

As Passed by the Senate

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S. B. No. 124

Senators Faber, Schiavoni

**Cosponsors: Senators Seitz, Fedor, Schuler, Kearney, Miller, D., Carey,
Harris, Hughes, Patton, Strahorn, Wagoner, Gibbs, Stewart, Miller, R.,
Sawyer, Turner, Wilson**

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A B I L L

To amend sections 5302.01, 5302.02, 5302.22, 1
5302.221, 5302.23, and 5815.36 and to enact 2
sections 5302.222 and 5302.24 of the Revised Code 3
to change the transfer on death (TOD) designation 4
instrument from a deed to an affidavit, to allow 5
real property owners holding title in survivorship 6
tenancy to execute such an affidavit, to clarify 7
the status of a trustee of a trust as a TOD 8
beneficiary and the dower rights of the spouse of 9
the property owner, and to make other changes 10
pertaining to the transfer on death of real 11
property. 12

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

Section 1. That sections 5302.01, 5302.02, 5302.22, 5302.221, 13
5302.23, and 5815.36 be amended and sections 5302.222 and 5302.24 14
of the Revised Code be enacted to read as follows: 15

Sec. 5302.01. The forms set forth in sections 5302.05, 16
5302.07, 5302.09, 5302.11, 5302.12, 5302.14, and 5302.17, ~~and~~ 17

~~5302.22~~ of the Revised Code may be used and shall be sufficient 18
for their respective purposes. They shall be known as "Statutory 19
Forms" and may be referred to as such. They may be altered as 20
circumstances require, and the authorization of ~~such~~ those forms 21
shall not prevent the use of other forms. Wherever the phrases 22
defined in sections 5302.06, 5302.08, 5302.10, and 5302.13 of the 23
Revised Code are to be incorporated in instruments by reference, 24
the method of incorporation as indicated in the statutory forms 25
shall be sufficient, but shall not preclude other methods. 26

Sec. 5302.02. The rules and definitions contained in sections 27
5302.03, 5302.04, 5302.06, 5302.08, 5302.10, 5302.13, 5302.17, 28
5302.18, 5302.19, 5302.20, and 5302.21, ~~and 5302.22~~ of the Revised 29
Code apply to all deeds or other instruments relating to real 30
estate, whether the statutory forms or other forms are used, where 31
the instruments are executed on or after October 1, 1965, ~~or, in~~ 32
~~relation to the.~~ The rules and definitions contained in section 33
5302.22 of the Revised Code, as it existed prior to the effective 34
date of this amendment, apply to instruments executed on or after 35
August 29, 2000, and prior to the effective date of this 36
amendment. The rules and definitions contained in section 5302.22 37
of the Revised Code apply to instruments executed on or after the 38
effective date of this amendment. 39

Sec. 5302.22. (A) ~~A deed conveying any interest in real 40
property, and in substance following the form set forth in this 41
division, when duly executed in accordance with Chapter 5301. of 42
the Revised Code and recorded in the office of the county 43
recorder, creates a present interest as sole owner or as a tenant 44
in common in the grantee and creates a transfer on death interest 45
in the beneficiary or beneficiaries. Upon the death of the 46
grantee, the deed vests the interest of the decedent in the 47
beneficiary or beneficiaries. The deed described in this division 48~~

shall in substance conform to the following form: 49

~~"Transfer on Death Deed 50~~

~~..... (marital status), of County, 51~~

~~..... (for valuable consideration paid, if any), 52~~

~~grant(s) (with covenants, if any), to whose 53~~

~~tax mailing address is, transfer on death to 54~~

~~....., beneficiary(s), the following real property: 55~~

~~(Description of land or interest in land and encumbrances, 56~~

~~reservations, and exceptions, if any.) 57~~

~~Prior Instrument Reference: 58~~

~~....., wife (husband) of the grantor, releases all 59~~

~~rights of dower therein. 60~~

~~Executed this day of 61~~

~~..... 62~~

~~(Signature of Grantor) 63~~

~~(Execution in accordance with Chapter 5301. of the Revised 64~~

~~Code)" As used in sections 5302.22, 5302.222, 5302.23, and 5302.24 65~~

~~of the Revised Code: 66~~

~~(1) "Affidavit of confirmation" means an affidavit executed 67~~

~~under division (A) of section 5302.222 of the Revised Code. 68~~

~~(2) "Survivorship tenancy" means an ownership of real 69~~

~~property or any interest in real property by two or more persons 70~~

~~that is created by executing a deed pursuant to section 5302.17 of 71~~

~~the Revised Code. 72~~

~~(3) "Survivorship tenant" means one of the owners of real 73~~

~~property or any interest in real property in a survivorship 74~~

~~tenancy. 75~~

~~(4) "Tenants by the entirety" mean only those persons who 76~~

~~are vested as tenants in an estate by the entirety with 77~~

~~survivorship pursuant to any deed recorded between February 9, 78~~

1972, and April 3, 1985, under section 5302.17 of the Revised Code 79
as it existed during that period of time. Nothing in sections 80
5302.22, 5302.222, 5302.23, and 5302.24 of the Revised Code 81
authorizes the creation of a tenancy by the entireties or 82
recognizes a tenancy by the entireties created outside that period 83
of time. 84

