

As Introduced

**128th General Assembly
Regular Session
2009-2010**

S. B. No. 251

Senators Seitz, Schiavoni

Cosponsor: Senator Turner

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A B I L L

To amend sections 1337.092, 1337.12, 2101.24, 1
2109.21, 2111.02, 2111.12, 2111.121, 5301.071, 2
5747.02, 5801.10, 5808.14, 5808.17, and 5810.13; 3
to enact new section 2107.52 and sections 1337.21 4
to 1337.64, 3793.31 to 3793.39, 5808.18, 5808.19, 5
5809.031, and 5810.14; and to repeal sections 6
1337.09, 1337.091, 1337.093, 1337.18, 1337.19, 7
1337.20, and 2107.52 of the Revised Code to adopt 8
the Uniform Power of Attorney Act; to modify a 9
trustee's duties with respect to life insurance 10
policies, specify a trustee's power to distribute 11
trust principal in further trust, provide for the 12
titling of assets in trust form, and make other 13
changes in the Trust Code; to modify the 14
anti-lapse provisions regarding wills and adopt 15
anti-lapse provisions applicable to trusts; and to 16
provide a mechanism for a probate court to order a 17
person who suffers from alcohol and other drug 18
abuse to undergo treatment. 19

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

Section 1. That sections 1337.092, 1337.12, 2101.24, 2109.21, 20

2111.02, 2111.12, 2111.121, 5301.071, 5747.02, 5801.10, 5808.14, 21
5808.17, and 5810.13 be amended and new section 2107.52 and 22
sections 1337.21, 1337.22, 1337.23, 1337.24, 1337.25, 1337.26, 23
1337.27, 1337.28, 1337.29, 1337.30, 1337.31, 1337.32, 1337.33, 24
1337.34, 1337.35, 1337.36, 1337.37, 1337.38, 1337.39, 1337.40, 25
1337.41, 1337.42, 1337.43, 1337.44, 1337.45, 1337.46, 1337.47, 26
1337.48, 1337.49, 1337.50, 1337.51, 1337.52, 1337.53, 1337.54, 27
1337.55, 1337.56, 1337.57, 1337.58, 1337.59, 1337.60, 1337.61, 28
1337.62, 1337.63, 1337.64, 3793.31, 3793.32, 3793.33, 3793.34, 29
3793.35, 3793.36, 3793.37, 3793.38, 3793.39, 5808.18, 5808.19, 30
5809.031, and 5810.14 of the Revised Code be enacted to read as 31
follows: 32

Sec. 1337.092. (A) If an attorney in fact enters into a 33
contract in the representative capacity of the attorney in fact, 34
if the contract is within the authority of the attorney in fact, 35
and if the attorney in fact discloses in the contract that it is 36
being entered into in the representative capacity of the attorney 37
in fact, the attorney in fact is not personally liable on the 38
contract, unless the contract otherwise specifies. If the words or 39
initialism "attorney in fact," "as attorney in fact," "AIF," 40
"power of attorney," "POA," or any other word or words or 41
initialism indicating representative capacity as an attorney in 42
fact are included in a contract following the name or signature of 43
an attorney in fact, the inclusion is sufficient disclosure for 44
purposes of this division that the contract is being entered into 45
in the attorney in fact's representative capacity as attorney in 46
fact. 47

(B) An attorney in fact is not personally liable for a debt 48
of the attorney in fact's principal, unless one or more of the 49
following applies: 50

(1) The attorney in fact agrees to be personally responsible 51

for the debt. 52

(2) The debt was incurred for the support of the principal, 53
and the attorney in fact is liable for that debt because of 54
another legal relationship that gives rise to or results in a duty 55
of support relative to the principal. 56

(3) The negligence of the attorney in fact gave rise to or 57
resulted in the debt. 58

(4) An act of the attorney in fact that was beyond the 59
attorney in fact's authority gave rise to or resulted in the debt. 60

(5) An agreement to assist in the recovery of funds under 61
section 169.13 of the Revised Code was the subject of the power of 62
attorney that gave rise to or resulted in the debt. 63

(C) This section applies but is not limited to, and the terms 64
"power of attorney" and "attorney in fact" include but are not 65
limited to, an agency agreement and an agent under an agency 66
agreement. 67

Sec. 1337.12. (A)(1) An adult who is of sound mind 68
voluntarily may create a valid durable power of attorney for 69
health care by executing a durable power of attorney, in 70
accordance with ~~division (B) of section 1337.09~~ 1337.24 of the 71
Revised Code, that authorizes an attorney in fact as described in 72
division (A)(2) of this section to make health care decisions for 73
the principal at any time that the attending physician of the 74
principal determines that the principal has lost the capacity to 75
make informed health care decisions for the principal. Except as 76
otherwise provided in divisions (B) to (F) of section 1337.13 of 77
the Revised Code, the authorization may include the right to give 78
informed consent, to refuse to give informed consent, or to 79
withdraw informed consent to any health care that is being or 80
could be provided to the principal. Additionally, to be valid, a 81

82 durable power of attorney for health care shall satisfy both of
83 the following:

84 (a) It shall be signed at the end of the instrument by the
85 principal and shall state the date of its execution.

86 (b) It shall be witnessed in accordance with division (B) of
87 this section or be acknowledged by the principal in accordance
88 with division (C) of this section.

89 (2) Except as otherwise provided in this division, a durable
90 power of attorney for health care may designate any competent
91 adult as the attorney in fact. The attending physician of the
92 principal and an administrator of any nursing home in which the
93 principal is receiving care shall not be designated as an attorney
94 in fact in, or act as an attorney in fact pursuant to, a durable
95 power of attorney for health care. An employee or agent of the
96 attending physician of the principal and an employee or agent of
97 any health care facility in which the principal is being treated
98 shall not be designated as an attorney in fact in, or act as an
99 attorney in fact pursuant to, a durable power of attorney for
100 health care, except that these limitations do not preclude a
101 principal from designating either type of employee or agent as the
102 principal's attorney in fact if the individual is a competent
103 adult and related to the principal by blood, marriage, or
104 adoption, or if the individual is a competent adult and the
105 principal and the individual are members of the same religious
106 order.

107 (3) A durable power of attorney for health care shall not
108 expire, unless the principal specifies an expiration date in the
109 instrument. However, when a durable power of attorney contains an
110 expiration date, if the principal lacks the capacity to make
111 informed health care decisions for the principal on the expiration
112 date, the instrument shall continue in effect until the principal

regains the capacity to make informed health care decisions for 113
the principal. 114

(B) If witnessed for purposes of division (A)(1)(b) of this 115
section, a durable power of attorney for health care shall be 116
witnessed by at least two individuals who are adults and who are 117
not ineligible to be witnesses under this division. Any person who 118
is related to the principal by blood, marriage, or adoption, any 119
person who is designated as the attorney in fact in the 120
instrument, the attending physician of the principal, and the 121
administrator of any nursing home in which the principal is 122
receiving care are ineligible to be witnesses. 123

The witnessing of a durable power of attorney for health care 124
shall involve the principal signing, or acknowledging the 125
principal's signature, at the end of the instrument in the 126
presence of each witness. Then, each witness shall subscribe the 127
witness's signature after the signature of the principal and, by 128
doing so, attest to the witness's belief that the principal 129
appears to be of sound mind and not under or subject to duress, 130
fraud, or undue influence. The signatures of the principal and the 131
witnesses under this division are not required to appear on the 132
same page of the instrument. 133

(C) If acknowledged for purposes of division (A)(1)(b) of 134
this section, a durable power of attorney for health care shall be 135
acknowledged before a notary public, who shall make the 136
certification described in section 147.53 of the Revised Code and 137
also shall attest that the principal appears to be of sound mind 138
and not under or subject to duress, fraud, or undue influence. 139

(D)(1) If a principal has both a valid durable power of 140
attorney for health care and a valid declaration, division (B) of 141
section 2133.03 of the Revised Code applies. If a principal has 142
both a valid durable power of attorney for health care and a DNR 143
identification that is based upon a valid declaration and if the 144

declaration supersedes the durable power of attorney for health 145
care under division (B) of section 2133.03 of the Revised Code, 146
the DNR identification supersedes the durable power of attorney 147
for health care to the extent of any conflict between the two. A 148
valid durable power of attorney for health care supersedes any DNR 149
identification that is based upon a do-not-resuscitate order that 150
a physician issued for the principal which is inconsistent with 151
the durable power of attorney for health care or a valid decision 152
by the attorney in fact under a durable power of attorney. 153

(2) As used in division (D) of this section: 154

(a) "Declaration" has the same meaning as in section 2133.01 155
of the Revised Code. 156

(b) "Do-not-resuscitate order" and "DNR identification" have 157
the same meanings as in section 2133.21 of the Revised Code. 158

Sec. 1337.21. Sections 1337.21 to 1337.64 of the Revised Code 159
may be cited as the uniform power of attorney act. 160

Sec. 1337.22. As used in sections 1337.21 to 1337.64 of the 161
Revised Code: 162

(A) "Agent" means a person granted authority to act for a 163
principal under a power of attorney, whether denominated an agent, 164
attorney in fact, or otherwise. "Agent" includes an original 165
agent, coagent, successor agent, and a person to which an agent's 166
authority is delegated. 167

(B) "Durable," with respect to a power of attorney, means not 168
terminated by the principal's incapacity. 169

(C) "Electronic" means relating to technology having 170
electrical, digital, magnetic, wireless, optical, electromagnetic, 171
or similar capabilities. 172

(D) "Good faith" means honesty in fact. 173

(E) "Incapacity" means inability of an individual to manage property or business affairs for either of the following reasons: 174
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(1) The individual has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance. 176
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(2) The individual is any of the following: 179

(a) Missing; 180

(b) Detained, including incarcerated in a penal system; 181

(c) Outside the United States and unable to return. 182

(F) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. 183
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(G) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used. 188
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(H) "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will. 191
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(I) "Principal" means an individual who grants authority to 203

an agent in a power of attorney. 204

(J) "Property" means anything that may be the subject of 205
ownership, whether real or personal, or legal or equitable, or any 206
interest or right therein. 207

(K) "Record" means information that is inscribed on a 208
tangible medium or that is stored in an electronic or other medium 209
and is retrievable in perceivable form. 210

(L) "Sign" means, with present intent to authenticate or 211
adopt a record, to execute or adopt a tangible symbol or to attach 212
to or logically associate with the record an electronic sound, 213
symbol, or process. 214

(M) "State" means a state of the United States, the District 215
of Columbia, Puerto Rico, the United States Virgin Islands, or any 216
territory or insular possession subject to the jurisdiction of the 217
United States. 218

(N) "Stocks and bonds" means stocks, bonds, mutual funds, and 219
all other types of securities and financial instruments, whether 220
held directly, indirectly, or in any other manner, but does not 221
include commodity futures contracts or call or put options on 222
stocks or stock indexes. 223

Sec. 1337.23. Sections 1337.21 to 1337.64 of the Revised Code 224
apply to all powers of attorney except the following: 225

(A) A power to the extent it is coupled with an interest in 226
the subject of the power, including a power given to or for the 227
benefit of a creditor in connection with a credit transaction; 228

(B) A power to make health-care decisions; 229

(C) A proxy or other delegation to exercise voting rights or 230
management rights with respect to an entity; 231

(D) A power created on a form prescribed by a government or 232

governmental subdivision, agency, or instrumentality for a 233
governmental purpose. 234

Sec. 1337.24. A power of attorney created under sections 235
1337.21 to 1337.64 of the Revised Code is durable unless it 236
expressly provides that it is terminated by the incapacity of the 237
principal. 238

Sec. 1337.25. A power of attorney must be signed by the 239
principal or in the principal's conscious presence by another 240
individual directed by the principal to sign the principal's name 241
on the power of attorney. A signature on a power of attorney is 242
presumed to be genuine if the principal acknowledges the signature 243
before a notary public or other individual authorized by law to 244
take acknowledgments. 245

Sec. 1337.26. (A) A power of attorney executed in this state 246
on or after the effective date of this section is valid if its 247
execution complies with section 1337.25 of the Revised Code. 248

(B) A power of attorney executed in this state before the 249
effective date of this section is valid if its execution complied 250
with the law of this state as it existed at the time of execution. 251

(C) A power of attorney executed other than in this state is 252
valid in this state if, when the power of attorney was executed, 253
the execution complied with the law of the jurisdiction that 254
determines the meaning and effect of the power of attorney 255
pursuant to section 1337.27 of the Revised Code or with the 256
requirements for a military power of attorney pursuant to 10 257
U.S.C. 1044b. 258

(D) Except as otherwise provided by statute other than 259
sections 1337.21 to 1337.64 of the Revised Code, a photocopy or 260
electronically transmitted copy of an original power of attorney 261

has the same effect as the original. 262

Sec. 1337.27. The meaning and effect of a power of attorney 263
is determined by the law of the jurisdiction indicated in the 264
power of attorney and, in the absence of an indication of 265
jurisdiction, by the law of the jurisdiction in which the power of 266
attorney was executed. 267

Sec. 1337.28. (A) In a power of attorney, a principal may 268
nominate a guardian of the principal's person, estate, or both and 269
may nominate a guardian of the person, the estate, or both of one 270
or more of the principal's minor children, whether born at the 271
time of the execution of the power of attorney or afterward. The 272
nomination is for consideration by a court if proceedings for the 273
appointment of a guardian for the principal's person, estate, or 274
both or if proceedings for the appointment of a guardian of the 275
person, the estate, or both of one or more of the principal's 276
minor children are commenced at a later time. The principal may 277
authorize the person nominated as guardian or the agent to 278
nominate a successor guardian for consideration by a court. Except 279
for good cause shown or disqualification, the court shall make its 280
appointment in accordance with the principal's most recent 281
nomination. Nomination of a person as a guardian or successor 282
guardian of the person, the estate, or both of one or more of the 283
principal's minor children under this division, and any subsequent 284
appointment of the guardian or successor guardian as guardian 285
under section 2111.02 of the Revised Code, does not vacate the 286
jurisdiction of any other court that previously may have exercised 287
jurisdiction over the person of the minor. 288

(B) The principal may direct that bond be waived for a person 289
nominated as guardian or as a successor guardian. 290

(C) If, after a principal executes a power of attorney, a 291

court appoints a guardian of the principal's estate or other 292
fiduciary charged with the management of some or all of the 293
principal's property, the agent is accountable to the fiduciary as 294
well as to the principal. The power of attorney is not terminated 295
and the agent's authority continues unless limited, suspended, or 296
terminated by the court after notice to the agent and upon a 297
finding that limitation, suspension, or termination would be in 298
the best interest of the principal. 299

(D) A power of attorney that contains the nomination of a 300
person to be the guardian of the person, the estate, or both of 301
one or more of the principal's minor children under this division 302
may be filed with the probate court for safekeeping, and the 303
probate court shall designate the nomination as the nomination of 304
a standby guardian. 305

Sec. 1337.29. (A) A power of attorney is effective when 306
executed unless the principal provides in the power of attorney 307
that it becomes effective at a future date or upon the occurrence 308
of a future event or contingency. 309

(B) If a power of attorney becomes effective upon the 310
occurrence of a future event or contingency, the principal, in the 311
power of attorney, may authorize one or more persons to determine 312
in a writing or other record that the event or contingency has 313
occurred. 314

(C) If a power of attorney becomes effective upon the 315
principal's incapacity and the principal has not authorized a 316
person to determine whether the principal is incapacitated, or the 317
person authorized is unable or unwilling to make the 318
determination, the power of attorney becomes effective upon one of 319
the following determinations made in a writing or other record: 320

(1) A determination by a physician who has examined the 321
principal or a licensed psychologist who has evaluated the 322

principal that the principal is incapacitated within the meaning 323
of division (E)(1) of section 1337.22 of the Revised Code; 324

(2) A determination by an attorney at law, a judge, or an 325
appropriate governmental official that the principal is 326
incapacitated within the meaning of division (E)(2) of section 327
1337.22 of the Revised Code. 328

(D) A person authorized by the principal in the power of 329
attorney to determine that the principal is incapacitated may act 330
as the principal's personal representative pursuant to 42 U.S.C. 331
1320d to 1320d-8, and applicable regulations, to obtain access to 332
the principal's health-care information and communicate with the 333
principal's health-care provider. 334

Sec. 1337.30. (A) A power of attorney terminates when any of 335
the following occurs: 336

(1) The principal dies; 337

(2) The principal becomes incapacitated, if the power of 338
attorney is not durable; 339

(3) The principal revokes the power of attorney; 340

(4) The power of attorney provides that it terminates; 341

(5) The purpose of the power of attorney is accomplished; 342

(6) The principal revokes the agent's authority or the agent 343
dies, becomes incapacitated, or resigns, and the power of attorney 344
does not provide for another agent to act under the power of 345
attorney. 346

(B) An agent's authority terminates when any of the following 347
occurs: 348

(1) The principal revokes the authority; 349

(2) The agent dies, becomes incapacitated, or resigns; 350

(3) An action is filed for the divorce, dissolution, or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; 351
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(4) The power of attorney terminates. 354

(C) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under division (B) of this section, notwithstanding a lapse of time since the execution of the power of attorney. 355
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(D) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest. 359
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(E) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest. 365
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(F) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked. 371
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Sec. 1337.31. (A) A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently. 376
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(B) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not 379
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qualified to serve, or declines to serve. A principal may grant 381
authority to designate one or more successor agents to an agent or 382
other person designated by name, office, or function. Unless the 383
power of attorney otherwise provides, a successor agent has the 384
same authority as that granted to the original agent and may not 385
act until all predecessor agents have resigned, died, become 386
incapacitated, are no longer qualified to serve, or have declined 387
to serve. 388

