

**As Reported by the Senate Judiciary--Civil Justice Committee**

**128th General Assembly**

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**S. B. No. 124**

**Senators Faber, Schiavoni**

**Cosponsors: Senators Seitz, Fedor, Schuler, Kearney, Miller, D.**

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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 entireties" mean only those persons who~~ 76  
~~are vested as tenants in an estate by the entireties 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 interest in real property that is subject to a transfer on death beneficiary designation made under a transfer on death deed as provided in this section, if the title to the real property is registered pursuant to Chapter 5309. of the Revised Code, the procedure for the transfer of the interest of the deceased owner shall be pursuant to section 5309.081 of the Revised Code For purposes of this division, if a natural or legal person designated by name in the affidavit as a transfer on death beneficiary or as a contingent transfer on death beneficiary as provided in division (B)(2) of section 5302.23 of the Revised Code solely in that person's capacity as a trustee of a trust has died, has resigned, or otherwise has been replaced by a successor trustee of the trust on the date of death of the deceased owner, the successor trustee of the trust shall be considered the transfer on death beneficiary or contingent transfer on death beneficiary in existence on the date of death of the deceased owner in full compliance with this division, notwithstanding that the successor trustee is not named as a transfer on death beneficiary or contingent transfer on death beneficiary in the affidavit.~~

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

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

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

"Medicaid estate recovery program" means the program instituted under section 5111.11 of the Revised Code. 235  
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 237  
238  
239

the Revised Code, who survives the deceased owner of the real 240  
property or an interest in the real property or that is in 241  
existence on the date of death of the deceased owner, or ~~such a~~ 242  
that beneficiary's representative is to indicate both of the 243  
following: 244

(1) Whether the deceased owner was either of the following: 245

(a) A decedent subject to the medicaid estate recovery 246  
program; 247

(b) The spouse of a decedent subject to the medicaid estate 248  
recovery program. 249

(2) Whether the real property or interest in the real 250  
property was part of the estate of a decedent subject to the 251  
medicaid estate recovery program. 252

(C) A county recorder shall obtain a properly completed form 253  
prescribed under division (B) of this section from the beneficiary 254  
of a transfer on death ~~deed~~ designation affidavit or the 255  
beneficiary's representative and send a copy of the form to the 256  
administrator of the medicaid estate recovery program before 257  
recording the transfer of the real property or interest in the 258  
real property under ~~division (C) of section 5302.22~~ 5302.222 of 259  
the Revised Code. 260

Sec. 5302.222. (A) The transfer of a deceased owner's real 261  
property or interest in real property as designated in a transfer 262  
on death designation affidavit provided in section 5302.22 of the 263  
Revised Code shall be recorded by presenting to the county auditor 264  
of the county in which the real property is located and filing 265  
with the county recorder of that county an affidavit of 266  
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 entirety of the interest, by 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 entirety 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 entirety, the death of the first tenant by the entirety 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 entirety. 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 entirety. No 424  
affirmative act of revocation is required of the remaining tenant 425  
by the entirety 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 interest disclaimed, and of any fiduciary right, power, privilege, or immunity disclaimed;	522 523 524
(c) A declaration of the disclaimer and its extent.	525
(4) The guardian of the estate of a minor or an incompetent, or the personal representative of a deceased person, whether or not authorized by the instrument to disclaim, with the consent of the probate division of the court of common pleas may disclaim, in whole or in part, the succession to any property, or interest in property, that the ward, if an adult and competent, or the deceased, if living, might have disclaimed. The guardian or personal representative, or any interested person may file an application with the probate division of the court of common pleas that has jurisdiction of the estate, asking that the court order the guardian or personal representative to execute and deliver, file, or record the disclaimer on behalf of the ward, estate, or deceased person. The court shall order the guardian or personal representative to execute and deliver, file, or record the disclaimer if the court finds, upon hearing after notice to interested parties and such other persons as the court shall direct, that:	526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542
(a) It is in the best interests of those interested in the estate of the person and of those who will take the disclaimed interest;	543 544 545
(b) It would not materially, adversely affect the minor or incompetent, or the beneficiaries of the estate of the decedent, taking into consideration other available resources and the age, probable life expectancy, physical and mental condition, and present and reasonably anticipated future needs of the minor or	546 547 548 549 550

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 580  
disclaimer instrument: 581

(1) The disclaimant has power to revoke the disclaimer. 582

(2) The disclaimant may transfer, or direct to be 583  
transferred, to self the entire legal and equitable ownership of 584  
the property subject to the disclaimer instrument. 585

(F)(1) Subject to division (F)(2) of this section, if the 586  
interest disclaimed is created by a nontestamentary instrument, 587  
including, but not limited to, a transfer on death designation 588  
affidavit pursuant to section 5302.22 of the Revised Code, the 589  
disclaimer instrument shall be delivered personally or by 590  
certified mail to the trustee or other person who has legal title 591  
to, or possession of, the property disclaimed. If the interest 592  
disclaimed is created by a transfer on death designation affidavit 593  
pursuant to section 5302.22 of the Revised Code, the disclaimer 594  
instrument shall be filed with the county recorder of the county 595  
in which the real property that is the subject of that affidavit 596  
is located. 597

(2) If the interest disclaimed is created by a testamentary 598  
instrument, by intestate succession, ~~by a transfer on death deed~~ 599  
~~pursuant to section 5302.22 of the Revised Code,~~ or by a 600  
certificate of title to a motor vehicle, watercraft, or outboard 601  
motor that evidences ownership of the motor vehicle, watercraft, 602  
or outboard motor that is transferable on death pursuant to 603  
section 2131.13 of the Revised Code, the disclaimer instrument 604  
shall be filed in the probate division of the court of common 605  
pleas in the county in which proceedings for the administration of 606  
the decedent's estate have been commenced, and an executed copy of 607  
the disclaimer instrument shall be delivered personally or by 608  
certified mail to the personal representative of the decedent's 609  
estate. 610

(3) If no proceedings for the administration of the 611  
decedent's estate have been commenced, the disclaimer instrument 612  
shall be filed in the probate division of the court of common 613

pleas in the county in which proceedings for the administration of 614  
the decedent's estate might be commenced according to law. The 615  
disclaimer instrument shall be filed and indexed, and fees 616  
charged, in the same manner as provided by law for an application 617  
to be appointed as personal representative to administer the 618  
decedent's estate. The disclaimer is effective whether or not 619  
proceedings thereafter are commenced to administer the decedent's 620  
estate. If proceedings thereafter are commenced for the 621  
administration of the decedent's estate, they shall be filed 622  
under, or consolidated with, the case number assigned to the 623  
disclaimer instrument. 624

(4) If an interest in real estate is disclaimed, an executed 625  
copy of the disclaimer instrument also shall be recorded in the 626  
office of the recorder of the county in which the real estate is 627  
located. The disclaimer instrument shall include a description of 628  
the real estate with sufficient certainty to identify it, and 629  
shall contain a reference to the record of the instrument that 630  
created the interest disclaimed. If title to the real estate is 631  
registered under Chapters 5309. and 5310. of the Revised Code, the 632  
disclaimer interest shall be entered as a memorial on the last 633  
certificate of title. A spouse of a disclaimant has no dower or 634  
other interest in the real estate disclaimed. 635

(G) If a donative instrument expressly provides for the 636  
distribution of property, part of property, or interest in 637  
property if there is a disclaimer, the property, part of property, 638  
or interest disclaimed shall be distributed or disposed of, and 639  
accelerated or not accelerated, in accordance with the donative 640  
instrument. In the absence of express provisions to the contrary 641  
in the donative instrument, the property, part of property, or 642  
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