(5) "Transfer on death designation affidavit" means an 85
affidavit executed under this section. 86

(6) "Transfer on death beneficiary or beneficiaries" means 87
the beneficiary or beneficiaries designated in a transfer on death 88
designation affidavit. 89

(B) Any ~~person~~ individual who, under the Revised Code or the 90
common law of this state, owns real property or any interest in 91
real property as a sole owner ~~or,~~ as a tenant in common, or as a 92
survivorship tenant, or together with the individual's spouse owns 93
an indivisible interest in real property as tenants by the 94
entireties, may ~~create an~~ designate the entire interest, or any 95
specified part that is less than the entire interest, in ~~the~~ that 96
real property as transferable on death to a designated beneficiary 97
or beneficiaries by executing and recording a deed, together with 98
the individual's spouse, if any, a transfer on death designation 99
affidavit as provided in this section ~~conveying the person's~~ 100
entire, separate interest in the real property to one or more 101
individuals, including the grantor, and designating one or more 102
other persons, identified in the deed by name, as transfer on 103
death beneficiaries. 104

~~A deed conveying an interest in real property that includes a~~ 105
~~transfer on death beneficiary designation need not be supported by~~ 106
~~consideration and need not be delivered to the transfer on death~~ 107
~~beneficiary to be effective. If the affidavit is executed by an~~ 108
individual together with the individual's spouse, if any, the 109
dower rights of the spouse are subordinate to the vesting of title 110

to the interest in the real property in the transfer on death 111
beneficiary or beneficiaries designated under this section. The 112
affidavit shall be recorded in the office of the county recorder 113
in the county in which the real property is located, and, when so 114
recorded, the affidavit or a certified copy of the affidavit shall 115
be evidence of the transfer on death beneficiary or beneficiaries 116
so designated in the affidavit insofar as the affidavit affects 117
title to the real property. 118

(C) ~~Upon~~ (1) If an individual who owns real property or an 119
interest in real property as a sole owner or as a tenant in common 120
executes a transfer on death designation affidavit, upon the death 121
of that individual, title to the real property or interest in the 122
real property specified in the affidavit vests in the transfer on 123
death beneficiary or beneficiaries designated in the affidavit. 124

(2) If an individual who owns real property or an interest in 125
real property as a survivorship tenant executes a transfer on 126
death designation affidavit, upon the death of that individual or 127
of one but not all of the surviving survivorship tenants, title to 128
the real property or interest in the real property specified in 129
the affidavit vests in the surviving survivorship tenant or 130
tenants. Upon the death of the last surviving survivorship tenant, 131
title to the real property or interest in the real property vests 132
in the transfer on death beneficiary or beneficiaries designated 133
in the affidavit, subject to division (B)(7) of section 5302.23 of 134
the Revised Code. 135

(3) If an individual who together with the individual's 136
spouse owns an indivisible interest in real property as tenants by 137
the entirety executes a transfer on death designation affidavit, 138
upon the death of that individual, title to the real property or 139
interest in the real property vests in the remaining tenant by the 140
entireties. Upon the death of the remaining tenant by the 141
entireties, title to the real property or interest in the real 142

property vests in the transfer on death beneficiary or 143
beneficiaries designated in the affidavit, subject to division 144
(B)(7) of section 5302.23 of the Revised Code. 145

(D) A transfer on death designation affidavit shall be 146
verified before any person authorized to administer oaths and 147
shall include all of the following: 148

(1) A description of the real property the title to which is 149
affected by the affidavit and a reference to an instrument of 150
record containing that description; 151

(2) If less than the entire interest in the real property is 152
to be transferred on death under the affidavit, a statement of the 153
specific interest or part of the interest in the real property 154
that is to be so transferred; 155

(3) A statement by the individual executing the affidavit 156
that the individual is the person appearing on the record of the 157
real property as the owner of the real property or interest in the 158
real property at the time of the recording of the affidavit and 159
the marital status of that owner. If the owner is married, the 160
affidavit shall include a statement by the owner's spouse stating 161
that the spouse's dower rights are subordinate to the vesting of 162
title to the real property or interest in the real property in the 163
transfer on death beneficiary or beneficiaries designated in the 164
affidavit. 165

(4) A statement designating one or more persons, identified 166
by name, as transfer on death beneficiary or beneficiaries. 167