(C) Except as otherwise provided in the power of attorney and 389
division (D) of this section, an agent that does not participate 390
in or conceal a breach of fiduciary duty committed by another 391
agent, including a predecessor agent, is not liable for the 392
actions of the other agent. 393

(D) An agent that has actual knowledge of a breach or 394
imminent breach of fiduciary duty by another agent shall notify 395
the principal and, if the principal is incapacitated, take any 396
action reasonably appropriate in the circumstances to safeguard 397
the principal's best interest. An agent that fails to notify the 398
principal or take action as required by this division is liable 399
for the reasonably foreseeable damages that could have been 400
avoided if the agent had notified the principal or taken action as 401
required by this division. 402

Sec. 1337.32. Unless the power of attorney otherwise 403
provides, an agent is entitled to reimbursement of expenses 404
reasonably incurred on behalf of the principal and to compensation 405
that is reasonable under the circumstances. 406

Sec. 1337.33. Except as otherwise provided in the power of 407
attorney, a person accepts appointment as an agent under a power 408
of attorney by exercising authority or performing duties as an 409
agent or by any other assertion or conduct indicating acceptance. 410

Sec. 1337.34. (A) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall do all of the following: 411
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(1) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest; 414
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(2) Act in good faith; 417

(3) Act only within the scope of authority granted in the power of attorney; 418
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(4) Attempt to preserve the principal's estate plan to the extent actually known by the agent if preserving the plan is consistent with the principal's best interest based on all relevant factors, including all of the following: 420
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(a) The value and nature of the principal's property; 424

(b) The principal's foreseeable obligations and need for maintenance; 425
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(c) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; 427
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(d) Eligibility for a benefit, a program, or assistance under a statute or regulation. 429
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(B) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall do all of the following: 431
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(1) Act loyally for the principal's benefit; 433

(2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest; 434
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(3) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances; 437
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(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal; 439
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(5) Cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest. 441
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(C) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan. 445
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(D) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal. 448
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(E) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances. 453
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(F) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines. 459
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(G) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person. 461
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(H) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered 467
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by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within thirty days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty days. 470
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Sec. 1337.35. A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent that either of the following applies: 479
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(A) The provision relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal. 483
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(B) The provision was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal. 487
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Sec. 1337.36. (A) Any of the following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief: 489
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(1) The principal or the agent; 492

(2) A guardian, conservator, or other fiduciary acting for the principal, including an executor or administrator of the estate of a deceased principal; 493
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(3) A person authorized to make health-care decisions for the principal; 496
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(4) The principal's spouse, parent, or descendant; 498

(5) An individual who would qualify as a presumptive heir of the principal; 499
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(6) A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate; 501
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(7) A governmental agency having regulatory authority to protect the welfare of the principal; 505
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(8) The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; 507
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(9) A person asked to accept the power of attorney. 509

(B) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney. 510
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Sec. 1337.37. An agent that violates sections 1337.21 to 1337.64 of the Revised Code is liable to the principal or the principal's successors in interest for the amount required to restore the value of the principal's property to what it would have been had the violation not occurred and the amount required to reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf. 514
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Sec. 1337.38. Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated, to whichever of the following applies: 522
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(A) The guardian, if one has been appointed for the principal, and any coagent or successor agent; 526
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(B) If there is no person described in division (A) of this section, to any of the following: 528
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(1) The principal's caregiver; 530

(2) Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; 531
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(3) A governmental agency having authority to protect the welfare of the principal. 533
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Sec. 1337.39. Unless displaced by a provision of sections 1337.21 to 1337.64 of the Revised Code, the principles of law and equity supplement those sections. 535
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Sec. 1337.40. In the event of a conflict between any provision of sections 1337.21 to 1337.64 of the Revised Code and any other provision of law applicable to financial institutions or other entities, the other provision of law controls. 538
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Sec. 1337.41. The remedies provided under sections 1337.21 to 1337.64 of the Revised Code are not exclusive and do not abrogate any right or remedy under any other provision of law of this state. 542
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Sec. 1337.42. (A) An agent under a power of attorney may do any of the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and if exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject, and, with respect to a revocable trust of which the principal was the settlor, if the trust agreement expressly authorizes the agent to exercise the principal's powers with respect to the revocation, amendment, or distribution: 546
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<u>(1) Create, amend, revoke, or terminate an inter vivos trust</u>	556
<u>to the extent permitted by section 5801.05 of the Revised Code or</u>	557
<u>any other provision of Title LVIII of the Revised Code;</u>	558
<u>(2) Make a gift;</u>	559
<u>(3) Create or change rights of survivorship;</u>	560
<u>(4) Create or change a beneficiary designation;</u>	561
<u>(5) Delegate authority granted under the power of attorney;</u>	562
<u>(6) Waive the principal's right to be a beneficiary of a</u>	563
<u>joint and survivor annuity, including a survivor benefit under a</u>	564
<u>retirement plan;</u>	565
<u>(7) Exercise fiduciary powers that the principal has</u>	566
<u>authority to delegate.</u>	567
<u>(B) Notwithstanding a grant of authority to do an act</u>	568
<u>described in division (A) of this section, unless the power of</u>	569
<u>attorney otherwise provides, an agent that is not an ancestor,</u>	570
<u>spouse, or descendant of the principal may not exercise authority</u>	571
<u>under a power of attorney to create in the agent, or in an</u>	572
<u>individual to whom the agent owes a legal obligation of support,</u>	573
<u>an interest in the principal's property, whether by gift, right of</u>	574
<u>survivorship, beneficiary designation, disclaimer, or otherwise.</u>	575
<u>(C) Subject to division (A), (B), (D), and (E) of this</u>	576
<u>section, if a power of attorney grants to an agent authority to do</u>	577
<u>all acts that a principal could do, the agent has the general</u>	578
<u>authority described in sections 1337.45 to 1337.57 of the Revised</u>	579
<u>Code.</u>	580
<u>(D) Unless the power of attorney otherwise provides, a grant</u>	581
<u>of authority to make a gift is subject to section 1337.58 of the</u>	582
<u>Revised Code.</u>	583
<u>(E) Subject to divisions (A), (B), and (D) of this section,</u>	584
<u>if the subjects over which authority is granted in a power of</u>	585

attorney are similar or overlap, the broadest authority controls. 586

(F) Authority granted in a power of attorney is exercisable 587
with respect to property that the principal has when the power of 588
attorney is executed or acquires later, whether or not the 589
property is located in this state and whether or not the authority 590
is exercised or the power of attorney is executed in this state. 591

(G) An act performed by an agent pursuant to a power of 592
attorney has the same effect and inures to the benefit of and 593
binds the principal and the principal's successors in interest as 594
if the principal had performed the act. 595

Sec. 1337.43. (A) An agent has authority described in 596
sections 1337.42 to 1337.58 of the Revised Code if the power of 597
attorney refers to general authority with respect to the 598
descriptive term for the subjects stated in sections 1337.45 to 599
1337.58 of the Revised Code or cites the section of the Revised 600
Code in which the authority is described. 601

(B) A reference in a power of attorney to general authority 602
with respect to the descriptive term for a subject in sections 603
1337.45 to 1337.58 of the Revised Code or a citation to any of 604
those sections incorporates the entire section as if it were set 605
out in full in the power of attorney. 606

(C) A principal may modify authority incorporated by 607
reference. 608

Sec. 1337.44. Except as otherwise provided in the power of 609
attorney, by executing a power of attorney that incorporates by 610
reference a subject described in sections 1337.45 to 1337.58 of 611
the Revised Code or that grants to an agent authority to do all 612
acts that a principal could do pursuant to division (C) of section 613
1337.42 of the Revised Code, a principal authorizes the agent, 614
with respect to that subject, to do all of the following: 615

(A) Demand, receive, and obtain by litigation or otherwise, 616
money or another thing of value to which the principal is, may 617
become, or claims to be entitled, and conserve, invest, disburse, 618
or use anything so received or obtained for the purposes intended; 619

(B) Contract in any manner with any person, on terms 620
agreeable to the agent, to accomplish a purpose of a transaction 621
and perform, rescind, cancel, terminate, reform, restate, release, 622
or modify the contract or another contract made by or on behalf of 623
the principal; 624

(C) Execute, acknowledge, seal, deliver, file, or record any 625
instrument or communication the agent considers desirable to 626
accomplish a purpose of a transaction, including creating at any 627
time a schedule listing some or all of the principal's property 628
and attaching it to the power of attorney; 629

(D) Initiate, participate in, submit to alternative dispute 630
resolution, settle, oppose, or propose or accept a compromise with 631
respect to a claim existing in favor of or against the principal 632
or intervene in litigation relating to the claim; 633

(E) Seek on the principal's behalf the assistance of a court 634
or other governmental agency to carry out an act authorized in the 635
power of attorney; 636

(F) Engage, compensate, and discharge an attorney, 637
accountant, discretionary investment manager, expert witness, or 638
other advisor; 639

(G) Prepare, execute, and file a record, report, or other 640
document to safeguard or promote the principal's interest under a 641
statute or regulation; 642

(H) Communicate with any representative or employee of a 643
government or governmental subdivision, agency, or 644
instrumentality, on behalf of the principal; 645

(I) Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; 646
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(J) Do any lawful act with respect to the subject and all property related to the subject. 649
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Sec. 1337.45. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to do all of the following: 651
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(A) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property; 655
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(B) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property; 659
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(C) Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal; 668
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(D) Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted; 672
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(E) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including all of the following: 676
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(1) Insure against liability or casualty or other loss; 679

(2) Obtain or regain possession of or protecting the interest or right by litigation or otherwise; 680
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(3) Pay, assess, compromise, or contest taxes or assessments or apply for and receive refunds in connection with taxes; 682
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(4) Purchase supplies, hire assistance or labor, and make repairs or alterations to the real property. 684
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(F) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right; 686
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(G) Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including all of the following: 690
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(1) Sell or otherwise dispose of them; 695

(2) Exercise or sell an option, right of conversion, or similar right with respect to them; 696
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(3) Exercise any voting rights in person or by proxy. 698

(H) Change the form of title of an interest in or right incident to real property; 699
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(I) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest. 701
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Sec. 1337.46. Unless the power of attorney otherwise 704

provides, language in a power of attorney granting general 705
authority with respect to tangible personal property authorizes 706
the agent to do all of the following: 707

(A) Demand, buy, receive, accept as a gift or as security for 708
an extension of credit, or otherwise acquire or reject ownership 709
or possession of tangible personal property or an interest in 710
tangible personal property; 711

(B) Sell; exchange; convey with or without covenants, 712
representations, or warranties; quitclaim; release; surrender; 713
create a security interest in; grant options concerning; lease; 714
sublease; or otherwise dispose of tangible personal property or an 715
interest in tangible personal property; 716

(C) Grant a security interest in tangible personal property 717
or an interest in tangible personal property as security to borrow 718
money or pay, renew, or extend the time of payment of a debt of 719
the principal or a debt guaranteed by the principal; 720

(D) Release, assign, satisfy, or enforce by litigation or 721
otherwise a security interest, lien, or other claim on behalf of 722
the principal with respect to tangible personal property or an 723
interest in tangible personal property; 724

(E) Manage or conserve tangible personal property or an 725
interest in tangible personal property on behalf of the principal, 726
including all of the following: 727

(1) Insure against liability or casualty or other loss; 728

(2) Obtain or regain possession of or protect the property or 729
interest, by litigation or otherwise; 730

(3) Pay, assess, compromise, or contest taxes or assessments 731
or apply for and receive refunds in connection with taxes or 732
assessments; 733

(4) Move the property from place to place; 734

<u>(5) Store the property for hire or on a gratuitous bailment;</u>	735
<u>(6) Use and make repairs, alterations, or improvements to the property.</u>	736 737
<u>(F) Change the form of title of an interest in tangible personal property.</u>	738 739
<u>Sec. 1337.47. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to do all of the following:</u>	740 741 742 743
<u>(A) Buy, sell, and exchange stocks and bonds;</u>	744
<u>(B) Establish, continue, modify, or terminate an account with respect to stocks and bonds;</u>	745 746
<u>(C) Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;</u>	747 748
<u>(D) Receive certificates and other evidences of ownership with respect to stocks and bonds;</u>	749 750
<u>(E) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.</u>	751 752 753
<u>Sec. 1337.48. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to do both of the following:</u>	754 755 756 757
<u>(A) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange;</u>	758 759 760
<u>(B) Establish, continue, modify, and terminate option accounts.</u>	761 762

Sec. 1337.49. Unless the power of attorney otherwise 763
provides, language in a power of attorney granting general 764
authority with respect to banks and other financial institutions 765
authorizes the agent to do all of the following: 766

(A) Continue, modify, and terminate an account or other 767
banking arrangement made by or on behalf of the principal; 768

(B) Establish, modify, and terminate an account or other 769
banking arrangement with a bank, trust company, savings and loan 770
association, credit union, thrift company, brokerage firm, or 771
other financial institution selected by the agent; 772

(C) Contract for services available from a financial 773
institution, including renting a safe deposit box or space in a 774
vault; 775

(D) Withdraw, by check, order, electronic funds transfer, or 776
otherwise, money or property of the principal deposited with or 777
left in the custody of a financial institution; 778

(E) Receive statements of account, vouchers, notices, and 779
similar documents from a financial institution and act with 780
respect to them; 781

(F) Enter a safe deposit box or vault and withdraw or add to 782
the contents; 783

(G) Borrow money and pledge as security personal property of 784
the principal necessary to borrow money or pay, renew, or extend 785
the time of payment of a debt of the principal or a debt 786
guaranteed by the principal; 787

(H) Make, assign, draw, endorse, discount, guarantee, and 788
negotiate promissory notes, checks, drafts, and other negotiable 789
or nonnegotiable paper of the principal or payable to the 790
principal or the principal's order, transfer money, receive the 791
cash or other proceeds of those transactions, and accept a draft 792

drawn by a person upon the principal and pay it when due; 793

(I) Receive for the principal and act upon a sight draft, 794
warehouse receipt, or other document of title whether tangible or 795
electronic, or other negotiable or nonnegotiable instrument; 796

(J) Apply for, receive, and use letters of credit, credit and 797
debit cards, electronic transaction authorizations, and traveler's 798
checks from a financial institution and give an indemnity or other 799
agreement in connection with letters of credit; 800

(K) Consent to an extension of the time of payment with 801
respect to commercial paper or a financial transaction with a 802
financial institution. 803

Sec. 1337.50. Subject to the terms of a document or an 804
agreement governing an entity or an entity ownership interest, and 805
unless the power of attorney otherwise provides, language in a 806
power of attorney granting general authority with respect to 807
operation of an entity or business authorizes the agent to do all 808
of the following: 809

(A) Operate, buy, sell, enlarge, reduce, or terminate an 810
ownership interest; 811

(B) Perform a duty or discharge a liability and exercise in 812
person or by proxy a right, power, privilege, or option that the 813
principal has, may have, or claims to have; 814

(C) Enforce the terms of an ownership agreement; 815

(D) Initiate, participate in, submit to alternative dispute 816
resolution, settle, oppose, or propose or accept a compromise with 817
respect to litigation to which the principal is a party because of 818
an ownership interest; 819

(E) Exercise in person or by proxy, or enforce by litigation 820
or otherwise, a right, power, privilege, or option the principal 821
has or claims to have as the holder of stocks and bonds; 822

(F) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds; 823
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(G) With respect to an entity or business owned solely by the principal, do all of the following: 827
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(1) Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney; 829
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(2) Determine all of the following: 832

(a) The location of its operation; 833

(b) The nature and extent of its business; 834

(c) The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation; 835
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(d) The amount and types of insurance carried; 837

(e) The mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors. 838
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(3) Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; 840
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(4) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business. 844
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(H) Put additional capital into an entity or business in which the principal has an interest; 848
849

(I) Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business; 850
851

<u>(J) Sell or liquidate all or part of an entity or business;</u>	852
<u>(K) Establish the value of an entity or business under a buy-out agreement to which the principal is a party;</u>	853 854
<u>(L) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments;</u>	855 856 857
<u>(M) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.</u>	858 859 860 861 862 863
Sec. 1337.51. <u>Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to do all of the following:</u>	864 865 866 867
<u>(A) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;</u>	868 869 870 871 872
<u>(B) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents and select the amount, type of insurance or annuity, and mode of payment;</u>	873 874 875 876
<u>(C) Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;</u>	877 878 879
<u>(D) Apply for and receive a loan secured by a contract of insurance or annuity;</u>	880 881

<u>(E) Surrender and receive the cash surrender value on a contract of insurance or annuity;</u>	882
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<u>(F) Exercise an election;</u>	884
<u>(G) Exercise investment powers available under a contract of insurance or annuity;</u>	885
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<u>(H) Change the manner of paying premiums on a contract of insurance or annuity;</u>	887
	888
<u>(I) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;</u>	889
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<u>(J) Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;</u>	892
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<u>(K) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;</u>	895
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<u>(L) Select the form and timing of the payment of proceeds from a contract of insurance or annuity;</u>	898
	899
<u>(M) Pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.</u>	900
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Sec. 1337.52. <u>(A) As used in this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be entitled to a share or payment.</u>	905
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<u>(B) Unless the power of attorney otherwise provides, language</u>	910

in a power of attorney granting general authority with respect to 911
estates, trusts, and other beneficial interests authorizes the 912
agent to do all of the following: 913

(1) Accept, receive, receipt for, sell, assign, pledge, or 914
exchange a share in or payment from an estate, trust, or other 915
beneficial interest; 916

