174

A partnership certificate that is filed pursuant to Chapter 1175  
1777. or another chapter of the Revised Code and that indicates 1176  
that an executor or administrator holds a general partnership 1177  
interest in a fiduciary capacity by the use following the name or 1178  
signature of the executor or administrator of the words "executor 1179  
under the will of (name of decedent)" or "administrator of the 1180  
estate of (name of decedent)" or other words that indicate the 1181  
executor's or administrator's fiduciary capacity constitutes a 1182  
sufficient disclosure for purposes of this division. 1183

If a partnership certificate is not required to be filed 1184  
pursuant to Chapter 1777. or another chapter of the Revised Code, 1185  
a sufficient disclosure for purposes of this division can be made 1186  
by an executor or administrator if a certificate that satisfies 1187  
the following requirements is filed with the recorder of the 1188  
county in which the partnership's principal office or place of 1189  
business is situated and with the recorder of each county in which 1190  
the partnership owns real estate: 1191

(a) The certificate shall state in full the names of all 1192  
persons holding interests in the partnership and their places of 1193  
residence; 1194

(b) The certificate shall be signed by all persons who are 1195  
general partners in the partnership, and shall be acknowledged by 1196  
a person authorized to take acknowledgements of deeds; 1197

(c) The certificate shall use the words "executor under the 1198



will of (name of decedent)" or "administrator of the estate of 1199  
(name of decedent)" or other words that indicate the executor's or 1200  
administrator's fiduciary capacity, following the name or 1201  
signature of the executor or administrator. 1202

A contract or other written instrument delivered to a party 1203  
that contracts with the partnership in which an executor or 1204  
administrator holds a general partnership interest in a fiduciary 1205  
capacity, ~~which~~ that indicates that the executor or administrator 1206  
so holds the interest, constitutes a disclosure for purposes of 1207  
this division with respect to transactions between the party and 1208  
the partnership. If a disclosure has been made by a certificate in 1209  
accordance with this division, a disclosure for purposes of this 1210  
division with respect to such transactions exists regardless of 1211  
whether a contract or other instrument indicates the executor or 1212  
administrator holds the general partnership interest in a 1213  
fiduciary capacity. 1214

If an executor or administrator acquires, in a fiduciary 1215  
capacity, a general partnership interest, the decedent's estate is 1216  
liable for debts, obligations, or liabilities of the partnership. 1217

(C) An estate that includes a general partnership interest is 1218  
not liable for the debts, obligations, or liabilities of a 1219  
partnership in which another estate has a general partnership 1220  
interest, merely because the executor or administrator of the 1221  
estates holds a general partnership interest in both of the 1222  
partnerships in the executor's or administrator's fiduciary 1223  
capacities. 1224

(D) Divisions (B) and (C) of this section apply to general 1225  
partnership interests held by executors or administrators in their 1226  
fiduciary capacities prior to and on or after ~~the effective date~~ 1227  
~~of this section~~ March 22, 1984. If an appropriate disclosure is 1228  
made pursuant to division (B) of this section, the immunity 1229  
acquired under that division extends only to debts, obligations, 1230

and liabilities of the partnership arising on and after the date 1231  
of the disclosure and to debts, obligations, and liabilities of 1232  
the partnership that arose prior to the acquisition of the general 1233  
partnership interest by the executor or administrator becoming a 1234  
general partner. 1235

(E) The liability limitations in this section apply to 1236  
fiduciaries as partners notwithstanding the broader personal 1237  
liabilities otherwise imposed by any partnership law. 1238

(F) If an estate or other fund held by a fiduciary is 1239  
identified as a partner, the reference is deemed to be to, and the 1240  
partner is, the current executor, administrator, or other 1241  
fiduciary of the estate or other fund and their successors as 1242  
executors, administrators, or other fiduciaries. 1243

**Section 2.** That existing sections 2109.01, 5801.01, 5801.02, 1244  
5801.06, 5801.10, 5803.02, 5803.03, 5804.02, 5804.11, 5804.13, 1245  
5804.14, 5804.17, 5805.01, 5805.03, 5806.01, 5806.02, 5806.03, 1246  
5806.04, 5808.13, 5808.14, 5808.16, 5810.05, 5810.11, 5810.13, and 1247  
5815.35 and section 2109.022 of the Revised Code are hereby 1248  
repealed. 1249