(E) The county recorder of the county in which a transfer on 168
death designation affidavit is offered for recording shall receive 169
the affidavit and cause it to be recorded in the same manner as 170
deeds are recorded. The county recorder shall collect a fee for 171
recording the affidavit in the same amount as the fee for 172
recording deeds. The county recorder shall index the affidavit in 173

the name of the owner of record of the real property or interest 174
in the real property who executed the affidavit. 175

(F) A transfer on death designation affidavit need not be 176
supported by consideration and need not be delivered to the 177
transfer on death beneficiary or beneficiaries designated in the 178
affidavit to be effective. However, in order to be effective, that 179
affidavit shall be recorded with the county recorder as described 180
in this section prior to the death of the individual who executed 181
the affidavit. 182

(G) Subject to division (C) of this section, upon the death 183
of any individual who owns real property or an interest in real 184
property that is subject to a transfer on death beneficiary 185
designation made under a transfer on death ~~deed~~ designation 186
affidavit as provided in this section, ~~the deceased owner's that~~ 187
real property or interest in real property of the deceased owner 188
shall be transferred only to the transfer on death beneficiary or 189
beneficiaries who are identified in the ~~deed~~ affidavit by name and 190
who survive the deceased owner or that are in existence on the 191
date of death of the deceased owner. ~~The transfer of the deceased~~ 192
~~owner's interest shall be recorded by presenting to the county~~ 193
~~auditor and filing with the county recorder an affidavit,~~ 194
~~accompanied by a certified copy of a death certificate for the~~ 195
~~deceased owner. The affidavit shall recite the name and address of~~ 196
~~each designated transfer on death beneficiary who survived the~~ 197
~~deceased owner or that is in existence on the date of the deceased~~ 198
~~owner's death, the date of the deceased owner's death, a~~ 199
~~description of the subject real property or interest in real~~ 200
~~property, and the names of each designated transfer on death~~ 201
~~beneficiary who has not survived the deceased owner or that is not~~ 202
~~in existence on the date of the deceased owner's death. The~~ 203
~~affidavit shall be accompanied by a certified copy of a death~~ 204
~~certificate for each designated transfer on death beneficiary who~~ 205

~~has not survived the deceased owner. The county recorder shall~~ 206
~~make an index reference to any affidavit so filed in the record of~~ 207
~~deeds.~~ 208

~~Upon the death of any individual holding real property or an~~ 209
~~interest in real property that is subject to a transfer on death~~ 210
~~beneficiary designation made under a transfer on death deed as~~ 211
~~provided in this section, if the title to the real property is~~ 212
~~registered pursuant to Chapter 5309. of the Revised Code, the~~ 213
~~procedure for the transfer of the interest of the deceased owner~~ 214
~~shall be pursuant to section 5309.081 of the Revised Code For~~ 215
~~purposes of this division, if a natural or legal person designated~~ 216
~~by name in the affidavit as a transfer on death beneficiary or as~~ 217
~~a contingent transfer on death beneficiary as provided in division~~ 218
~~(B)(2) of section 5302.23 of the Revised Code solely in that~~ 219
~~person's capacity as a trustee of a trust has died, has resigned,~~ 220
~~or otherwise has been replaced by a successor trustee of the trust~~ 221
~~on the date of death of the deceased owner, the successor trustee~~ 222
~~of the trust shall be considered the transfer on death beneficiary~~ 223
~~or contingent transfer on death beneficiary in existence on the~~ 224
~~date of death of the deceased owner in full compliance with this~~ 225
~~division, notwithstanding that the successor trustee is not named~~ 226
~~as a transfer on death beneficiary or contingent transfer on death~~ 227
~~beneficiary in the affidavit.~~ 228

~~(H) Any person who knowingly makes any false statement in a~~ 229
~~transfer on death designation affidavit is guilty of falsification~~ 230
~~under division (A)(6) of section 2921.13 of the Revised Code.~~ 231

Sec. 5302.221. (A) As used in this section: 232

"Estate" has the same meaning as in section 5111.11 of the 233
Revised Code. 234

"Medicaid estate recovery program" means the program 235
instituted under section 5111.11 of the Revised Code. 236

(B) The administrator of the medicaid estate recovery program shall prescribe a form on which a beneficiary of a transfer on death ~~deed~~ designation affidavit as provided in section 5302.22 of the Revised Code, who survives the deceased owner of the real property or an interest in the real property or that is in existence on the date of death of the deceased owner, or ~~such a~~ that beneficiary's representative is to indicate both of the following:

(1) Whether the deceased owner was either of the following:

(a) A decedent subject to the medicaid estate recovery program;

(b) The spouse of a decedent subject to the medicaid estate recovery program.

(2) Whether the real property or interest in the real property was part of the estate of a decedent subject to the medicaid estate recovery program.