(2) Demand or obtain money or another thing of value to which 917
the principal is, may become, or claims to be entitled by reason 918
of an estate, trust, or other beneficial interest, by litigation 919
or otherwise; 920

(3) Exercise for the benefit of the principal a presently 921
exercisable general power of appointment held by the principal; 922

(4) Initiate, participate in, submit to alternative dispute 923
resolution, settle, oppose, or propose or accept a compromise with 924
respect to litigation to ascertain the meaning, validity, or 925
effect of a deed, will, declaration of trust, or other instrument 926
or transaction affecting the interest of the principal; 927

(5) Initiate, participate in, submit to alternative dispute 928
resolution, settle, oppose, or propose or accept a compromise with 929
respect to litigation to remove, substitute, or surcharge a 930
fiduciary; 931

(6) Conserve, invest, disburse, or use anything received for 932
an authorized purpose; 933

(7) Transfer an interest of the principal in real property, 934
stocks and bonds, accounts with financial institutions or 935
securities intermediaries, insurance, annuities, and other 936
property to the trustee of a revocable trust created by the 937
principal as settlor; 938

(8) Reject, renounce, disclaim, release, or consent to a 939
reduction in or modification of a share in or payment from an 940

estate, trust, or other beneficial interest. 941

Sec. 1337.53. Unless the power of attorney otherwise 942
provides, language in a power of attorney granting general 943
authority with respect to claims and litigation authorizes the 944
agent to do all of the following: 945

(A) Assert and maintain before a court or administrative 946
agency a claim, claim for relief, cause of action, counterclaim, 947
offset, recoupment, or defense, including an action to recover 948
property or other thing of value, recover damages sustained by the 949
principal, eliminate or modify tax liability, or seek an 950
injunction, specific performance, or other relief; 951

(B) Bring an action to determine adverse claims or intervene 952
or otherwise participate in litigation; 953

(C) Seek an attachment, garnishment, order of arrest, or 954
other preliminary, provisional, or intermediate relief and use an 955
available procedure to effect or satisfy a judgment, order, or 956
decree; 957

(D) Make or accept a tender, offer of judgment, or admission 958
of facts, submit a controversy on an agreed statement of facts, 959
consent to examination, and bind the principal in litigation; 960

(E) Submit to alternative dispute resolution, settle, and 961
propose or accept a compromise; 962

(F) Waive the issuance and service of process upon the 963
principal, accept service of process, appear for the principal, 964
designate persons upon which process directed to the principal may 965
be served, execute and file or deliver stipulations on the 966
principal's behalf, verify pleadings, seek appellate review, 967
procure and give surety and indemnity bonds, contract and pay for 968
the preparation and printing of records and briefs, receive, 969
execute, and file or deliver a consent, waiver, release, 970

confession of judgment, satisfaction of judgment, notice, 971
agreement, or other instrument in connection with the prosecution, 972
settlement, or defense of a claim or litigation; 973

(G) Act for the principal with respect to bankruptcy or 974
insolvency, whether voluntary or involuntary, concerning the 975
principal or some other person, or with respect to a 976
reorganization, receivership, or application for the appointment 977
of a receiver or trustee which affects an interest of the 978
principal in property or other thing of value; 979

(H) Pay a judgment, award, or order against the principal or 980
a settlement made in connection with a claim or litigation; 981

(I) Receive money or other thing of value paid in settlement 982
of or as proceeds of a claim or litigation. 983

Sec. 1337.54. (A) Unless the power of attorney otherwise 984
provides, language in a power of attorney granting general 985
authority with respect to personal and family maintenance 986
authorizes the agent to do all of the following: 987

(1) Perform the acts necessary to maintain the customary 988
standard of living of the principal, the principal's spouse, and 989
the following individuals, whether living when the power of 990
attorney is executed or later born: 991

(a) Other individuals legally entitled to be supported by the 992
principal; 993

(b) The individuals whom the principal has customarily 994
supported or indicated the intent to support. 995

(2) Make periodic payments of child support and other family 996
maintenance required by a court or governmental agency or an 997
agreement to which the principal is a party; 998

(3) Provide living quarters for the individuals described in 999
division (A)(1) of this section by doing either of the following: 1000

<u>(a) Purchasing, leasing, or otherwise contracting;</u>	1001
<u>(b) Paying the operating costs, including interest,</u>	1002
<u>amortization payments, repairs, improvements, and taxes, for</u>	1003
<u>premises owned by the principal or occupied by those individuals.</u>	1004
<u>(4) Provide normal domestic help, usual vacations and travel</u>	1005
<u>expenses, and funds for shelter, clothing, food, appropriate</u>	1006
<u>education, including postsecondary and vocational education, and</u>	1007
<u>other current living costs for the individuals described in</u>	1008
<u>division (A)(1) of this section;</u>	1009
<u>(5) Pay expenses for necessary health care and custodial care</u>	1010
<u>on behalf of the individuals described in division (A)(1) of this</u>	1011
<u>section;</u>	1012
<u>(6) Act as the principal's personal representative pursuant</u>	1013
<u>to 42 U.S.C. 1320d to 1320d-9 and applicable regulations in making</u>	1014
<u>decisions related to the past, present, or future payment for the</u>	1015
<u>provision of health care consented to by the principal or anyone</u>	1016
<u>authorized under the law of this state to consent to health care</u>	1017
<u>on behalf of the principal;</u>	1018
<u>(7) Continue any provision made by the principal for</u>	1019
<u>automobiles or other means of transportation, including</u>	1020
<u>registering, licensing, insuring, and replacing them, for the</u>	1021
<u>individuals described in division (A)(1) of this section;</u>	1022
<u>(8) Maintain credit and debit accounts for the convenience of</u>	1023
<u>the individuals described in division (A)(1) of this section and</u>	1024
<u>open new accounts;</u>	1025
<u>(9) Continue payments incidental to the membership or</u>	1026
<u>affiliation of the principal in a religious institution, club,</u>	1027
<u>society, order, or other organization or to continue contributions</u>	1028
<u>to those organizations.</u>	1029
<u>(B) Authority with respect to personal and family maintenance</u>	1030

is neither dependent upon, nor limited by, authority that an agent 1031
may or may not have with respect to gifts under sections 1337.21 1032
to 1337.64 of the Revised Code. 1033

Sec. 1337.55. (A) As used in this section, "benefits from 1034
governmental programs or civil or military service" means any 1035
benefit, program or assistance provided under a statute or 1036
regulation, including social security, medicare, and medicaid. 1037

(B) Unless the power of attorney otherwise provides, language 1038
in a power of attorney granting general authority with respect to 1039
benefits from governmental programs or civil or military service 1040
authorizes the agent to do all of the following: 1041

(1) Execute vouchers in the name of the principal for 1042
allowances and reimbursements payable by the United States or a 1043
foreign government or by a state or subdivision of a state to the 1044
principal, including allowances and reimbursements for 1045
transportation of the individuals described in division (A)(1) of 1046
section 1337.54 of the Revised Code, and for shipment of their 1047
household effects; 1048

(2) Take possession and order the removal and shipment of 1049
property of the principal from a post, warehouse, depot, dock, or 1050
other place of storage or safekeeping, either governmental or 1051
private, and execute and deliver a release, voucher, receipt, bill 1052
of lading, shipping ticket, certificate, or other instrument for 1053
that purpose; 1054

(3) Enroll in, apply for, select, reject, change, amend, or 1055
discontinue, on the principal's behalf, a benefit or program; 1056

(4) Prepare, file, and maintain a claim of the principal for 1057
a benefit or assistance, financial or otherwise, to which the 1058
principal may be entitled under a statute or regulation; 1059

(5) Initiate, participate in, submit to alternative dispute 1060

resolution, settle, oppose, or propose or accept a compromise with 1061
respect to litigation concerning any benefit or assistance the 1062
principal may be entitled to receive under a statute or 1063
regulation; 1064

(6) Receive the financial proceeds of a claim described in 1065
division (B)(4) of this section and conserve, invest, disburse, or 1066
use for a lawful purpose anything so received. 1067

Sec. 1337.56. (A) As used in this section, "retirement plan" 1068
means a plan or account created by an employer, the principal, or 1069
another individual to provide retirement benefits or deferred 1070
compensation of which the principal is a participant, beneficiary, 1071
or owner, including any of the following plans or accounts: 1072

(1) An individual retirement account under section 408 of the 1073
Internal Revenue Code of 1986, 26 U.S.C. 408; 1074

(2) A Roth individual retirement account under section 408A 1075
of the Internal Revenue Code of 1986, 26 U.S.C. 408A; 1076

(3) A deemed individual retirement account under section 1077
408(q) of the Internal Revenue Code of 1986, 26 U.S.C. 408(q); 1078

(4) An annuity or mutual fund custodial account under section 1079
403(b) of the Internal Revenue Code of 1986, 26 U.S.C. 403(b); 1080

(5) A pension, profit-sharing, stock bonus, or other 1081
retirement plan qualified under section 401(a) of the Internal 1082
Revenue Code of 1986, 26 U.S.C. 401(a); 1083

(6) A plan under section 457(b) of the Internal Revenue Code 1084
of 1986, 26 U.S.C. 457(b); 1085

(7) A nonqualified deferred compensation plan under section 1086
409A of the Internal Revenue Code of 1986, 26 U.S.C. 409A. 1087

(B) Unless the power of attorney otherwise provides, language 1088
in a power of attorney granting general authority with respect to 1089

<u>retirement plans authorizes the agent to do all of the following:</u>	1090
<u>(1) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;</u>	1091
<u>(2) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;</u>	1092
<u>(3) Establish a retirement plan in the principal's name;</u>	1093
<u>(4) Make contributions to a retirement plan;</u>	1094
<u>(5) Exercise investment powers available under a retirement plan;</u>	1095
<u>(6) Borrow from, sell assets to, or purchase assets from a retirement plan.</u>	1096
<u>Sec. 1337.57. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to do all of the following:</u>	1097
<u>(A) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under section 2032A of the Internal Revenue Code of 1986, 26 U.S.C. 2032A, closing agreements, and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five tax years;</u>	1098
<u>(B) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;</u>	1099
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(C) Exercise any election available to the principal under federal, state, local, or foreign tax law; 1119
1120

(D) Act for the principal in all tax matters for all periods before the internal revenue service, or other taxing authority. 1121
1122

Sec. 1337.58. (A) As used in this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act, and a tuition savings account or prepaid tuition plan as defined under section 529 of the Internal Revenue Code of 1986, 26 U.S.C. 529. 1123
1124
1125
1126
1127

(B) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent to do only the following: 1128
1129
1130

(1) Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under section 2503(b) of the Internal Revenue Code of 1986, 26 U.S.C. 2503(b), without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to section 2513 of the Internal Revenue Code of 1986, 26 U.S.C. 2513, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; 1131
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(2) Consent, pursuant to section 2513 of the Internal Revenue Code of 1986, 26 U.S.C. 2513, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses. 1142
1143
1144
1145

(C) An agent may make a gift of the principal's property, outright or by amending, creating, or funding a trust, only as the agent determines is consistent with the principal's objectives if 1146
1147
1148

actually known by the agent and, if unknown, as the agent 1149
determines is consistent with the principal's best interest based 1150
on all relevant factors, including all of the following: 1151

(1) The value and nature of the principal's property; 1152

(2) The principal's foreseeable obligations and need for 1153
maintenance; 1154

(3) Minimization of taxes, including income, estate, 1155
inheritance, generation-skipping transfer, and gift taxes; 1156

(4) Eligibility for a benefit, a program, or assistance under 1157
a statute or regulation; 1158

(5) The principal's personal history of making or joining in 1159
making gifts. 1160

Sec. 1337.59. In a power of attorney executed on or after 1161
March 29, 2006, and before the effective date of this section that 1162
either uses the statutory power of attorney form contained in 1163
former section 1337.18 of the Revised Code or that incorporates by 1164
reference any one or more of the powers contained in former 1165
section 1337.20 of the Revised Code, the powers granted shall be 1166
construed in accordance with former section 1337.20 of the Revised 1167
Code. 1168

Sec. 1337.60. A document substantially in the following form 1169
may be used to create a statutory form power of attorney that has 1170
the meaning and effect prescribed by sections 1337.21 to 1337.64 1171
of the Revised Code. 1172

[INSERT NAME OF JURISDICTION] 1173

STATUTORY FORM POWER OF ATTORNEY 1174

IMPORTANT INFORMATION 1175

This power of attorney authorizes another person (your agent) 1176

to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act (sections 1337.221 to 1337.64 of the Revised Code).

This power of attorney does not authorize the agent to make health-care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

ACTIONS REQUIRING EXPRESS AUTHORITY

Unless expressly authorized and initialed by me in the Special Instructions, this power of attorney does not grant authority to my agent to do any of the following:

(1) Create a trust;

(2) Amend, revoke, or terminate an inter vivos trust, even if specific authority to do so is granted to the agent in the trust

<u>agreement;</u>	1207
<u>(3) Make a gift;</u>	1208
<u>(4) Create or change rights of survivorship;</u>	1209
<u>(5) Create or change a beneficiary designation;</u>	1210
<u>(6) Delegate authority granted under the power of attorney;</u>	1211
<u>(7) Waive the principal's right to be a beneficiary of a</u>	1212
<u>joint and survivor annuity, including a survivor benefit under a</u>	1213
<u>retirement plan;</u>	1214
<u>(8) Exercise fiduciary powers that the principal has</u>	1215
<u>authority to delegate.</u>	1216
<u>CAUTION: Granting any of the above eight powers will give</u>	1217
<u>your agent the authority to take actions that could significantly</u>	1218
<u>reduce your property or change how your property is distributed at</u>	1219
<u>your death.</u>	1220
<u>If you have questions about the power of attorney or the</u>	1221
<u>authority you are granting to your agent, you should seek legal</u>	1222
<u>advice before signing this form.</u>	1223
<u>DESIGNATION OF AGENT</u>	1224
<u>I,</u> name the following	1225
<u>..... (Name of Principal) person as my agent:</u>	1226
<u>Name of Agent:</u>	1227
<u>.....</u>	1228
<u>Agent's Address:</u>	1229
<u>.....</u>	1230
<u>Agent's Telephone Number:</u>	1231
<u>.....</u>	1232
<u>DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)</u>	1233
<u>If my agent is unable or unwilling to act for me, I name as</u>	1234
<u>my successor agent:</u>	1235

<u>Name of Successor Agent:</u>	1236
.....	1237
<u>Successor Agent's Address:</u>	1238
.....	1239
<u>Successor Agent's Telephone Number:</u>	1240
.....	1241
<u>If my successor agent is unable or unwilling to act for me, I</u>	1242
<u>name as my second successor agent:</u>	1243
<u>Name of Second Successor Agent:</u>	1244
.....	1245
<u>Second Successor Agent's Address:</u>	1246
.....	1247
<u>Second Successor Agent's Telephone Number:</u>	1248
.....	1249
<u>GRANT OF GENERAL AUTHORITY</u>	1250
<u>I grant my agent and any successor agent general authority to</u>	1251
<u>act for me with respect to the following subjects as defined in</u>	1252
<u>the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of</u>	1253
<u>the Revised Code):</u>	1254
<u>(INITIAL each subject you want to include in the agent's</u>	1255
<u>general authority. If you wish to grant general authority over all</u>	1256
<u>of the subjects you may initial "All Preceding Subjects" instead</u>	1257
<u>of initialing each subject.)</u>	1258
<u>(...) Real Property</u>	1259
<u>(...) Tangible Personal Property</u>	1260
<u>(...) Stocks and Bonds</u>	1261
<u>(...) Commodities and Options</u>	1262
<u>(...) Banks and Other Financial Institutions</u>	1263
<u>(...) Operation of Entity or Business</u>	1264
<u>(...) Insurance and Annuities</u>	1265

<u>(...) Estates, Trusts, and Other Beneficial Interests</u>	1266
<u>(...) Claims and Litigation</u>	1267
<u>(...) Personal and Family Maintenance</u>	1268
<u>(...) Benefits from Governmental Programs or Civil or Military Service</u>	1269 1270
<u>(...) Retirement Plans</u>	1271
<u>(...) Taxes</u>	1272
<u>(...) All Preceding Subjects</u>	1273
<u>LIMITATION ON AGENT'S AUTHORITY</u>	1274
<u>An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.</u>	1275 1276 1277 1278
<u>SPECIAL INSTRUCTIONS (OPTIONAL)</u>	1279
<u>You may give special instructions on the following lines:</u>	1280
<u>.....</u>	1281
<u>.....</u>	1282
<u>.....</u>	1283
<u>.....</u>	1284
<u>.....</u>	1285
<u>.....</u>	1286
<u>.....</u>	1287
<u>.....</u>	1288
<u>.....</u>	1289
<u>EFFECTIVE DATE</u>	1290
<u>This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.</u>	1291 1292
<u>NOMINATION OF GUARDIAN (OPTIONAL)</u>	1293
<u>If it becomes necessary for a court to appoint a guardian of</u>	1294

my estate or my person, I nominate the following person(s) for 1295
appointment: 1296

Name of Nominee for guardian of my estate: 1297
..... 1298

Nominee's Address: 1299
..... 1300

Nominee's Telephone Number: 1301
..... 1302

Name of Nominee for guardian of my person: 1303
..... 1304

Nominee's Address: 1305
..... 1306

Nominee's Telephone Number: 1307
..... 1308

RELIANCE ON THIS POWER OF ATTORNEY 1309

Any person, including my agent, may rely upon the validity of 1310
this power of attorney or a copy of it unless that person knows it 1311
has terminated or is invalid. 1312