(C) A county recorder shall obtain a properly completed form prescribed under division (B) of this section from the beneficiary of a transfer on death ~~deed~~ designation affidavit or the beneficiary's representative and send a copy of the form to the administrator of the medicaid estate recovery program before recording the transfer of the real property or interest in the real property under ~~division (C) of section 5302.22~~ 5302.222 of the Revised Code.

Sec. 5302.222. (A) The transfer of a deceased owner's real property or interest in real property as designated in a transfer on death designation affidavit provided in section 5302.22 of the Revised Code shall be recorded by presenting to the county auditor of the county in which the real property is located and filing with the county recorder of that county an affidavit of

confirmation executed by any transfer on death beneficiary to whom 267
the transfer is made. The affidavit of confirmation shall be 268
verified before a person authorized to administer oaths and shall 269
be accompanied by a certified copy of the death certificate for 270
the deceased owner. The affidavit of confirmation shall contain 271
all of the following information: 272

(1) The name and address of each transfer on death 273
beneficiary who survived the deceased owner or that is in 274
existence on the date of death of the deceased owner. If a named 275
beneficiary was designated as a transfer on death beneficiary 276
solely in that person's capacity as a trustee of a trust and that 277
trustee subsequently has been replaced by a successor trustee, the 278
affidavit of confirmation shall include the name and address of 279
the successor trustee and shall be accompanied by a copy of the 280
recorded successor trustee affidavit described in section 5302.171 281
of the Revised Code. 282

(2) The date of death of the deceased owner; 283

(3) A description of the subject real property or interest in 284
real property; 285

(4) The name of each transfer on death beneficiary who has 286
not survived the deceased owner or that is not in existence on the 287
date of death of the deceased owner. 288

(B) The affidavit of confirmation shall be accompanied by a 289
certified copy of the death certificate for each transfer on death 290
beneficiary who has not survived the deceased owner. 291

(C) The county recorder shall make an index reference in the 292
record of deeds to any affidavit of confirmation filed with the 293
county recorder under this section. 294

(D) Upon the death of any individual holding real property or 295
an interest in real property that is the subject of a transfer on 296
death designation affidavit as provided in section 5302.22 of the 297

Revised Code, if the title to the real property is registered 298
pursuant to Chapter 5309. of the Revised Code, the procedure for 299
the transfer of the interest of the deceased owner to the transfer 300
on death beneficiary or beneficiaries designated in the affidavit 301
shall be pursuant to section 5309.081 of the Revised Code. 302

(E) Any person who knowingly makes any false statement in an 303
affidavit of confirmation is guilty of falsification under 304
division (A)(6) of section 2921.13 of the Revised Code. 305

Sec. 5302.23. (A) Any ~~deed~~ affidavit containing language that 306
shows a clear intent to designate a transfer on death beneficiary 307
shall be liberally construed to do so. 308

(B) Real property or an interest in real property that is the 309
subject ~~to~~ of a transfer on death ~~beneficiary~~ designation 310
affidavit as provided in section 5302.22 of the Revised Code or as 311
described in division (A) of this section has all of the following 312
characteristics and ramifications: 313

(1) An interest of a deceased owner shall be transferred to 314
the transfer on death beneficiaries who are identified in the ~~deed~~ 315
affidavit by name and who survive the deceased owner or that are 316
in existence on the date of the deceased owner's death. If there 317
is a designation of more than one transfer on death beneficiary, 318
the beneficiaries shall take title ~~in~~ to the interest in equal 319
shares as tenants in common, unless the deceased owner has 320
specifically designated other than equal shares or has designated 321
that the beneficiaries take title as survivorship tenants, subject 322
to division (B)(3) of this section. If a transfer on death 323
beneficiary does not survive the deceased owner or is not in 324
existence on the date of the deceased owner's death, and the 325
deceased owner has designated one or more persons as contingent 326
transfer on death beneficiaries as provided in division (B)(2) of 327
this section, the designated contingent transfer on death 328

beneficiaries shall take the same interest that would have passed 329
to the transfer on death beneficiary had that transfer on death 330
beneficiary survived the deceased owner or been in existence on 331
the date of the deceased owner's death. If none of the designated 332
transfer on death beneficiaries survives the deceased owner or is 333
in existence on the date of the deceased owner's death and no 334
contingent transfer on death beneficiaries have been designated 335
~~or~~, have survived the deceased owner, or are in existence on the 336
date of death of the deceased owner, the interest of the deceased 337
owner shall be distributed as part of the probate estate of the 338
deceased owner of the interest. If there are two or more transfer 339
on death beneficiaries and the deceased owner has designated that 340
title to the interest in the real property be taken by those 341
beneficiaries as survivorship tenants, no designated contingent 342
transfer on death beneficiaries shall take title to the interest 343
unless none of the transfer on death beneficiaries survives the 344
deceased owner on the date of death of the deceased owner. 345

(2) A transfer on death ~~deed~~ designation affidavit may 346
contain a designation of one or more persons as contingent 347
transfer on death beneficiaries, who shall take the interest of 348
the deceased owner that would otherwise have passed to the 349
~~designated~~ transfer on death beneficiary if that named ~~designated~~ 350
transfer on death beneficiary does not survive the deceased owner 351
or is not in existence on the date of death of the deceased owner. 352
Persons designated as contingent transfer on death beneficiaries 353
shall be identified in the ~~deed~~ affidavit by name. 354

(3) Any transfer on death beneficiary or contingent transfer 355
on death beneficiary may be a natural or legal person, including, 356
but not limited to, a bank as trustee of a trust, except that if 357
two or more transfer on death beneficiaries are designated as 358
survivorship tenants, all of those beneficiaries shall be natural 359
persons and if two or more contingent transfer on death 360

beneficiaries are designated as survivorship tenants, all of those 361
contingent beneficiaries shall be natural persons. A natural 362
person who is designated a transfer on death beneficiary or 363
contingent transfer on death beneficiary solely in that natural 364
person's capacity as a trustee of a trust is not considered a 365
natural person for purposes of designating the transfer on death 366
beneficiaries or contingent transfer on death beneficiaries as 367
survivorship tenants under division (B)(3) of this section. 368

(4) The designation of a transfer on death beneficiary has no 369
effect on the present ownership of real property, and a person 370
designated as a transfer on death beneficiary has no interest in 371
the real property until the death of the owner of the interest. 372

~~(4)~~(5) The designation in a ~~deed~~ transfer on death 373
designation affidavit of any transfer on death beneficiary may be 374
revoked or changed at any time, without the consent of that 375
~~designated~~ transfer on death beneficiary, by the owner of the 376
interest, by the surviving survivorship tenants of the interest, 377
or by the remaining tenant by the entireties of the interest, 378
executing ~~in accordance with Chapter 5301. of the Revised Code and~~ 379
~~recording, prior to the death of the owner of the interest, of the~~ 380
surviving survivorship tenants of the interest, or of the 381
remaining tenant by the entireties of the interest, as the case 382
may be, a deed conveying the grantor's entire, separate interest 383
in the real property to one or more persons, including the 384
grantor, with or without the designation of another transfer on 385
death beneficiary new transfer on death designation affidavit 386
pursuant to section 5302.22 of the Revised Code stating the 387
revocation or change in that designation. The new transfer on 388
death designation affidavit shall automatically supersede and 389
revoke all prior recorded transfer on death designation affidavits 390
with respect to the real property or the interest in real property 391
identified in the new affidavit, provided that the prior recorded 392

affidavit was executed before the later recorded affidavit. 393

~~(5)~~(6) A fee simple title or any fractional interest in a fee 394
simple title may be subjected to a transfer on death beneficiary 395
designation. 396

~~(6)~~(7)(a) A ~~designated~~ transfer on death beneficiary takes 397
only the interest that the deceased owner or owners of the 398
interest held on the date of death, subject to all encumbrances, 399
reservations, and exceptions. 400

~~(7)~~(b) If the owners hold title to the interest in a 401
survivorship tenancy, the death of all except the last 402
survivorship tenant automatically terminates and nullifies any 403
transfer on death beneficiary designations made solely by the 404
deceased survivorship tenant or tenants without joinder by the 405
last surviving survivorship tenant. The termination or 406
nullification of any transfer on death beneficiary designations 407
under division (B)(7)(b) of this section is effective as of the 408
date of death of a deceased survivorship tenant. No affirmative 409
act of revocation is required of the last surviving survivorship 410
tenant for the termination or nullification of the transfer on 411
death beneficiary designations to occur as described in division 412
(B)(7)(b) of this section. If the last surviving survivorship 413
tenant dies with no transfer on death beneficiary designation, the 414
entire interest of that last surviving survivorship tenant shall 415
be distributed as part of the tenant's probate estate. 416

(c) If the owners hold title to the interest in a tenancy by 417
the entireties, the death of the first tenant by the entireties 418
automatically terminates and nullifies any transfer on death 419
beneficiary designations made solely by that deceased first tenant 420
without joinder by the remaining tenant by the entireties. The 421
termination or nullification of any transfer on death beneficiary 422
designations under division (B)(7)(c) of this section is effective 423
as of the date of death of the first tenant by the entireties. No 424

affirmative act of revocation is required of the remaining tenant 425
by the entireties for the termination or nullification of the 426
transfer on death beneficiary designations to occur as described 427
in division (B)(7)(c) of this section. If the remaining tenant by 428
the entireties dies with no transfer on death beneficiary 429
designation, the entire interest of that remaining tenant shall be 430
distributed as part of the tenant's probate estate. 431