SIGNATURE AND ACKNOWLEDGMENT 1313

..... 1314

Your Signature Date 1315
..... 1316

Your Name Printed 1317
..... 1318

Your Address 1319
..... 1320

Your Telephone Number 1321

State of Ohio 1322

County of 1323

This document was acknowledged before me on 1324
..... (Date), by (Name) 1325

<u>of Principal).</u>	1326
.....	1327
<u>Signature of Notary</u>	1328
<u>My commission expires:</u>	1329
.....	
<u>This document prepared by:</u>	1330
.....	1331
.....	1332
<u>IMPORTANT INFORMATION FOR AGENT</u>	1333
<u>Agent's Duties</u>	1334
<u>When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:</u>	1335
	1336
	1337
	1338
	1339
<u>(1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;</u>	1340
	1341
	1342
<u>(2) Act in good faith;</u>	1343
<u>(3) Do nothing beyond the authority granted in this power of attorney;</u>	1344
	1345
<u>(4) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest;</u>	1346
	1347
	1348
<u>(5) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:</u>	1349
	1350
	1351
<u>(Principal's Name) by (Your Signature) as Agent</u>	1352
<u>Unless the Special Instructions in this power of attorney state otherwise, you must also:</u>	1353
	1354

<u>(1) Act loyally for the principal's benefit;</u>	1355
<u>(2) Avoid conflicts that would impair your ability to act in the principal's best interest;</u>	1356
<u>(3) Act with care, competence, and diligence;</u>	1357
<u>(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;</u>	1358
<u>(5) Cooperate with any person that has authority to make health-care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest.</u>	1359
<u>Termination of Agent's Authority</u>	1360
<u>You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:</u>	1361
<u>(1) The death of the principal;</u>	1362
<u>(2) The principal's revocation of the power of attorney or your authority;</u>	1363
<u>(3) The occurrence of a termination event stated in the power of attorney;</u>	1364
<u>(4) The purpose of the power of attorney is fully accomplished;</u>	1365
<u>(5) If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.</u>	1366
<u>Liability of Agent</u>	1367

The meaning of the authority granted to you is defined in the 1384
Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the 1385
Revised Code). If you violate the Uniform Power of Attorney Act or 1386
act outside the authority granted, you may be liable for any 1387
damages caused by your violation. 1388

If there is anything about this document or your duties that 1389
you do not understand, you should seek legal advice. 1390

Sec. 1337.61. The following optional form may be used by an 1391
agent to certify facts concerning a power of attorney. 1392

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY 1393
AND AGENT'S AUTHORITY 1394

State of Ohio 1395

County of 1396

I, (Name of Agent), 1397
certify under penalty of perjury that 1398
..... (Name of Principal) granted me 1399
authority as an agent or successor agent in a power of attorney 1400
dated 1401

I further certify that to my knowledge: 1402

(1) The Principal is alive and has not revoked the Power of 1403
Attorney or my authority to act under the Power of Attorney and 1404
the Power of Attorney and my authority to act under the Power of 1405
Attorney have not terminated; 1406

(2) If the Power of Attorney was drafted to become effective 1407
upon the happening of an event or contingency, the event or 1408
contingency has occurred; 1409

(3) If I was named as a successor agent, the prior agent is 1410
no longer able or willing to serve; 1411

(4)..... 1412

and National Commerce Act," 15 U.S.C. 7001 et seq., with the 1442
exception of section 101(c) of that act, 15 U.S.C. 7001(c). 1443
Sections 1337.21 to 1337.64 of the Revised Code do not authorize 1444
electronic delivery of any of the notices described in section 1445
103(b) of that act, 15 U.S.C. 7003(b). 1446

Sec. 1337.64. (A) Except as otherwise provided in sections 1447
1337.21 to 1337.64 of the Revised Code, on the effective date of 1448
this section, those sections apply to all of the following: 1449

(1) A power of attorney created before, on, or after the 1450
effective date of this section; 1451

(2) A judicial proceeding concerning a power of attorney 1452
commenced on or after the effective date of this section; 1453

(3) A judicial proceeding concerning a power of attorney 1454
commenced before the effective date of this section, unless the 1455
court finds that application of a provision of sections 1337.21 to 1456
1337.64 of the Revised Code would substantially interfere with the 1457
effective conduct of the judicial proceeding or prejudice the 1458
rights of a party, in which case that provision does not apply and 1459
the superseded law applies. 1460

(B) Sections 1337.21 to 1337.64 of the Revised Code do not 1461
affect an act done before the effective date of this section. 1462

Sec. 2101.24. (A)(1) Except as otherwise provided by law, the 1463
probate court has exclusive jurisdiction: 1464

(a) To take the proof of wills and to admit to record 1465
authenticated copies of wills executed, proved, and allowed in the 1466
courts of any other state, territory, or country. If the probate 1467
judge is unavoidably absent, any judge of the court of common 1468
pleas may take proof of wills and approve bonds to be given, but 1469
the record of these acts shall be preserved in the usual records 1470

of the probate court.	1471
(b) To grant and revoke letters testamentary and of administration;	1472 1473
(c) To direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates;	1474 1475 1476
(d) To appoint the attorney general to serve as the administrator of an estate pursuant to section 2113.06 of the Revised Code;	1477 1478 1479
(e) To appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts;	1480 1481 1482
(f) To grant marriage licenses;	1483
(g) To make inquests respecting persons who are so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that they are unable to manage their property and affairs effectively, subject to guardianship;	1484 1485 1486 1487 1488
(h) To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts;	1489 1490 1491
(i) To authorize the sale of lands, equitable estates, or interests in lands or equitable estates, and the assignments of inchoate dower in such cases of sale, on petition by executors, administrators, and guardians;	1492 1493 1494 1495
(j) To authorize the completion of real estate contracts on petition of executors and administrators;	1496 1497
(k) To construe wills;	1498
(l) To render declaratory judgments, including, but not limited to, those rendered pursuant to section 2107.084 of the	1499 1500

Revised Code;	1501
(m) To direct and control the conduct of fiduciaries and settle their accounts;	1502 1503
(n) To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee;	1504 1505
(o) To terminate a testamentary trust in any case in which a court of equity may do so;	1506 1507
(p) To hear and determine actions to contest the validity of wills;	1508 1509
(q) To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption;	1510 1511 1512
(r) To hear and determine an action commenced pursuant to section 3107.41 of the Revised Code to obtain the release of information pertaining to the birth name of the adopted person and the identity of the adopted person's biological parents and biological siblings;	1513 1514 1515 1516 1517
(s) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;	1518 1519
(t) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;	1520 1521
(u) To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;	1522 1523 1524
(v) To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337.16 of the Revised Code;	1525 1526 1527
(w) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;	1528 1529 1530

(x) To hear and determine complaints that pertain to the use	1531
or continuation, or the withholding or withdrawal, of	1532
life-sustaining treatment in connection with certain patients	1533
allegedly in a terminal condition or in a permanently unconscious	1534
state pursuant to division (E) of section 2133.08 of the Revised	1535
Code, in accordance with that division;	1536
(y) To hear and determine applications that pertain to the	1537
withholding or withdrawal of nutrition and hydration from certain	1538
patients allegedly in a permanently unconscious state pursuant to	1539
section 2133.09 of the Revised Code, in accordance with that	1540
section;	1541
(z) To hear and determine applications of attending	1542
physicians in accordance with division (B) of section 2133.15 of	1543
the Revised Code;	1544
(aa) To hear and determine actions relative to the use or	1545
continuation of comfort care in connection with certain principals	1546
under durable powers of attorney for health care, declarants under	1547
declarations, or patients in accordance with division (E) of	1548
either section 1337.16 or 2133.12 of the Revised Code;	1549
(bb) To hear and determine applications for an order	1550
relieving an estate from administration under section 2113.03 of	1551
the Revised Code;	1552
(cc) To hear and determine applications for an order granting	1553
a summary release from administration under section 2113.031 of	1554
the Revised Code;	1555
(dd) To hear and determine actions relating to the exercise	1556
of the right of disposition, in accordance with section 2108.90 of	1557
the Revised Code;	1558
(ee) To hear and determine actions relating to the	1559
disinterment and reinterment of human remains under section 517.23	1560
of the Revised Code;	1561

(ff) To hear and determine petitions for an order for treatment of a person suffering from alcohol and other drug abuse filed under section 3793.34 of the Revised Code and to order treatment of that nature in accordance with, and take other actions afforded to the court under, sections 3793.31 to 3793.39 of the Revised Code.

(2) In addition to the exclusive jurisdiction conferred upon the probate court by division (A)(1) of this section, the probate court shall have exclusive jurisdiction over a particular subject matter if both of the following apply:

(a) Another section of the Revised Code expressly confers jurisdiction over that subject matter upon the probate court.

(b) No section of the Revised Code expressly confers jurisdiction over that subject matter upon any other court or agency.

(B)(1) The probate court has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the court of common pleas to issue writs and orders, and to hear and determine actions as follows:

(a) If jurisdiction relative to a particular subject matter is stated to be concurrent in a section of the Revised Code or has been construed by judicial decision to be concurrent, any action that involves that subject matter;

(b) Any action that involves an inter vivos trust; a trust created pursuant to section 5815.28 of the Revised Code; a charitable trust or foundation; subject to divisions (A)(1)(u) and (z) of this section, a power of attorney, including, but not limited to, a durable power of attorney; the medical treatment of a competent adult; or a writ of habeas corpus.

(2) Any action that involves a concurrent jurisdiction subject matter and that is before the probate court may be

transferred by the probate court, on its order, to the general 1593
division of the court of common pleas. 1594

(C) The probate court has plenary power at law and in equity 1595
to dispose fully of any matter that is properly before the court, 1596
unless the power is expressly otherwise limited or denied by a 1597
section of the Revised Code. 1598

(D) The jurisdiction acquired by a probate court over a 1599
matter or proceeding is exclusive of that of any other probate 1600
court, except when otherwise provided by law. 1601

Sec. 2107.52. (A) As used in this section: 1602

(1) "Class member" means an individual who fails to survive 1603
the testator but who would have taken under a devise in the form 1604
of a class gift had the individual survived the testator. 1605

(2) "Descendant of a grandparent" means an individual who 1606
qualifies as a descendant of a grandparent of the testator or of 1607
the donor of a power of appointment under any of the following: 1608

(a) The rules of construction applicable to a class gift 1609
created in the testator's will if the devise or the exercise of 1610
the power of appointment is in the form of a class gift; 1611

(b) The rules for intestate succession if the devise or the 1612
exercise of the power of appointment is not in the form of a class 1613
gift. 1614

(3) "Devise" means an alternative devise, a devise in the 1615
form of a class gift, or an exercise of a power of appointment. 1616

(4) "Devisee" means any of the following: 1617

(a) A class member if the devise is in the form of a class 1618
gift; 1619

(b) An individual or class member who was deceased at the 1620
time the testator executed the testator's will or an individual or 1621

class member who was then living but who failed to survive the 1622
testator; 1623

(c) An appointee under a power of appointment exercised by 1624
the testator's will. 1625

(5) "Per stirpes" means that the shares of the descendants of 1626
a devisee who does not survive the testator are determined in the 1627
same way they would have been determined under division (A) of 1628
section 2105.06 of the Revised Code if the devisee had died 1629
intestate and unmarried on the date of the testator's death. 1630

(6) "Stepchild" means a child of the surviving, deceased, or 1631
former spouse of the testator or of the donor of a power of 1632
appointment and not of the testator or donor. 1633

(7) "Surviving devisee" or "surviving descendant" means a 1634
devisee or descendant, whichever is applicable, who survives the 1635
testator by at least one hundred twenty hours. 1636

(8) "Testator" includes the donee of a power of appointment 1637
if the power is exercised in the testator's will. 1638

(B)(1) As used in "surviving descendants" in divisions 1639
(B)(2)(a) and (b) of this section, "descendants" means the 1640
descendants of a deceased devisee or class member under the 1641
applicable division who would take under a class gift created in 1642
the testator's will. 1643

(2) Unless a contrary intent appears in the will, if a 1644
devisee fails to survive the testator and is a grandparent, a 1645
descendant of a grandparent, or a stepchild of either the testator 1646
or the donor of a power of appointment exercised by the testator's 1647
will, either of the following applies: 1648

(a) If the devise is not in the form of a class gift and the 1649
deceased devisee leaves surviving descendants, a substitute gift 1650
is created in the devisee's surviving descendants. The surviving 1651

descendants take, per stirpes, the property to which the devisee 1652
would have been entitled had the devisee survived the testator. 1653

(b) If the devise is in the form of a class gift, other than 1654
a devise to "issue," "descendants," "heirs of the body," "heirs," 1655
"next of kin," "relatives," or "family," or a class described by 1656
language of similar import, a substitute gift is created in the 1657
surviving descendants of any deceased devisee. The property to 1658
which the devisees would have been entitled had all of them 1659
survived the testator passes to the surviving devisees and the 1660
surviving descendants of the deceased devisees. Each surviving 1661
devisee takes the share to which the surviving devisee would have 1662
been entitled had the deceased devisees survived the testator. 1663
Each deceased devisee's surviving descendants who are substituted 1664
for the deceased devisee take, per stirpes, the share to which the 1665
deceased devisee would have been entitled had the deceased devisee 1666
survived the testator. For purposes of division (B)(2)(b) of this 1667
section, "deceased devisee" means a class member who failed to 1668
survive the testator by at least one hundred twenty hours and left 1669
one or more surviving descendants. 1670

(C) For purposes of this section, each of the following 1671
applies: 1672

(1) Attaching the word "surviving" or "living" to a devise, 1673
such as a gift "to my surviving (or living) children," is not, in 1674
the absence of other language in the will or other evidence to the 1675
contrary, a sufficient indication of an intent to negate the 1676
application of division (B) of this section. 1677

(2) Attaching other words of survivorship to a devise, such 1678
as "to my child, if my child survives me," is, in the absence of 1679
other language in the will or other evidence to the contrary, a 1680
sufficient indication of an intent to negate the application of 1681
division (B) of this section. 1682

(3) A residuary clause is not a sufficient indication of an intent to negate the application of division (B) of this section unless the will specifically provides that upon lapse or failure the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause.

(4) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power of appointment.

(D) Except as provided in division (A), (B), or (C) of this section, each of the following applies:

(1) A devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(2) If the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

(3) If a residuary devise fails for any reason in its entirety, the residue passes by intestate succession.

(E) This section applies only to outright devises and appointments. Devises and appointments in trust, including to a testamentary trust, are subject to section 5808.19 of the Revised Code.

(F) This section applies to wills of decedents who die on or after the effective date of this section.

Sec. 2109.21. (A) An administrator, special administrator, administrator de bonis non, or administrator with the will annexed

shall be a resident of this state and shall be removed on proof 1713
that the administrator is no longer a resident of this state. 1714

(B)(1) To qualify for appointment as executor or trustee, an 1715
executor or a trustee named in a will or nominated in accordance 1716
with any power of nomination conferred in a will, may be a 1717
resident of this state or, as provided in this division, a 1718
nonresident of this state. To qualify for appointment, a 1719
nonresident executor or trustee named in, or nominated pursuant 1720
to, a will shall be an individual who is related to the maker of 1721
the will by consanguinity or affinity, or a person who resides in 1722
a state that has statutes or rules that authorize the appointment 1723
of a nonresident person who is not related to the maker of a will 1724
by consanguinity or affinity, as an executor or trustee when named 1725
in, or nominated pursuant to, a will. No such executor or trustee 1726
shall be refused appointment or removed solely because the 1727
executor or trustee is not a resident of this state. 1728

The court may require that a nonresident executor or trustee 1729
named in, or nominated pursuant to, a will assure that all of the 1730
assets of the decedent that are in the county at the time of the 1731
death of the decedent will remain in the county until distribution 1732
or until the court determines that the assets may be removed from 1733
the county. 1734

(2) In accordance with this division and section 2129.08 of 1735
the Revised Code, the court shall appoint as an ancillary 1736
administrator a person who is named in the will of a nonresident 1737
decedent, or who is nominated in accordance with any power of 1738
nomination conferred in the will of a nonresident decedent, as a 1739
general executor of the decedent's estate or as executor of the 1740
portion of the decedent's estate located in this state, whether or 1741
not the person so named or nominated is a resident of this state. 1742

To qualify for appointment as an ancillary administrator, a 1743
person who is not a resident of this state and who is named or 1744

nominated as described in this division, shall be an individual 1745
who is related to the maker of the will by consanguinity or 1746
affinity, or a person who resides in a state that has statutes or 1747
rules that authorize the appointment of a nonresident of that 1748
state who is not related to the maker of a will by consanguinity 1749
or affinity, as an ancillary administrator when the nonresident is 1750
named in a will or nominated in accordance with any power of 1751
nomination conferred in a will. If a person who is not a resident 1752
of this state and who is named or nominated as described in this 1753
division so qualifies for appointment as an ancillary 1754
administrator and if the provisions of section 2129.08 of the 1755
Revised Code are satisfied, the court shall not refuse to appoint 1756
the person, and shall not remove the person, as ancillary 1757
administrator solely because the person is not a resident of this 1758
state. 1759

The court may require that an ancillary administrator who is 1760
not a resident of this state and who is named or nominated as 1761
described in this division, assure that all of the assets of the 1762
decedent that are in the county at the time of the death of the 1763
decedent will remain in the county until distribution or until the 1764
court determines that the assets may be removed from the county. 1765

(C)(1) A guardian shall be a resident of this state, except 1766
that the court may appoint a nonresident of this state as a 1767
guardian if any of the following applies: 1768

(a) The nonresident is named in a will by a parent of a 1769
minor. 1770

(b) The nonresident is selected by a minor over the age of 1771
fourteen years as provided by section 2111.12 of the Revised Code. 1772

(c) The nonresident is nominated in or pursuant to a durable 1773
power of attorney ~~as described in division (D) of~~ under section 1774
~~1337.09~~ 1337.24 of the Revised Code or a writing as described in 1775

division (A) of section 2111.121 of the Revised Code. 1776

(2) A guardian, other than a guardian named in a will by a 1777
parent of a minor, selected by a minor over the age of fourteen 1778
years, or nominated in or pursuant to a durable power of attorney 1779
or writing described in division (C)(1)(c) of this section, may be 1780
removed on proof that the guardian is no longer a resident of this 1781
state. 1782

(D) Any fiduciary, whose residence qualifications are not 1783
defined in this section, shall be a resident of this state, and 1784
shall be removed on proof that the fiduciary is no longer a 1785
resident of this state. 1786

(E) Any fiduciary, in order to assist in the carrying out of 1787
the fiduciary's fiduciary duties, may employ agents who are not 1788
residents of the county or of this state. 1789

Sec. 2111.02. (A) When found necessary, the probate court on 1790
its own motion or on application by any interested party shall 1791
appoint, subject to divisions (C) and (D) of this section and to 1792
section 2109.21 and division (B) of section 2111.121 of the 1793
Revised Code, a guardian of the person, the estate, or both, of a 1794
minor or incompetent, provided the person for whom the guardian is 1795
to be appointed is a resident of the county or has a legal 1796
settlement in the county and, except in the case of a minor, has 1797
had the opportunity to have the assistance of counsel in the 1798
proceeding for the appointment of such guardian. An interested 1799
party includes, but is not limited to, a person nominated in a 1800
durable power of attorney ~~as described in division (D) of~~ under 1801
section ~~1337.09~~ 1337.24 of the Revised Code or in a writing as 1802
described in division (A) of section 2111.121 of the Revised Code. 1803

Except when the guardian of an incompetent is an agency under 1804
contract with the department of developmental disabilities for the 1805
provision of protective services under sections 5123.55 to 5123.59 1806

of the Revised Code, the guardian of an incompetent, by virtue of 1807
such appointment, shall be the guardian of the minor children of 1808
the guardian's ward, unless the court appoints some other person 1809
as their guardian. 1810

When the primary purpose of the appointment of a guardian is, 1811
or was, the collection, disbursement, or administration of moneys 1812
awarded by the veterans administration to the ward, or assets 1813
derived from such moneys, no court costs shall be charged in the 1814
proceeding for the appointment or in any subsequent proceedings 1815
made in pursuance of the appointment, unless the value of the 1816
estate, including the moneys then due under the veterans 1817
administration award, exceeds one thousand five hundred dollars. 1818

(B)(1) If the probate court finds it to be in the best 1819
interest of an incompetent or minor, it may appoint pursuant to 1820
divisions (A) and (C) of this section, on its own motion or on 1821
application by an interested party, a limited guardian with 1822
specific limited powers. The sections of the Revised Code, rules, 1823
and procedures governing guardianships apply to a limited 1824
guardian, except that the order of appointment and letters of 1825
authority of a limited guardian shall state the reasons for, and 1826
specify the limited powers of, the guardian. The court may appoint 1827
a limited guardian for a definite or indefinite period. An 1828
incompetent or minor for whom a limited guardian has been 1829
appointed retains all of the incompetent's or minor's rights in 1830
all areas not affected by the court order appointing the limited 1831
guardian. 1832

(2) If a guardian appointed pursuant to division (A) of this 1833
section is temporarily or permanently removed or resigns, and if 1834
the welfare of the ward requires immediate action, at any time 1835
after the removal or resignation, the probate court may appoint, 1836
ex parte and with or without notice to the ward or interested 1837
parties, an interim guardian for a maximum period of fifteen days. 1838

If the court appoints the interim guardian ex parte or without notice to the ward, the court, at its first opportunity, shall enter upon its journal with specificity the reason for acting ex parte or without notice, and, as soon as possible, shall serve upon the ward a copy of the order appointing the interim guardian. For good cause shown, after notice to the ward and interested parties and after hearing, the court may extend an interim guardianship for a specified period, but not to exceed an additional thirty days.

(3) If a minor or incompetent has not been placed under a guardianship pursuant to division (A) of this section and if an emergency exists, and if it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the minor or incompetent, at any time after it receives notice of the emergency, the court, ex parte, may issue any order that it considers necessary to prevent injury to the person or estate of the minor or incompetent, or may appoint an emergency guardian for a maximum period of seventy-two hours. A written copy of any order issued by a court under this division shall be served upon the incompetent or minor as soon as possible after its issuance. Failure to serve such an order after its issuance or prior to the taking of any action under its authority does not invalidate the order or the actions taken. The powers of an emergency guardian shall be specified in the letters of appointment, and shall be limited to those powers that are necessary to prevent injury to the person or estate of the minor or incompetent. If the court acts ex parte or without notice to the minor or incompetent, the court, at its first opportunity, shall enter upon its journal a record of the case and, with specificity, the reason for acting ex parte or without notice. For good cause shown, after notice to the minor or incompetent and interested parties, and after hearing, the court may extend an emergency guardianship for a specified period, but not to exceed

an additional thirty days. 1872

(C) Prior to the appointment of a guardian or limited 1873
guardian under division (A) or (B)(1) of this section, the court 1874
shall conduct a hearing on the matter of the appointment. The 1875
hearing shall be conducted in accordance with all of the 1876
following: 1877

(1) The proposed guardian or limited guardian shall appear at 1878
the hearing and, if appointed, shall swear under oath that the 1879
proposed guardian or limited guardian has made and will continue 1880
to make diligent efforts to file a true inventory in accordance 1881
with section 2111.14 of the Revised Code and find and report all 1882
assets belonging to the estate of the ward and that the proposed 1883
guardian or limited guardian faithfully and completely will 1884
fulfill the other duties of guardian, including the filing of 1885
timely and accurate reports and accountings; 1886

(2) If the hearing is conducted by a referee, the procedures 1887
set forth in Civil Rule 53 shall be followed; 1888

(3) If the hearing concerns the appointment of a guardian or 1889
limited guardian for an alleged incompetent, the burden of proving 1890
incompetency shall be by clear and convincing evidence; 1891

(4) Upon request of the applicant, the alleged incompetent 1892
for whom the appointment is sought or the alleged incompetent's 1893
counsel, or any interested party, a recording or record of the 1894
hearing shall be made; 1895

(5) Evidence of a less restrictive alternative to 1896
guardianship may be introduced, and when introduced, shall be 1897
considered by the court; 1898

(6) The court may deny a guardianship based upon a finding 1899
that a less restrictive alternative to guardianship exists; 1900

(7) If the hearing concerns the appointment of a guardian or 1901

limited guardian for an alleged incompetent, the alleged	1902
incompetent has all of the following rights:	1903
(a) The right to be represented by independent counsel of the	1904
alleged incompetent's choice;	1905
(b) The right to have a friend or family member of the	1906
alleged incompetent's choice present;	1907
(c) The right to have evidence of an independent expert	1908
evaluation introduced;	1909
(d) If the alleged incompetent is indigent, upon the alleged	1910
incompetent's request:	1911
(i) The right to have counsel and an independent expert	1912
evaluator appointed at court expense;	1913
(ii) If the guardianship, limited guardianship, or standby	1914
guardianship decision is appealed, the right to have counsel	1915
appointed and necessary transcripts for appeal prepared at court	1916
expense.	1917
(D)(1) When a person has been nominated to be a guardian of	1918
the estate of a minor in or pursuant to a durable power of	1919
attorney as described in division (D) of <u>under</u> section 1337.09	1920
<u>1337.24</u> of the Revised Code or a writing as described in division	1921
(A) of section 2111.121 of the Revised Code, the person nominated	1922
has preference in appointment over a person selected by the minor.	1923
A person who has been nominated to be a guardian of the person of	1924
a minor in or pursuant to a durable power of attorney or writing	1925
of that nature does not have preference in appointment over a	1926
person selected by the minor, but the probate court may appoint	1927
the person named in the durable power of attorney or the writing,	1928
the person selected by the minor, or another person as guardian of	1929
the person of the minor.	1930
(2) A person nominated as a guardian of an incompetent adult	1931

child pursuant to a durable power of attorney under section 1932
~~1337.09~~ 1337.24 or pursuant to section 2111.121 of the Revised 1933
Code shall have preference in appointment over a person applying 1934
to be guardian if the person nominated is competent, suitable, and 1935
willing to accept the appointment, and if the incompetent adult 1936
child does not have a spouse or an adult child and has not 1937
designated a guardian prior to the court finding the adult child 1938
incompetent. 1939

Sec. 2111.12. (A) A minor over the age of fourteen years may 1940
select a guardian who shall be appointed if a suitable person. If 1941
such minor fails to select a suitable person, an appointment may 1942
be made without reference to the minor's wishes. The minor shall 1943
not select one person to be the guardian of the minor's estate 1944
only and another to be the guardian of the person only, unless the 1945
court which appoints is of the opinion that the interests of such 1946
minor will thereby be promoted. 1947

(B) A surviving parent by last will in writing may appoint a 1948
guardian for any of the surviving parent's children, whether born 1949
at the time of making the will or afterward, to continue during 1950
the minority of the child or for a less time. 1951

When the father or mother of a minor names a person as 1952
guardian of the estate of such minor in a will, the person named 1953
shall have preference in appointment over the person selected by 1954
such minor. A person named in such a will as guardian of the 1955
person of such minor shall have no preference in appointment over 1956
the person selected by such minor, but in such event the probate 1957
court may appoint the person named in the will, the person 1958
selected by the minor, or some other person. 1959

Whenever a testamentary guardian is appointed, the 1960
testamentary guardian's duties, powers, and liabilities in all 1961
other respects shall be governed by the law regulating guardians 1962

not appointed by will. 1963

(C) A parent pursuant to a durable power of attorney ~~as~~ 1964
~~described in division (D) of~~ under section ~~1337.09~~ 1337.24 or a 1965
writing as described in division (A) of section 2111.121 of the 1966
Revised Code may nominate a person to be a guardian for one or 1967
more of the parent's minor children, whether born at the time of 1968
the making of the petition or afterward. 1969

Sec. 2111.121. (A) A person may nominate in a writing, as 1970
described in this division, another person to be the guardian of 1971
the nominator's person, estate, or both or the guardian of the 1972
person, the estate, or both, of one or more of the nominator's 1973
minor or incompetent adult children, whether born at the time of 1974
the execution of the writing or afterward, subject to notice and a 1975
hearing pursuant to section 2111.02 of the Revised Code. The 1976
nomination is for consideration by a court if proceedings for the 1977
appointment of a guardian of the person, the estate, or both, for 1978
the person making the nomination or if proceedings for the 1979
appointment of a guardian as the guardian of the person, the 1980
estate, or both of one or more of the nominator's minor or 1981
incompetent adult children are commenced at a later time. The 1982
person may authorize, in a writing of that nature, the person 1983
nominated as guardian to nominate a successor guardian for 1984
consideration by a court. The person also may direct, in a writing 1985
of that nature, that bond be waived for a person nominated as 1986
guardian in it or nominated as a successor guardian in accordance 1987
with an authorization in it. 1988

To be effective as a nomination, the writing shall be signed 1989
by the person making the nomination in the presence of two 1990
witnesses; signed by the witnesses; contain, immediately prior to 1991
their signatures, an attestation of the witnesses that the person 1992
making the nomination signed the writing in their presence; and be 1993

acknowledged by the person making the nomination before a notary public. 1994
1995

(B) If a person has nominated, in a writing as described in 1996
division (A) of this section or in a durable power of attorney ~~as~~ 1997
~~described in division (D) of~~ under section ~~1337.09~~ 1337.24 of the 1998
Revised Code, another person to be the guardian of the nominator's 1999
person, estate, or both, and proceedings for the appointment of a 2000
guardian for the person are commenced at a later time, the court 2001
involved shall appoint the person nominated as guardian in the 2002
writing or durable power of attorney most recently executed if the 2003
person nominated is competent, suitable, and willing to accept the 2004
appointment. If the writing or durable power of attorney contains 2005
a waiver of bond, the court shall waive bond of the person 2006
nominated as guardian unless it is of the opinion that the 2007
interest of the trust demands it. 2008

(C) Nomination of a person as a guardian or successor 2009
guardian of the person, the estate, or both of one or more of the 2010
nominator's minor or incompetent adult children under division (A) 2011
of this section, and any subsequent appointment of the guardian or 2012
successor guardian as guardian under section 2111.02 of the 2013
Revised Code, does not vacate the jurisdiction of any other court 2014
that previously may have exercised jurisdiction over the person of 2015
the minor or incompetent adult child. 2016

(D) The writing containing the nomination of a person to be 2017
the guardian of the person, the estate, or both of one or more of 2018
the nominator's minor or incompetent adult children under division 2019
(A) of this section may be filed with the probate court for 2020
safekeeping, and the probate court shall designate the nomination 2021
as the nomination of a standby guardian. 2022

Sec. 3793.31. As used in sections 3793.31 to 3793.39 of the 2023
Revised Code: 2024

<u>(A) "Alcohol and other drug abuse" means alcoholism or drug addiction.</u>	2025 2026
<u>(B) "Alcoholism" and "drug addiction" have the same meanings as in section 3793.01 of the Revised Code.</u>	2027 2028
<u>(C) "Another drug" means a controlled substance as defined in section 3719.01 of the Revised Code or a harmful intoxicant as defined in section 2925.01 of the Revised Code.</u>	2029 2030 2031
<u>(D) "Board of alcohol, drug addiction, and mental health services" means a board of alcohol, drug addiction, and mental health services established under section 340.02 or 340.021 of the Revised Code.</u>	2032 2033 2034 2035
<u>(E) "Danger" or "threat of danger to self, family, or others" means substantial physical harm or threat of substantial physical harm upon self, family, or others.</u>	2036 2037 2038
<u>(F) "Hospital" has the same meaning as in section 3701.01 or 3727.01 of the Revised Code but does not include either a hospital operated by the department of mental health or an inpatient unit licensed by the department.</u>	2039 2040 2041 2042
<u>(G) "Intoxicated" means being under the influence of alcohol, another drug, or both alcohol and another drug and, as a result, having a significantly impaired ability to function.</u>	2043 2044 2045
<u>(H) "Petitioner" means a person who institutes a proceeding under sections 3793.32 to 3793.39 of the Revised Code.</u>	2046 2047
<u>(I) "Probate court" means the probate division of the court of common pleas.</u>	2048 2049
<u>(J) "Qualified health professional" means a person that is properly credentialed or licensed to conduct a drug and alcohol assessment and diagnosis under Ohio law.</u>	2050 2051 2052
<u>(K) "Residence" means the legal residence of a person as determined by applicable principles governing conflicts of law.</u>	2053 2054

(L) "Respondent" means a person alleged in a hearing under sections 3793.32 to 3793.39 of the Revised Code to be a person who is suffering from alcohol and other drug abuse and who should be ordered under those sections to undergo treatment. 2055
2056
2057
2058

(M) "Treatment" means services and programs for the care and rehabilitation of intoxicated persons and persons suffering from alcohol and other drug abuse. "Treatment" includes residential treatment, a halfway house setting, and an intensive outpatient or outpatient level of care. 2059
2060
2061
2062
2063

Sec. 3793.32. A probate court may order involuntary treatment for a person suffering from alcohol and other drug abuse pursuant to the procedures set forth in sections 3793.31 to 3793.39 of the Revised Code. 2064
2065
2066
2067

Sec. 3793.33. No person shall be ordered to undergo treatment under sections 3793.31 to 3793.39 of the Revised Code unless all of the following apply to that person: 2068
2069
2070

(A) The person suffers from alcohol and other drug abuse. 2071

(B) The person presents an imminent danger or imminent threat of danger to self, family, or others as a result of alcohol and other drug abuse, or there exists a substantial likelihood of such a threat in the near future. 2072
2073
2074
2075

(C) The person can reasonably benefit from treatment. 2076

Sec. 3793.34. (A) A person may initiate proceedings for treatment for an individual suffering from alcohol and other drug abuse by filing a verified petition in the probate court and paying a filing fee in the same amount, if any, that is charged for the filing under section 5122.11 of the Revised Code of an affidavit seeking the hospitalization of a person. The petition and all subsequent court documents shall be entitled: "In the 2077
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2080
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2083

interest of (name of respondent)." A spouse, relative, or guardian 2084
of the individual concerning whom the petition is filed shall file 2085
the petition. 2086

(B) A petition filed under division (A) of this section shall 2087
set forth all of the following: 2088

(1) The petitioner's relationship to the respondent; 2089

(2) The respondent's name, residence address, and current 2090
location, if known; 2091

(3) The name and residence of the respondent's parents, if 2092
living and if known, or of the respondent's legal guardian, if any 2093
and if known; 2094

(4) The name and residence of the respondent's spouse, if any 2095
and if known; 2096

(5) The name and residence of the person having custody of 2097
the respondent, if any, or if no such person is known, the name 2098
and residence of a near relative or a statement that the person is 2099
unknown; 2100

(6) The petitioner's belief, including the factual basis for 2101
the belief, that the respondent is suffering from alcohol and 2102
other drug abuse and presents an imminent danger or imminent 2103
threat of danger to self, family, or others if not treated for 2104
alcohol or other drug abuse. 2105