(8) No rights of any lienholder, including, but not limited 432
to, any mortgagee, judgment creditor, or mechanic's lien holder, 433
shall be affected by the designation of a transfer on death 434
beneficiary pursuant to this section and section 5302.22 of the 435
Revised Code. If any lienholder takes action to enforce the lien, 436
by foreclosure or otherwise through a court proceeding, it is not 437
necessary to join ~~the~~ any transfer on death beneficiary as a party 438
defendant in the action unless the transfer on death beneficiary 439
has another interest in the real property ~~that is currently~~ 440
vested. 441

~~(8)~~(9) Any transfer on death of real property or of an 442
interest in real property that results from a ~~deed~~ transfer on 443
death designation affidavit designating a transfer on death 444
beneficiary is not testamentary. That transfer on death shall 445
supersede any attempted testate or intestate transfer of that real 446
property or interest in real property. 447

(10) The execution and recording of a transfer on death 448
designation affidavit shall be effective to terminate the 449
designation of a transfer on death beneficiary in a transfer on 450
death deed involving the same real property or interest in real 451
property and recorded prior to the effective date of this section. 452

(11) The execution and recording of a transfer on death 453
designation affidavit shall be effective to bar the vesting of any 454
rights of dower in a subsequent spouse of the owner of the real 455
property who executed that affidavit unless the affidavit is 456

revoked or changed. 457

Sec. 5302.24. Sections 5302.22, 5302.222, and 5302.23 of the 458
Revised Code do not affect any deed that was executed and recorded 459
prior to the effective date of this section, or any transfer on 460
death beneficiary designation made, pursuant to section 5302.22 of 461
the Revised Code as it existed prior to the effective date of this 462
section. If that deed or designation is valid on the day prior to 463
the effective date of this section, the deed or designation 464
continues to be valid on and after the effective date of this 465
section. A grantee of that deed need not execute a transfer on 466
death designation affidavit that designates the same transfer on 467
death beneficiary or beneficiaries as in the deed unless the 468
grantee chooses to do so. 469

Sec. 5815.36. (A) As used in this section: 470

(1) "Disclaimant" means any person, any guardian or personal 471
representative of a person or estate of a person, or any 472
attorney-in-fact or agent of a person having a general or specific 473
authority to act granted in a written instrument, who is any of 474
the following: 475

(a) With respect to testamentary instruments and intestate 476
succession, an heir, next of kin, devisee, legatee, donee, person 477
succeeding to a disclaimed interest, surviving joint tenant, 478
surviving tenant by the entirety, surviving tenant of a tenancy 479
with a right of survivorship, beneficiary under a testamentary 480
instrument, or person designated to take pursuant to a power of 481
appointment exercised by a testamentary instrument; 482

(b) With respect to nontestamentary instruments, a grantee, 483
donee, person succeeding to a disclaimed interest, surviving joint 484
tenant, surviving tenant by the entirety, surviving tenant of a 485
tenancy with a right of survivorship, beneficiary under a 486

nontestamentary instrument, or person designated to take pursuant 487
to a power of appointment exercised by a nontestamentary 488
instrument; 489

(c) With respect to fiduciary rights, privileges, powers, and 490
immunities, a fiduciary under a testamentary or nontestamentary 491
instrument. Division (A)(1)(c) of this section does not authorize 492
a fiduciary who disclaims fiduciary rights, privileges, powers, 493
and immunities to cause the rights of any beneficiary to be 494
disclaimed unless the instrument creating the fiduciary 495
relationship authorizes the fiduciary to make such a disclaimer. 496

(d) Any person entitled to take an interest in property upon 497
the death of a person or upon the occurrence of any other event. 498

(2) "Personal representative" includes any fiduciary as 499
defined in section 2109.01 of the Revised Code and any executor, 500
trustee, guardian, or other person or entity having a fiduciary 501
relationship with regard to any interest in property passing to 502
the fiduciary, executor, trustee, guardian, or other person or 503
entity by reason of a disclaimant's death. 504

(3) "Property" means all forms of property, real and 505
personal, tangible and intangible. 506

(B)(1) A disclaimant, other than a fiduciary under an 507
instrument who is not authorized by the instrument to disclaim the 508
interest of a beneficiary, may disclaim, in whole or in part, the 509
succession to any property by executing and by delivering, filing, 510
or recording a written disclaimer instrument in the manner 511
provided in this section. 512

(2) A disclaimant who is a fiduciary under an instrument may 513
disclaim, in whole or in part, any right, power, privilege, or 514
immunity, by executing and by delivering, filing, or recording a 515
written disclaimer instrument in the manner provided in this 516
section. 517

(3) The written instrument of disclaimer shall be signed and 518
acknowledged by the disclaimant and shall contain all of the 519
following: 520

(a) A reference to the donative instrument; 521

(b) A description of the property, part of property, or 522
interest disclaimed, and of any fiduciary right, power, privilege, 523
or immunity disclaimed; 524

(c) A declaration of the disclaimer and its extent. 525

(4) The guardian of the estate of a minor or an incompetent, 526
or the personal representative of a deceased person, whether or 527
not authorized by the instrument to disclaim, with the consent of 528
the probate division of the court of common pleas may disclaim, in 529
whole or in part, the succession to any property, or interest in 530
property, that the ward, if an adult and competent, or the 531
deceased, if living, might have disclaimed. The guardian or 532
personal representative, or any interested person may file an 533
application with the probate division of the court of common pleas 534
that has jurisdiction of the estate, asking that the court order 535
the guardian or personal representative to execute and deliver, 536
file, or record the disclaimer on behalf of the ward, estate, or 537
deceased person. The court shall order the guardian or personal 538
representative to execute and deliver, file, or record the 539
disclaimer if the court finds, upon hearing after notice to 540
interested parties and such other persons as the court shall 541
direct, that: 542

(a) It is in the best interests of those interested in the 543
estate of the person and of those who will take the disclaimed 544
interest; 545

(b) It would not materially, adversely affect the minor or 546
incompetent, or the beneficiaries of the estate of the decedent, 547
taking into consideration other available resources and the age, 548

probable life expectancy, physical and mental condition, and 549
present and reasonably anticipated future needs of the minor or 550
incompetent or the beneficiaries of the estate of the decedent. 551

A written instrument of disclaimer ordered by the court under 552
this division shall be executed and be delivered, filed, or 553
recorded within the time and in the manner in which the person 554
could have disclaimed if the person were living, an adult, and 555
competent. 556

(C) A partial disclaimer of property that is subject to a 557
burdensome interest created by the donative instrument is not 558
effective unless the disclaimed property constitutes a gift that 559
is separate and distinct from undisclaimed gifts. 560

(D) The disclaimant shall deliver, file, or record the 561
disclaimer, or cause the same to be done, prior to accepting any 562
benefits of the disclaimed interest and at any time after the 563
latest of the following dates: 564

(1) The effective date of the donative instrument if both the 565
taker and the taker's interest in the property are finally 566
ascertained on that date; 567

(2) The date of the occurrence of the event upon which both 568
the taker and the taker's interest in the property become finally 569
ascertainable; 570

(3) The date on which the disclaimant attains eighteen years 571
of age or is no longer an incompetent, without tendering or 572
repaying any benefit received while the disclaimant was under 573
eighteen years of age or an incompetent, and even if a guardian of 574
a minor or incompetent had filed an application pursuant to 575
division (B)(4) of this section and the probate division of the 576
court of common pleas involved did not consent to the guardian 577
executing a disclaimer. 578

(E) No disclaimer instrument is effective under this section 579

if either of the following applies under the terms of the disclaimer instrument:

(1) The disclaimant has power to revoke the disclaimer.

(2) The disclaimant may transfer, or direct to be transferred, to self the entire legal and equitable ownership of the property subject to the disclaimer instrument.

(F)(1) Subject to division (F)(2) of this section, if the interest disclaimed is created by a nontestamentary instrument, including, but not limited to, a transfer on death designation affidavit pursuant to section 5302.22 of the Revised Code, the disclaimer instrument shall be delivered personally or by certified mail to the trustee or other person who has legal title to, or possession of, the property disclaimed. If the interest disclaimed is created by a transfer on death designation affidavit pursuant to section 5302.22 of the Revised Code, the disclaimer instrument shall be filed with the county recorder of the county in which the real property that is the subject of that affidavit is located.

(2) If the interest disclaimed is created by a testamentary instrument, by intestate succession, ~~by a transfer on death deed pursuant to section 5302.22 of the Revised Code,~~ or by a certificate of title to a motor vehicle, watercraft, or outboard motor that evidences ownership of the motor vehicle, watercraft, or outboard motor that is transferable on death pursuant to section 2131.13 of the Revised Code, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate have been commenced, and an executed copy of the disclaimer instrument shall be delivered personally or by certified mail to the personal representative of the decedent's estate.

(3) If no proceedings for the administration of the decedent's estate have been commenced, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate might be commenced according to law. The disclaimer instrument shall be filed and indexed, and fees charged, in the same manner as provided by law for an application to be appointed as personal representative to administer the decedent's estate. The disclaimer is effective whether or not proceedings thereafter are commenced to administer the decedent's estate. If proceedings thereafter are commenced for the administration of the decedent's estate, they shall be filed under, or consolidated with, the case number assigned to the disclaimer instrument.

(4) If an interest in real estate is disclaimed, an executed copy of the disclaimer instrument also shall be recorded in the office of the recorder of the county in which the real estate is located. The disclaimer instrument shall include a description of the real estate with sufficient certainty to identify it, and shall contain a reference to the record of the instrument that created the interest disclaimed. If title to the real estate is registered under Chapters 5309. and 5310. of the Revised Code, the disclaimer interest shall be entered as a memorial on the last certificate of title. A spouse of a disclaimant has no dower or other interest in the real estate disclaimed.