(C) Any petition filed pursuant to divisions (A) and (B) of 2106
this section shall be accompanied by a guarantee, signed by the 2107
petitioner or another person authorized under division (A) of this 2108
section, obligating that person to pay all costs for treatment of 2109
the respondent for alcohol and other drug abuse that is ordered by 2110
the court and to pay any other costs of the respondent that are 2111
associated with a hearing conducted in accordance with section 2112
3793.35 of the Revised Code and that the court determines to be 2113

appropriate. 2114

Sec. 3793.35. (A) Upon receipt of a petition filed under 2115
section 3793.34 of the Revised Code and the payment of the 2116
appropriate filing fee, if any, the probate court shall examine 2117
the petitioner under oath as to the contents of the petition. 2118

(B) If, after reviewing the allegations contained in the 2119
petition and examining the petitioner under oath, it appears to 2120
the probate court that there is probable cause to believe the 2121
respondent should be ordered to undergo treatment, then the court 2122
shall do all of the following: 2123

(1) Schedule a hearing to be held within seven days to 2124
determine if there is probable cause to believe that the 2125
respondent should be ordered to undergo treatment for alcohol and 2126
other drug abuse; 2127

(2) Notify the respondent, the legal guardian, if any and if 2128
known, and the spouse, parents, or nearest relative or friend of 2129
the respondent concerning the allegations and contents of the 2130
petition and of the date and purpose of the hearing; 2131

(3) Notify the respondent that the respondent may retain 2132
counsel and have independent expert evaluation of the person's 2133
physical and mental condition and, if the person is unable to 2134
obtain an attorney or independent expert evaluation, that the 2135
respondent may be represented by court-appointed counsel or have 2136
independent expert evaluation of the person's physical or mental 2137
condition, or both, at public expense if the person is indigent 2138
and upon appointment of an attorney to represent the respondent 2139
notify the respondent of the name, address, and telephone number 2140
of the attorney appointed to represent the respondent; 2141

(4) Cause the respondent to be examined not later than 2142
twenty-four hours before the hearing date by a physician for the 2143

purpose of a physical examination and by a qualified health professional for the purpose of a drug and alcohol addiction assessment and diagnosis; 2144
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(5) Conduct the hearing. 2147

(C) The physician and qualified health professional who examine the respondent pursuant to division (B)(4) of this section or who are obtained by or appointed for the respondent pursuant to division (B)(3) of this section shall certify their findings to the court within twenty-four hours of the examinations. The findings of each qualified health professional shall include a recommendation for treatment if the qualified health professional determines that treatment is necessary. 2148
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(D) If the probate court finds upon completion of the hearing held under division (B) of this section that the respondent should be ordered to undergo treatment, the court shall order the treatment at a level of care and for a length of time recommended by the qualified health professional who conducted the examination of the respondent under this section. Failure of a respondent to undergo treatment ordered pursuant to this division is contempt of court. 2156
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(E) If, at any time after a petition is filed under section 3793.34 of the Revised Code, the probate court finds that there is not probable cause to continue treatment or if the petitioner withdraws the petition, then the court shall dismiss the proceedings against the respondent. 2164
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Sec. 3793.36. (A) Following an examination by a qualified health professional and a certification by that professional that the person meets the criteria specified in section 3793.33 of the Revised Code, a probate court may order the person hospitalized for a period not to exceed seventy-two hours if the court finds by clear and convincing evidence that the person presents an imminent 2169
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threat of danger to self, family, or others as a result of alcohol 2175
and other drug abuse. However, if the hearing to be held under 2176
section 3793.35 of the Revised Code will not be held within 2177
seventy-two hours, the court may order the person hospitalized 2178
until the hearing. In making its order, the court shall inform the 2179
person that the person may immediately make a reasonable number of 2180
telephone calls or use other reasonable means to contact an 2181
attorney, a licensed physician, or a qualified health 2182
professional, to contact any other person or persons to secure 2183
representation by counsel, or to obtain medical or psychological 2184
assistance and that the person will be provided assistance in 2185
making calls if the assistance is needed and requested. 2186

(B) Any person who has been admitted to a hospital under 2187
division (A) of this section shall be released from the hospital 2188
immediately upon the expiration of the time period established by 2189
the court for the hospitalization. 2190

(C) No person ordered hospitalized under this section shall 2191
be held in jail pending transportation to the hospital or 2192
evaluation unless the probate court previously has found the 2193
person to be in contempt of court for either failure to undergo 2194
treatment or failure to appear at the evaluation ordered pursuant 2195
to section 3793.35 of the Revised Code. 2196

Sec. 3793.37. When a probate court is authorized to issue an 2197
order that the respondent be transported to a hospital, the court 2198
may issue a summons. If the respondent fails to attend an 2199
examination scheduled before the hearing under section 3793.35 of 2200
the Revised Code, the court shall issue a summons. A summons so 2201
issued shall be directed to the respondent and shall command the 2202
respondent to appear at a time and place specified in the summons. 2203
If a respondent who has been summoned fails to appear at the 2204
hospital or the examination, the probate court may order the 2205

sheriff or any other peace officer to transport the respondent to 2206
a hospital on the list provided under section 3793.38 of the 2207
Revised Code for treatment. The sheriff or any other peace 2208
officer, upon agreement of a person authorized by the peace 2209
officer, may authorize a board of alcohol, drug addiction, and 2210
mental health services, a private agency under contract with a 2211
board of alcohol, drug addiction, and mental health services, or 2212
an ambulance service designated by a board of alcohol, drug 2213
addiction, and mental health services to transport the respondent 2214
to the hospital. The transportation costs of the sheriff, other 2215
peace officer, ambulance service, or other private agency under 2216
contract with the board of alcohol and drug addiction services 2217
shall be included in the costs of treatment for alcohol and other 2218
drug abuse to be paid by the petitioner. 2219

Sec. 3793.38. Each board of alcohol, drug addiction, and 2220
mental health services on at least an annual basis shall submit 2221
each of the following lists to the clerk of the probate court in 2222
each county served by the board: 2223

(A) A list of all hospitals in the counties served by the 2224
board that are able and willing to take respondents ordered to 2225
undergo seventy-two hours of treatment and observation pursuant to 2226
section 3793.36 of the Revised Code; 2227

(B) A list of hospitals and treatment providers in the 2228
counties served by the board that are able and willing to provide 2229
treatment for alcohol and other drug abuse ordered pursuant to 2230
section 3793.35 of the Revised Code. 2231

Sec. 3793.39. Sections 3793.12, 3793.13, and 3793.14 of the 2232
Revised Code apply to a person who is ordered to undergo treatment 2233
under sections 3793.31 to 3793.39 of the Revised Code. 2234

Sec. 5301.071. No instrument conveying real estate property, 2235
or any interest ~~therein~~ in real property, and of record in the 2236
office of the county recorder of the county within this state in 2237
which ~~such that~~ real estate property is situated shall be ~~deemed~~ 2238
considered defective nor shall the validity of ~~such that~~ 2239
conveyance be affected because of any of the following: 2240

(A) The dower interest of the spouse of any grantor was not 2241
specifically released, but ~~such that~~ spouse executed ~~said the~~ 2242
instrument in the manner provided in section 5301.01 of the 2243
Revised Code. 2244

(B) The officer taking the acknowledgment of ~~such the~~ 2245
instrument having an official seal did not affix ~~such that~~ seal to 2246
the certificate of acknowledgment. 2247

(C) The certificate of acknowledgment is not on the same 2248
sheet of paper as the instrument. 2249

(D) The executor, administrator, guardian, assignee, or 2250
trustee making ~~such the~~ instrument signed or acknowledged the same 2251
individually instead of in ~~his~~ a representative or official 2252
capacity. 2253

(E)(1) The grantor or grantee of the instrument is a trust 2254
rather than the trustee or trustees of the trust if the trust 2255
named as grantor or grantee has been duly created under the laws 2256
of the state of its existence at the time of the conveyance and a 2257
memorandum of trust that complies with section 5301.255 of the 2258
Revised Code and contains a description of the real property 2259
conveyed by that instrument is recorded in the office of the 2260
county recorder in which the instrument of conveyance is recorded. 2261
Upon compliance with division (E)(1) of this section, a conveyance 2262
to a trust shall be considered to be a conveyance to the trustee 2263
or trustees of the trust in furtherance of the manifest intention 2264
of the parties. 2265

(2) Except as otherwise provided in division (E)(2) of this section, division (E)(1) of this section shall be given retroactive effect to the fullest extent permitted under section 28 of Article II, Ohio Constitution. Division (E) of this section shall not be given retroactive or curative effect if to do so would invalidate or supersede any instrument that conveys real property, or any interest in the real property, recorded in the office of the county recorder in which that real property is situated prior to the date of recording of a curative memorandum of trust or the effective date of this section, whichever event occurs later.

Sec. 5747.02. (A) For the purpose of providing revenue for the support of schools and local government functions, to provide relief to property taxpayers, to provide revenue for the general revenue fund, and to meet the expenses of administering the tax levied by this chapter, there is hereby levied on every individual, trust, and estate residing in or earning or receiving income in this state, on every individual, trust, and estate earning or receiving lottery winnings, prizes, or awards pursuant to Chapter 3770. of the Revised Code, and on every individual, trust, and estate otherwise having nexus with or in this state under the Constitution of the United States, an annual tax measured in the case of individuals by Ohio adjusted gross income less an exemption for the taxpayer, the taxpayer's spouse, and each dependent as provided in section 5747.025 of the Revised Code; measured in the case of trusts by modified Ohio taxable income under division (D) of this section; and measured in the case of estates by Ohio taxable income. The tax imposed by this section on the balance thus obtained is hereby levied as follows:

(1) For taxable years beginning in 2004:

OHIO ADJUSTED GROSS INCOME LESS

EXEMPTIONS (INDIVIDUALS)		
OR		2297
MODIFIED OHIO		2298
TAXABLE INCOME (TRUSTS)		2299
OR		2300
OHIO TAXABLE INCOME (ESTATES)	TAX	2301
\$5,000 or less	.743%	2302
More than \$5,000 but not more than \$10,000	\$37.15 plus 1.486% of the amount in excess of \$5,000	2303
More than \$10,000 but not more than \$15,000	\$111.45 plus 2.972% of the amount in excess of \$10,000	2304
More than \$15,000 but not more than \$20,000	\$260.05 plus 3.715% of the amount in excess of \$15,000	2305
More than \$20,000 but not more than \$40,000	\$445.80 plus 4.457% of the amount in excess of \$20,000	2306
More than \$40,000 but not more than \$80,000	\$1,337.20 plus 5.201% of the amount in excess of \$40,000	2307
More than \$80,000 but not more than \$100,000	\$3,417.60 plus 5.943% of the amount in excess of \$80,000	2308
More than \$100,000 but not more than \$200,000	\$4,606.20 plus 6.9% of the amount in excess of \$100,000	2309
More than \$200,000	\$11,506.20 plus 7.5% of the amount in excess of \$200,000	2310
(2) For taxable years beginning in 2005:		2311
OHIO ADJUSTED GROSS INCOME LESS		2312
EXEMPTIONS (INDIVIDUALS)		
OR		2313
MODIFIED OHIO		2314
TAXABLE INCOME (TRUSTS)		2315
OR		2316
OHIO TAXABLE INCOME (ESTATES)	TAX	2317
\$5,000 or less	.712%	2318
More than \$5,000 but not more	\$35.60 plus 1.424% of the amount	2319

than \$10,000	in excess of \$5,000	
More than \$10,000 but not more than \$15,000	\$106.80 plus 2.847% of the amount in excess of \$10,000	2320
More than \$15,000 but not more than \$20,000	\$249.15 plus 3.559% of the amount in excess of \$15,000	2321
More than \$20,000 but not more than \$40,000	\$427.10 plus 4.27% of the amount in excess of \$20,000	2322
More than \$40,000 but not more than \$80,000	\$1,281.10 plus 4.983% of the amount in excess of \$40,000	2323
More than \$80,000 but not more than \$100,000	\$3,274.30 plus 5.693% of the amount in excess of \$80,000	2324
More than \$100,000 but not more than \$200,000	\$4,412.90 plus 6.61% of the amount in excess of \$100,000	2325
More than \$200,000	\$11,022.90 plus 7.185% of the amount in excess of \$200,000	2326
(3) For taxable years beginning in 2006:		2327
OHIO ADJUSTED GROSS INCOME LESS EXEMPTIONS (INDIVIDUALS)		2328
OR		2329
MODIFIED OHIO TAXABLE INCOME (TRUSTS)		2330
OR		2331
OHIO TAXABLE INCOME (ESTATES)	TAX	2332
\$5,000 or less	.681%	2333
More than \$5,000 but not more than \$10,000	\$34.05 plus 1.361% of the amount in excess of \$5,000	2334
More than \$10,000 but not more than \$15,000	\$102.10 plus 2.722% of the amount in excess of \$10,000	2335
More than \$15,000 but not more than \$20,000	\$238.20 plus 3.403% of the amount in excess of \$15,000	2336
More than \$20,000 but not more than \$40,000	\$408.35 plus 4.083% of the amount in excess of \$20,000	2337
More than \$40,000 but not more	\$1,224.95 plus 4.764% of the	2338
		2339

than \$80,000	amount in excess of \$40,000	
More than \$80,000 but not more than \$100,000	\$3,130.55 plus 5.444% of the amount in excess of \$80,000	2340
More than \$100,000 but not more than \$200,000	\$4,219.35 plus 6.32% of the amount in excess of \$100,000	2341
More than \$200,000	\$10,539.35 plus 6.87% of the amount in excess of \$200,000	2342
(4) For taxable years beginning in 2007:		2343
OHIO ADJUSTED GROSS INCOME LESS EXEMPTIONS (INDIVIDUALS)		2344
OR		2345
MODIFIED OHIO TAXABLE INCOME (TRUSTS)		2346
OR		2347
OHIO TAXABLE INCOME (ESTATES)		2348
	TAX	2349
\$5,000 or less	.649%	2350
More than \$5,000 but not more than \$10,000	\$32.45 plus 1.299% of the amount in excess of \$5,000	2351
More than \$10,000 but not more than \$15,000	\$97.40 plus 2.598% of the amount in excess of \$10,000	2352
More than \$15,000 but not more than \$20,000	\$227.30 plus 3.247% of the amount in excess of \$15,000	2353
More than \$20,000 but not more than \$40,000	\$389.65 plus 3.895% of the amount in excess of \$20,000	2354
More than \$40,000 but not more than \$80,000	\$1,168.65 plus 4.546% of the amount in excess of \$40,000	2355
More than \$80,000 but not more than \$100,000	\$2,987.05 plus 5.194% of the amount in excess of \$80,000	2356
More than \$100,000 but not more than \$200,000	\$4,025.85 plus 6.031% of the amount in excess of \$100,000	2357
More than \$200,000	\$10,056.85 plus 6.555% of the amount in excess of \$200,000	2358
(5) For taxable years beginning in 2008, 2009, or 2010:		2359

OHIO ADJUSTED GROSS INCOME LESS		2360
EXEMPTIONS (INDIVIDUALS)		
OR		2361
MODIFIED OHIO		2362
TAXABLE INCOME (TRUSTS)		2363
OR		2364
OHIO TAXABLE INCOME (ESTATES)	TAX	2365
\$5,000 or less	.618%	2366
More than \$5,000 but not more than \$10,000	\$30.90 plus 1.236% of the amount in excess of \$5,000	2367
More than \$10,000 but not more than \$15,000	\$92.70 plus 2.473% of the amount in excess of \$10,000	2368
More than \$15,000 but not more than \$20,000	\$216.35 plus 3.091% of the amount in excess of \$15,000	2369
More than \$20,000 but not more than \$40,000	\$370.90 plus 3.708% of the amount in excess of \$20,000	2370
More than \$40,000 but not more than \$80,000	\$1,112.50 plus 4.327% of the amount in excess of \$40,000	2371
More than \$80,000 but not more than \$100,000	\$2,843.30 plus 4.945% of the amount in excess of \$80,000	2372
More than \$100,000 but not more than \$200,000	\$3,832.30 plus 5.741% of the amount in excess of \$100,000	2373
More than \$200,000	\$9,573.30 plus 6.24% of the amount in excess of \$200,000	2374
(6) For taxable years beginning in 2011 or thereafter:		2375
OHIO ADJUSTED GROSS INCOME LESS		2376
EXEMPTIONS (INDIVIDUALS)		
OR		2377
MODIFIED OHIO		2378
TAXABLE INCOME (TRUSTS)		2379
OR		2380
OHIO TAXABLE INCOME (ESTATES)	TAX	2381
\$5,000 or less	.587%	2382

More than \$5,000 but not more than \$10,000	\$29.35 plus 1.174% of the amount in excess of \$5,000	2383
More than \$10,000 but not more than \$15,000	\$88.05 plus 2.348% of the amount in excess of \$10,000	2384
More than \$15,000 but not more than \$20,000	\$205.45 plus 2.935% of the amount in excess of \$15,000	2385
More than \$20,000 but not more than \$40,000	\$352.20 plus 3.521% of the amount in excess of \$20,000	2386
More than \$40,000 but not more than \$80,000	\$1,056.40 plus 4.109% of the amount in excess of \$40,000	2387
More than \$80,000 but not more than \$100,000	\$2,700.00 plus 4.695% of the amount in excess of \$80,000	2388
More than \$100,000 but not more than \$200,000	\$3,639.00 plus 5.451% of the amount in excess of \$100,000	2389
More than \$200,000	\$9,090.00 plus 5.925% of the amount in excess of \$200,000	2390

In July of each year, beginning in 2010, the tax commissioner shall adjust the income amounts prescribed in this division by multiplying the percentage increase in the gross domestic product deflator computed that year under section 5747.025 of the Revised Code by each of the income amounts resulting from the adjustment under this division in the preceding year, adding the resulting product to the corresponding income amount resulting from the adjustment in the preceding year, and rounding the resulting sum to the nearest multiple of fifty dollars. The tax commissioner also shall recompute each of the tax dollar amounts to the extent necessary to reflect the adjustment of the income amounts. The rates of taxation shall not be adjusted.