(G) If a donative instrument expressly provides for the distribution of property, part of property, or interest in property if there is a disclaimer, the property, part of property, or interest disclaimed shall be distributed or disposed of, and accelerated or not accelerated, in accordance with the donative instrument. In the absence of express provisions to the contrary in the donative instrument, the property, part of property, or

interest in property disclaimed, and any future interest that is 643
to take effect in possession or enjoyment at or after the 644
termination of the interest disclaimed, shall descend, be 645
distributed, or otherwise be disposed of, and shall be 646
accelerated, in the following manner: 647

(1) If intestate or testate succession is disclaimed, as if 648
the disclaimant had predeceased the decedent; 649

(2) If the disclaimant is one designated to take pursuant to 650
a power of appointment exercised by a testamentary instrument, as 651
if the disclaimant had predeceased the donee of the power; 652

(3) If the donative instrument is a nontestamentary 653
instrument, as if the disclaimant had died before the effective 654
date of the nontestamentary instrument; 655

(4) If the disclaimer is of a fiduciary right, power, 656
privilege, or immunity, as if the right, power, privilege, or 657
immunity was never in the donative instrument. 658

(H) A disclaimer pursuant to this section is effective as of, 659
and relates back for all purposes to, the date upon which the 660
taker and the taker's interest have been finally ascertained. 661

(I) A disclaimant who has a present and future interest in 662
property, and disclaims the disclaimant's present interest in 663
whole or in part, is considered to have disclaimed the 664
disclaimant's future interest to the same extent, unless a 665
contrary intention appears in the disclaimer instrument or the 666
donative instrument. A disclaimant is not precluded from 667
receiving, as an alternative taker, a beneficial interest in the 668
property disclaimed, unless a contrary intention appears in the 669
disclaimer instrument or in the donative instrument. 670

(J) The disclaimant's right to disclaim under this section is 671
barred if the disclaimant does any of the following: 672

(1) Assigns, conveys, encumbers, pledges, or transfers, or 673
contracts to assign, convey, encumber, pledge, or transfer, the 674
property or any interest in it; 675

(2) Waives in writing the disclaimant's right to disclaim and 676
executes and delivers, files, or records the waiver in the manner 677
provided in this section for a disclaimer instrument; 678

(3) Accepts the property or an interest in it; 679

(4) Permits or suffers a sale or other disposition of the 680
property pursuant to judicial action against the disclaimant. 681

(K) Neither a fiduciary's application for appointment or 682
assumption of duties as a fiduciary nor a beneficiary's 683
application for appointment as a personal representative or 684
fiduciary waives or bars the disclaimant's right to disclaim a 685
right, power, privilege, or immunity as a personal representative 686
or fiduciary or the beneficiary's right to disclaim property. 687

(L) The right to disclaim under this section exists 688
irrespective of any limitation on the interest of the disclaimant 689
in the nature of a spendthrift provision or similar restriction. 690

(M) A disclaimer instrument or written waiver of the right to 691
disclaim that has been executed and delivered, filed, or recorded 692
as required by this section is final and binding upon all persons. 693

(N) The right to disclaim and the procedures for disclaimer 694
established by this section are in addition to, and do not exclude 695
or abridge, any other rights or procedures that exist or formerly 696
existed under any other section of the Revised Code or at common 697
law to assign, convey, release, refuse to accept, renounce, waive, 698
or disclaim property. 699

(O)(1) No person is liable for distributing or disposing of 700
property in a manner inconsistent with the terms of a valid 701
disclaimer if the distribution or disposition is otherwise proper 702

and the person has no actual knowledge of the disclaimer. 703

(2) No person is liable for distributing or disposing of 704
property in reliance upon the terms of a disclaimer that is 705
invalid because the right of disclaimer has been waived or barred 706
if the distribution or disposition is otherwise proper and the 707
person has no actual knowledge of the facts that constitute a 708
waiver or bar to the right to disclaim. 709

(P)(1) A disclaimant may disclaim pursuant to this section 710
any interest in property that is in existence on September 27, 711
1976, if either the interest in the property or the taker of the 712
interest in the property is not finally ascertained on that date. 713

(2) No disclaimer executed pursuant to this section destroys 714
or diminishes an interest in property that exists on September 27, 715
1976, in any person other than the disclaimant. 716

(Q) This section may be applied separately to different 717
interests or powers created in the disclaimant by the same 718
testamentary or nontestamentary instrument. 719

Section 2. That existing sections 5302.01, 5302.02, 5302.22, 720
5302.221, 5302.23, and 5815.36 of the Revised Code are hereby 721
repealed. 722