The adjusted amounts apply to taxable years beginning in the calendar year in which the adjustments are made. The tax commissioner shall not make such adjustments in any year in which the amount resulting from the adjustment would be less than the amount resulting from the adjustment in the preceding year.

(B) If the director of budget and management makes a certification to the tax commissioner under division (B) of section 131.44 of the Revised Code, the amount of tax as determined under division (A) of this section shall be reduced by the percentage prescribed in that certification for taxable years beginning in the calendar year in which that certification is made.

(C) The levy of this tax on income does not prevent a municipal corporation, a joint economic development zone created under section 715.691, or a joint economic development district created under section 715.70 or 715.71 or sections 715.72 to 715.81 of the Revised Code from levying a tax on income.

(D) This division applies only to taxable years of a trust beginning in 2002 or thereafter.

(1) The tax imposed by this section on a trust shall be computed by multiplying the Ohio modified taxable income of the trust by the rates prescribed by division (A) of this section.

(2) A ~~nonresident~~ resident trust may claim a credit against the tax computed under division (D) of this section equal to the lesser of (1) the tax paid to another state or the District of Columbia on the ~~nonresident~~ resident trust's modified nonbusiness income, other than the portion of the ~~nonresident~~ resident trust's nonbusiness income that is qualifying investment income as defined in section 5747.012 of the Revised Code, or (2) the effective tax rate, based on modified Ohio taxable income, multiplied by the ~~nonresident~~ resident trust's modified nonbusiness income other than the portion of the ~~nonresident~~ resident trust's nonbusiness income that is qualifying investment income. The credit applies before any other applicable credits.

(3) The credits enumerated in divisions (A)(1) to (13) of section 5747.98 of the Revised Code do not apply to a trust

subject to division (D) of this section. Any credits enumerated in 2439
other divisions of section 5747.98 of the Revised Code apply to a 2440
trust subject to division (D) of this section. To the extent that 2441
the trust distributes income for the taxable year for which a 2442
credit is available to the trust, the credit shall be shared by 2443
the trust and its beneficiaries. The tax commissioner and the 2444
trust shall be guided by applicable regulations of the United 2445
States treasury regarding the sharing of credits. 2446

(E) For the purposes of this section, "trust" means any trust 2447
described in Subchapter J of Chapter 1 of the Internal Revenue 2448
Code, excluding trusts that are not irrevocable as defined in 2449
division (I)(3)(b) of section 5747.01 of the Revised Code and that 2450
have no modified Ohio taxable income for the taxable year, 2451
charitable remainder trusts, qualified funeral trusts and preneed 2452
funeral contract trusts established pursuant to sections 4717.31 2453
to 4717.38 of the Revised Code that are not qualified funeral 2454
trusts, endowment and perpetual care trusts, qualified settlement 2455
trusts and funds, designated settlement trusts and funds, and 2456
trusts exempted from taxation under section 501(a) of the Internal 2457
Revenue Code. 2458

Sec. 5801.10. (A) As used in this section, "creditor" means 2459
any of the following: 2460

(1) A person holding a debt or security for a debt entered 2461
into by a trustee on behalf of the trust; 2462

(2) A person holding a debt secured by one or more assets of 2463
the trust; 2464

(3) A person having a claim against the trustee or the assets 2465
of the trust under section 5805.06 of the Revised Code; 2466

(4) A person who has attached through legal process a 2467
beneficiary's interest in the trust. 2468

(B) The parties to an agreement under this section shall be 2469
all of the following, or their representatives under the 2470
representation provisions of Chapter 5803. of the Revised Code, 2471
except that only the settlor and any trustee are required to be 2472
parties to an amendment of any revocable trust: 2473

(1) The settlor if living and if no adverse income or 2474
transfer tax results would arise from the settlor's participation; 2475

(2) All beneficiaries; 2476

(3) All currently serving trustees; 2477

(4) Creditors, if their interest is to be affected by the 2478
agreement. 2479

(C) The persons specified in division (B) of this section may 2480
by written instrument enter into an agreement with respect to any 2481
matter concerning the construction of, administration of, or 2482
distributions under the terms of the trust, the investment of 2483
income or principal held by the trustee, or other matters. The 2484
agreement may not effect a termination of the trust before the 2485
date specified for the trust's termination in the terms of the 2486
trust, change the interests of the beneficiaries in the trust 2487
except as necessary to effect a modification described in division 2488
(C)(5) or (6) of this section, or include terms and conditions 2489
that could not be properly approved by the court under Chapters 2490
5801. to 5811. of the Revised Code or other applicable law. The 2491
invalidity of any provision of the agreement does not affect the 2492
validity of other provisions of the agreement. Matters that may be 2493
resolved by a private settlement agreement include, but are not 2494
limited to, all of the following: 2495

(1) Determining classes of creditors, beneficiaries, heirs, 2496
next of kin, or other persons; 2497

(2) Resolving disputes arising out of the administration or 2498
distribution under the terms of the trust, including disputes over 2499

the construction of the language of the trust instrument or 2500
construction of the language of other writings that affect the 2501
terms of the trust; 2502

(3) Granting to the trustee necessary or desirable powers not 2503
granted in the terms of the trust or otherwise provided by law, to 2504
the extent that those powers either are not inconsistent with the 2505
express provisions or purposes of the terms of the trust or, if 2506
inconsistent with the express provisions or purposes of the terms 2507
of the trust, are necessary for the due administration of the 2508
terms of the trust; 2509

(4) Modifying the terms of the trust, if the modification is 2510
not inconsistent with any dominant purpose or objective of the 2511
trust; 2512

(5) Modifying the terms of the trust in the manner required 2513
to qualify the gift under the terms of the trust for the 2514
charitable estate or gift tax deduction permitted by federal law, 2515
including the addition of mandatory governing instrument 2516
requirements for a charitable remainder trust as required by the 2517
Internal Revenue Code and regulations promulgated under it in any 2518
case in which all parties interested in the trust have submitted 2519
written agreements to the proposed changes or written disclaimer 2520
of interest; 2521

(6) Modifying the terms of the trust in the manner required 2522
to qualify any gift under the terms of the trust for the estate 2523
tax marital deduction available to noncitizen spouses, including 2524
the addition of mandatory governing instrument requirements for a 2525
qualified domestic trust under section 2056A of the Internal 2526
Revenue Code and regulations promulgated under it in any case in 2527
which all parties interested in the trust have submitted written 2528
agreements to the proposed changes or written disclaimer of 2529
interest; 2530

(7) Resolving any other matter that arises under Chapters 5801. to 5811. of the Revised Code.	2531 2532
(D) No agreement shall be entered into under this section affecting the rights of a creditor without the creditor's consent or affecting the collection rights of federal, state, or local taxing authorities.	2533 2534 2535 2536
(E) Any agreement entered into under this section that complies with the requirements of division (C) of this section shall be final and binding on the trustee, the settlor if living, all beneficiaries, creditors who are parties to the agreement, and their heirs, successors, and assigns.	2537 2538 2539 2540 2541
(F) Notwithstanding anything in this section, in division (D) of section 5803.03 of the Revised Code, or in any other rule of law to the contrary, a trustee serving under the terms of the trust shall only represent its own individual or corporate interests in negotiating or entering into an agreement subject to this section. No trustee serving under the terms of the trust shall be considered to represent any settlor, beneficiary, or the interests of any settlor or beneficiary in negotiating or entering into an agreement subject to this section.	2542 2543 2544 2545 2546 2547 2548 2549 2550
(G) Any party to a private settlement agreement entered into under this section may request the court to approve the agreement, to determine whether the representation as provided in Chapter 5803. of the Revised Code was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.	2551 2552 2553 2554 2555 2556
(H) If an agreement entered into under this section contains a provision requiring binding arbitration of any disputes arising under the agreement, the provision is enforceable.	2557 2558 2559
(I) Nothing in this section affects any of the following:	2560
(1) The right of a beneficiary to disclaim under section	2561

5815.36 of the Revised Code;	2562
(2) The termination or modification of a trust under section 5804.10, 5804.11, 5804.12, 5804.13, 5804.14, 5804.15, or 5804.16 of the Revised Code;	2563 2564 2565
(3) The ability of a trustee to divide or consolidate a trust under section 5804.17 of the Revised Code;	2566 2567
<u>(4) The power of the trustee to make distributions pursuant to section 5808.18 of the Revised Code.</u>	2568 2569
(J) Nothing in this section restricts or limits the jurisdiction of any court to dispose of matters not covered by agreements under this section or to supervise the acts of trustees appointed by that court.	2570 2571 2572 2573
(K) This section shall be liberally construed to favor the validity and enforceability of agreements entered into under it.	2574 2575
(L) A trustee serving under the trust instrument is not liable to any third person arising from any loss due to that trustee's actions or inactions taken or omitted in good faith reliance on the terms of an agreement entered into under this section.	2576 2577 2578 2579 2580
(M) This section does not apply to any of the following:	2581
(1) A charitable trust that has one or more charitable organizations as qualified beneficiaries;	2582 2583
(2) A charitable trust the terms of which authorize or direct the trustee to distribute trust income or principal to one or more charitable organizations to be selected by the trustee, or for one or more charitable purposes described in division (A) of section 5804.05 of the Revised Code, if any of the following apply:	2584 2585 2586 2587 2588
(a) The distributions may be made on the date that an agreement under this section would be entered into.	2589 2590
(b) The distributions could be made on the date that an	2591

agreement under this section would be entered into if the 2592
interests of the current beneficiaries of the trust terminated on 2593
that date, but the termination of those interests would not cause 2594
the trust to terminate. 2595

(c) The distributions could be made on the date that an 2596
agreement under this section would be entered into if the trust 2597
terminated on that date. 2598

Sec. 5808.14. (A) The judicial standard of review for 2599
discretionary trusts is that the trustee shall exercise a 2600
discretionary power reasonably, in good faith, and in accordance 2601
with the terms and purposes of the trust and the interests of the 2602
beneficiaries, except that with respect to distribution decisions 2603
a reasonableness standard shall not be applied to the exercise of 2604
discretion by the trustee of a wholly discretionary trust. The 2605
greater the grant of discretion by the settlor to the trustee, the 2606
broader the range of permissible conduct by the trustee in 2607
exercising it. 2608

(B) Subject to division (D) of this section, and unless the 2609
terms of the trust expressly indicate that a rule in this division 2610
does not apply: 2611

(1) A person other than a settlor who is a beneficiary and 2612
trustee of a trust that confers on the trustee a power to make 2613
discretionary distributions to or for the trustee's personal 2614
benefit may exercise the power only in accordance with an 2615
ascertainable standard. 2616

(2) A trustee may not exercise a power to make discretionary 2617
distributions to satisfy a legal obligation of support that the 2618
trustee personally owes another person. 2619

(C) A power whose exercise is limited or prohibited by 2620
division (B) of this section may be exercised by a majority of the 2621

remaining trustees whose exercise of the power is not so limited 2622
or prohibited. If the power of all trustees is so limited or 2623
prohibited, the court may appoint a special fiduciary with 2624
authority to exercise the power. 2625

(D) Division (B) of this section does not apply to any of the 2626
following: 2627

(1) A power held by the settlor's spouse who is the trustee 2628
of a trust for which a marital deduction, as defined in section 2629
2056(b)(5) or 2523(e) of the Internal Revenue Code, was previously 2630
allowed; 2631

(2) Any trust during any period that the trust may be revoked 2632
or amended by its settlor; 2633

(3) A trust if contributions to the trust qualify for the 2634
annual exclusion under section 2503(c) of the Internal Revenue 2635
Code. 2636

(E) For purposes of division (A) of this section, a trustee 2637
who acts reasonably and in good faith in exercising the power to 2638
distribute trust income or principal to the trustee of a second 2639
trust in accordance with division (A) or (B) of section 5808.18 of 2640
the Revised Code is presumed to have acted in accordance with the 2641
terms and purposes of the trust and the interests of the 2642
beneficiaries. 2643

Sec. 5808.17. (A) Upon termination or partial termination of 2644
a trust, the trustee may send to the beneficiaries a proposal for 2645
distribution. The right of any beneficiary to object to the 2646
proposed distribution terminates if the beneficiary does not 2647
notify the trustee of an objection within thirty days after the 2648
proposal was sent but only if the proposal informed the 2649
beneficiary of the right to object and of the time allowed for 2650
objection. 2651

(B) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(C) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent that it was induced by improper conduct of the trustee or that the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

(D) If a beneficiary who was entitled to receive a distribution is deceased, the beneficiary's death did not terminate the beneficiary's right to receive the distribution, and an administration of the beneficiary's estate is open, the trustee shall make the distribution to the personal representative of the beneficiary's estate. If a beneficiary who was entitled to receive a distribution is deceased, the beneficiary's death did not terminate the beneficiary's right to receive the distribution, and an administration of the beneficiary's estate is not open, the trustee, without liability, may make the distribution directly to the beneficiary's heirs or devisees without requiring the opening or re-opening of estate administration proceedings if the trustee does not know of an adverse claim to the distribution and one of the following applies:

(1) The beneficiary's estate was administered as an intestate estate in the jurisdiction in which the beneficiary was domiciled at death, and the trustee does both of the following:

(a) Distributes the personal property included in the distribution to the person or persons who were determined to be the heirs of the beneficiary in that administration, in the same manner as the personal property would have been distributed if it had been part of the beneficiary's intestate estate;

(b) Distributes the real property included in the 2684
distribution to the person or persons the trustee reasonably 2685
determines were the beneficiary's heirs under the statutes of 2686
descent and distribution, in effect at the time of the 2687
beneficiary's death, of the jurisdiction or jurisdictions in which 2688
the real property is located. 2689

(2) The beneficiary's estate was administered as a testate 2690
estate in the jurisdiction in which the deceased beneficiary was 2691
domiciled at death, and the trustee does both of the following: 2692

(a) Distributes the personal property included in the 2693
distribution to the residuary devisee or devisees under the 2694
beneficiary's will, in the same manner as the personal property 2695
would have been distributed in that administration if it had been 2696
part of the beneficiary's testate estate; 2697

(b) Distributes the real property included in the 2698
distribution to the person or persons the trustee reasonably 2699
determines would have received the real property under the law of 2700
the jurisdiction or jurisdictions in which the real property is 2701
located. 2702

(3) Division (D)(1) or (2) of this section does not apply, 2703
the beneficiary's death occurred at least six months before the 2704
trustee makes the distribution, and all of the following apply: 2705

(a) The trustee determines that the beneficiary had created a 2706
trust during the beneficiary's life that remained in existence at 2707
the beneficiary's death. 2708

(b) The beneficiary had executed a will that the trustee 2709
reasonably determines would have been admitted to probate if it 2710
had been offered for probate. 2711

(c) The beneficiary's will described in division (D)(3)(b) of 2712
this section devised the residue of the beneficiary's estate to 2713
the trustee of the trust described in division (D)(3)(a) of this 2714

section to be held under the terms of that trust. 2715

(d) The trustee makes the distribution to the trustee of the trust described in division (D)(3)(a) of this section. 2716
2717

(4) Division (D)(1), (2), or (3) of this section does not apply, the beneficiary's death occurred at least six months before the trustee makes the distribution, and all of the following apply: 2718
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(a) The trustee, exercising reasonable diligence, determines that an administration of the beneficiary's estate has not been commenced in the jurisdiction in which the trustee reasonably determines the beneficiary was domiciled at death. 2722
2723
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(b) The trustee does not know of an administration of the beneficiary's estate having been commenced in any other jurisdiction. 2726
2727
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(c) The trustee does not know of a purported last will and testament of the beneficiary. 2729
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(d) The trustee does both of the following: 2731

(i) Distributes the personal property included in the distribution to the person or persons the trustee reasonably determines were the beneficiary's heirs under the statutes of descent and distribution, in effect at the time of the beneficiary's death, of the jurisdiction in which the trustee reasonably determines the beneficiary was domiciled at death; 2732
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(ii) Distributes the real property included in the distribution to the person or persons the trustee reasonably determines were the beneficiary's heirs under the statutes of descent and distribution, in effect at the time of the beneficiary's death, of the jurisdiction or jurisdictions in which the real property is located. 2738
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(E) The trustee's protection from liability for making 2744

distributions under division (D) of this section has no effect on 2745
the ability of third parties to pursue claims against the 2746
recipients of those distributions. 2747

Sec. 5808.18. (A) Unless the trust instrument expressly 2748
provides otherwise and subject to the limitations set forth in 2749
this section, all of the following apply: 2750

(1) If a trustee of a trust, referred to in this section as 2751
"first trust," has absolute power under the terms of the first 2752
trust to make distributions of principal to one or more current 2753
beneficiaries, that trustee may exercise that power by 2754
distributing all or any part of the principal subject to the 2755
power, and all or any part of any income that is not otherwise 2756
currently required to be distributed, to the trustee of another 2757
trust, referred to in this section as "second trust," that is for 2758
the benefit of one or more current beneficiaries of the first 2759
trust. The second trust may be a trust under the trust instrument 2760
for the first trust or under a different governing instrument, 2761
including a governing instrument created by the trustee of the 2762
first trust. A trustee of the first trust who is authorized to 2763
make distributions to the trustee of a second trust pursuant to 2764
division (A) of this section may do so at any time, whether or not 2765
the trustee of the first trust would otherwise have made a 2766
distribution at that time to, or for the benefit of, any 2767
beneficiary pursuant to the terms of the first trust. 2768

(2) In determining whether the trustee has absolute power to 2769
make distributions of principal to any current beneficiary and the 2770
identity of the current beneficiaries, all of the following apply: 2771

(a) An absolute power to distribute principal includes any 2772
power to make distributions of principal that is not limited by 2773
reasonably definite standards or ascertainable standards, whether 2774
or not the word "absolute" is used in the trust instrument. 2775

(b) A power to make distributions of principal for purposes that include best interests, welfare, comfort or happiness, or words of similar import, if not otherwise limited by reasonably definite standards or ascertainable standards, constitutes an absolute power not limited by reasonably definite standards or ascertainable standards, regardless of any requirement to take into account other resources of the current beneficiary or beneficiaries to whom those distributions may be made. 2776
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(c) If the current beneficiaries of the first trust are defined, in whole or in part, as a class of persons, that class includes any person who falls within that class of persons after the distribution to the second trust. 2784
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(d) A power to make distributions for the benefit of a beneficiary is considered a power to make distributions to that beneficiary. 2788
2789
2790

(3) If property is distributed pursuant to the authority described in division (A) of this section, the governing instrument for the second trust, without limitation, may do either of the following: 2791
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2793
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(a) Grant a power of appointment to one or more of the beneficiaries for whose benefit the property was so distributed, including a power to appoint trust property to the power holder, the power holder's creditors, the power holder's estate, the creditors of the power holder's estate, or any other person, whether or not that person is a beneficiary of the first trust or the second trust; 2795
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(b) Provide that, at a time or upon an event specified in that governing instrument, the remaining trust property shall thereafter be held for the benefit of the beneficiaries of the first trust upon terms and conditions that are substantially identical to the terms and conditions of the trust instrument for 2802
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the first trust, except that any current beneficiary or 2807
beneficiaries for whose benefit the property could have been, but 2808
was not, so distributed may be excluded from having any beneficial 2809
interest in the second trust. 2810

(4) For purposes of division (A)(3) of this section: 2811

(a) "Terms and conditions" refer only to those terms and 2812
conditions that govern the interests of the beneficiaries. 2813

(b) Charitable organizations that are not expressly 2814
designated in the terms of the first trust to receive 2815
distributions but to which the trustee of the first trust, in the 2816
discretion of the trustee, or in the discretion of any other 2817
person directing the trustee and acting in a fiduciary capacity, 2818
may at any time make a distribution, are considered beneficiaries 2819
of the first trust. 2820

(B) Unless the trust instrument expressly provides otherwise 2821
and subject to the limitations set forth in this section, a 2822
trustee of a first trust who has power, other than absolute power 2823
as described in division (A) of this section, under the terms of 2824
the first trust to make distributions of principal to one or more 2825
current beneficiaries may exercise that power by distributing all 2826
or any part of the principal subject to the power, and all or any 2827
part of any income that is not otherwise required to be 2828
distributed, to the trustee of a second trust. The second trust 2829
may be a trust under the trust instrument for the first trust or 2830
under a different governing instrument, including a governing 2831
instrument created by the trustee of the first trust. The power 2832
described in this division may be exercised whether or not there 2833
is a current need to distribute trust principal under any standard 2834
contained in the first trust. The exercise of a trustee's power 2835
under this division is valid only if the governing instrument for 2836
the second trust does not materially change the interests of the 2837
beneficiaries of the first trust. For purposes of this division, a 2838

power to make distributions for the benefit of a beneficiary shall 2839
be considered a power to make distributions to that beneficiary. 2840

(C) The exercise of the power to make distributions to a 2841
second trust under division (A) or (B) of this section is subject 2842
to the following additional limitations: 2843

(1)(a) The distribution to the trustee of the second trust 2844
shall not result in the reduction, limitation, or modification of 2845
any of the following rights or interests of a beneficiary of the 2846
first trust if the right or interest has come into effect with 2847
respect to the beneficiary: 2848

(i) The current right to a mandatory distribution of income 2849
or principal of the first trust; 2850

(ii) The current mandatory annuity or unitrust interest in 2851
the property of the first trust; 2852

(iii) The right annually to withdraw a percentage of the 2853
value of the first trust or a specified dollar amount. 2854

(b) For purposes of division (C)(1)(a)(i) of this section, a 2855
beneficiary's current right to a distribution of income is not 2856
considered to be mandatory if, under the terms of the first trust, 2857
current distributions of principal may be made to any person other 2858
than that current beneficiary. 2859

(2) If any transfer to the first trust qualified, or if not 2860
for the provisions of division (A) or (B) of this section would 2861
have qualified, for a marital or charitable deduction for purposes 2862
of any federal income, gift, or estate tax under the Internal 2863
Revenue Code, or for purposes of any state income, gift, estate, 2864
or inheritance tax, the governing instrument for the second trust 2865
shall not include or omit any term that, if included in or omitted 2866
from the trust instrument for the first trust, would have 2867
prevented the first trust from qualifying for that deduction, or 2868
would have reduced the amount of the deduction, under the same 2869

provisions of the Internal Revenue Code or under the same 2870
provisions of the applicable state law under which the transfer to 2871
the first trust so qualified. 2872

(3) If any transfer to the first trust has been treated, or 2873
if not for the provisions of division (A) or (B) of this section 2874
would have been treated, as a gift qualifying for the exclusion 2875
from the gift tax described in section 2503(b) of the Internal 2876
Revenue Code, the governing instrument for the second trust shall 2877
not include or omit any term that, if included in or omitted from 2878
the trust instrument for the first trust, would have prevented any 2879
gift to the first trust from so qualifying under the same 2880
provisions of section 2503 of the Internal Revenue Code under 2881
which the transfer to the first trust so qualified. 2882

(4) If the assets of the first trust include any shares of 2883
stock in an S corporation, as defined in section 1361 of the 2884
Internal Revenue Code, and the first trust is, or if not for the 2885
provisions of division (A) or (B) of this section would be, a 2886
permitted shareholder under any provision of section 1361 of the 2887
Internal Revenue Code, the governing instrument for the second 2888
trust shall not include or omit any term that, if included in or 2889
omitted from the trust instrument for the first trust, would have 2890
prevented the first trust from qualifying as a permitted 2891
shareholder of shares of stock in an S corporation under the same 2892
provisions of section 1361 of the Internal Revenue Code under 2893
which the first trust so qualified. 2894

(5) If any transfer to the first trust has been treated, or 2895
if not for the provisions of division (A) or (B) of this section 2896
would have been treated, as a gift qualifying for a zero inclusion 2897
ratio for purposes of the federal generation-skipping transfer tax 2898
under section 2642(c) of the Internal Revenue Code, the governing 2899
instrument for the second trust shall not include or omit any term 2900
that, if included in or omitted from the trust instrument for the 2901

first trust, would have prevented the transfer to the first trust 2902
from so qualifying. 2903

(6) If the assets of the first trust include any interest 2904
subject to the minimum distribution rules of section 401(a)(9) of 2905
the Internal Revenue Code and the treasury regulations issued 2906
under that section, the governing instrument for the second trust 2907
shall not include or omit any term that, if included in or omitted 2908
from the trust instrument for the first trust, would have 2909
shortened the maximum distribution period otherwise allowable 2910
under section 401(a)(9) of the Internal Revenue Code and the 2911
treasury regulations with respect to that interest under the first 2912
trust. 2913

(7)(a) As used in division (C)(7) of this section, "tax 2914
benefit" means any federal or state tax deduction, exemption, 2915
exclusion, or other tax benefit not otherwise listed in division 2916
(C) of this section. 2917

(b) If the trust instrument for the first trust expressly 2918
indicates an intention to qualify for any tax benefit or if the 2919
terms of the trust instrument for the first trust are clearly 2920
designed to enable the first trust to qualify for a tax benefit, 2921
and if the first trust did qualify, or if not for the provisions 2922
of division (A) or (B) of this section would have qualified, for 2923
any tax benefit, the governing instrument for the second trust 2924
shall not include or omit any term that, if included in or omitted 2925
from the trust instrument for the first trust, would have 2926
prevented the first trust from qualifying for that tax benefit. 2927

(8) The distribution to the trustee of the second trust shall 2928
not result in any of the following: 2929

(a) An increase in, or a change in the method of determining, 2930
the compensation of the trustee unless the increase in, or change 2931
in the method of determining, that compensation has been consented 2932

to by all of the persons, other than the trustee of the second 2933
trust, who are current beneficiaries of the second trust or is 2934
approved by the court having jurisdiction over the trust. However, 2935
an increase in compensation of the trustee arising solely because 2936
the duration of the second trust is longer than the duration of 2937
the first trust is not considered an increase in, or a change in 2938
the method of determining, the compensation of the trustee. 2939

(b) A reduction in the standard of care applicable to the 2940
actions of the trustee of the first trust or the second trust or 2941
an exoneration of the trustee of the first trust or the second 2942
trust from liability for actions taken in bad faith or with 2943
willful disregard of the duties of either trustee, including by 2944
increasing the extent to which the trustee is entitled to 2945
indemnification from the trust, as provided in the terms of the 2946
first trust and under any law of this state. 2947

(D) The exercise of the power to distribute trust income or 2948
principal to the trustee of a second trust under division (A) or 2949
(B) of this section shall be by an instrument in writing, signed 2950
by the trustee of the first trust and filed with the records of 2951
the first trust. 2952

(E) The power to distribute trust income or principal to the 2953
trustee of a second trust under division (A) or (B) of this 2954
section shall not be exercised in a manner contrary to any 2955
provision of section 2131.08 of the Revised Code to the extent 2956
applicable to the first trust, and after applying the provisions 2957
of division (B) of section 2131.09 of the Revised Code to the 2958
extent applicable to the first trust. Solely for purposes of 2959
applying under this division the provisions of section 2131.08 and 2960
division (B) of section 2131.09 of the Revised Code, the exercise 2961
of the power to distribute trust income or principal to the 2962
trustee of a second trust under division (A) or (B) of this 2963
section is considered the exercise of a power of appointment other 2964

than a general power of appointment within the meaning of division 2965
(B)(4) of section 2131.09 of the Revised Code. 2966

(F) The trustee of the first trust shall notify all current 2967
beneficiaries of the first trust, in writing, of the intended 2968
distribution to the trustee of a second trust pursuant to division 2969
(A) or (B) of this section not later than thirty days prior to 2970
that distribution. The distribution may be made prior to the 2971
expiration of thirty days from the date on which that notice is 2972
given to all current beneficiaries of the first trust if all of 2973
those current beneficiaries waive the thirty-day period from 2974
receipt of the notice in which the distribution is to be made. The 2975
trustee's giving of notice of an intended distribution under this 2976
division or the waiver or expiration of that thirty-day period 2977
from receipt of the notice do not limit the right of any 2978
beneficiary to object to the exercise of the trustee's power to 2979
distribute trust principal as provided in any other applicable 2980
provision of the Ohio Trust Code. 2981

(G) Any person, other than the trustee, who has a power 2982
exercisable in a fiduciary capacity to direct the trustee to make 2983
any distribution of principal that, if held by the trustee, would 2984
be a distribution as described in division (A) or (B) of this 2985
section, may exercise that power by directing the trustee to make 2986
a distribution under either division (A) or (B) of this section, 2987
whichever would be applicable if that person were the trustee, 2988
subject to all of the limitations described in this section that 2989
apply to a trustee's exercise of that power. 2990

(H) The exercise of the power to distribute trust income or 2991
principal to the trustee of a second trust under division (A) or 2992
(B) of this section is not prohibited by a spendthrift clause or a 2993
provision in the trust instrument that prohibits the amendment or 2994
revocation of the trust. 2995

(I) For purposes of division (A) of section 5808.14 of the 2996

Revised Code, a trustee who acts reasonably and in good faith in 2997
exercising the power to distribute trust income or principal to 2998
the trustee of a second trust in accordance with division (A) or 2999
(B) of this section, is presumed to have acted in accordance with 3000
the terms and purposes of the trust and the interests of the 3001
beneficiaries. 3002

(J) Nothing in this section is intended to create or imply a 3003
duty to exercise a power to distribute income or principal of a 3004
trust, and no inference of impropriety shall arise as a result of 3005
a trustee not exercising the power to make any distribution to the 3006
trustee of a second trust under division (A) or (B) of this 3007
section. 3008

(K) If the first trust is a testamentary trust established 3009
under the will of a testator who was domiciled in this state at 3010
the time of the testator's death, the power to distribute trust 3011
income or principal to the trustee of a second trust under 3012
division (A) or (B) of this section may be exercised only if 3013
approved by the court, if any, that has jurisdiction over the 3014
testamentary trust. 3015

(L) Divisions (A) and (B) of this section do not apply to 3016
either of the following: 3017

(1) Any trust during any period that the trust may be revoked 3018
or amended by its settlor; 3019

(2) Any trustee with respect to any portion of the first 3020
trust as to which that trustee is also the settlor. 3021

(M) If, and to the extent that, a trustee makes any 3022
distribution pursuant to division (A) or (B) of this section to 3023
the trustee of a second trust, then for purposes of division (W) 3024
of section 5801.01 of the Revised Code, the governing instrument 3025
for the second trust is considered to be an amendment of the trust 3026
instrument signed by the settlor of the first trust, even if that 3027

governing instrument is signed by a person other than that 3028
settlor. 3029

(N) Nothing in this section shall be construed to limit the 3030
power of any trustee to distribute trust property in further 3031
trust, whether that power arises under the terms of the trust 3032
instrument, under any other section of Title LVIII of the Revised 3033
Code, under any other statute, or under the common law. The terms 3034
of a trust instrument may do any of the following: 3035

(1) Confer upon the trustee the power to make any 3036
distribution, or confer upon any other person acting in a 3037
fiduciary capacity the power to direct the trustee to make any 3038
distribution, in further trust that are broader or more limited 3039
than, or that conflict with, the provisions of this section; 3040

(2) Provide for different requirements for notice to 3041
beneficiaries of the trust of the trustee's exercise of the power 3042
conferred under the terms of the trust instrument or described in 3043
division (A) or (B) of this section; 3044

(3) Waive any requirement of notice to the beneficiaries of 3045
the trust of the trustee's exercise of the power conferred under 3046
the terms of the trust instrument or described in division (A) or 3047
(B) of this section; 3048

(4) Otherwise include any terms and conditions governing the 3049
distribution in further trust that the settlor of the trust 3050
determines. 3051

(O)(1) Division (A) of this section is intended to be a 3052
codification of the common law of this state in effect prior to 3053
the enactment of this section and applies to distributions, 3054
whenever made, from any trust that is governed by the law of this 3055
state or that has its principal place of administration in this 3056
state, whether that trust was created before, on, or after the 3057
effective date of this section. 3058

(2) Division (B) of this section applies to distributions 3059
made on or after the effective date of this section from any trust 3060
that is governed by the law of this state or that has its 3061
principal place of administration in this state, whether that 3062
trust was created before, on, or after the effective date of this 3063
section. 3064

Sec. 5808.19. (A) As used in this section, unless otherwise 3065
provided in any other provision in this section: 3066

(1) "Beneficiary" means the beneficiary of a future interest 3067
and includes a class member if the future interest is in the form 3068
of a class gift. 3069

(2) "Class member" means an individual who fails to survive 3070
the distribution date by at least one hundred twenty hours but who 3071
would have taken under a future interest in the form of a class 3072
gift had the individual survived the distribution date by at least 3073
one hundred twenty hours. 3074

(3) "Descendant of a grandparent of the transferor" means an 3075
individual who would qualify as a descendant of a grandparent of 3076
the transferor under the rules of construction that would apply to 3077
a class gift under the transferor's will to the descendants of the 3078
transferor's grandparent. 3079

(4) "Distribution date," with respect to a future interest, 3080
means the time when the future interest is to take effect in 3081
possession or enjoyment. The distribution date need not occur at 3082
the beginning or end of a calendar day but may occur at a time 3083
during the course of a day. 3084

(5) "Future interest" means an alternative future interest or 3085
a future interest in the form of a class gift. 3086

(6) "Future interest under the terms of a trust" means a 3087
future interest that was created by a transfer creating a trust or 3088

a transfer to an existing trust, or by an exercise of a power of 3089
appointment to an existing trust, that directs the continuance of 3090
an existing trust, designates a beneficiary of an existing trust, 3091
or creates a trust. 3092

(7) "Per stirpes" means that the shares of the descendants of 3093
a beneficiary who does not survive the distribution date by at 3094
least one hundred twenty hours are determined in the same way they 3095
would have been determined under division (A) of section 2105.06 3096
of the Revised Code if the beneficiary had died intestate and 3097
unmarried on the distribution date. 3098

(8) "Revocable trust" means a trust that was revocable 3099
immediately before the settlor's death by the settlor alone or by 3100
the settlor with the consent of any person other than a person 3101
holding an adverse interest. A trust's characterization as 3102
revocable is not affected by the settlor's lack of capacity to 3103
exercise the power of revocation, regardless of whether an agent 3104
of the settlor under a power of attorney, or a guardian of the 3105
person or estate of the settlor, was serving. 3106

(9) "Stepchild" means a child of the surviving, deceased, or 3107
former spouse of the transferor and not of the transferor. 3108

(10) "Transferor" means any of the following: 3109

(a) The donor and donee of a power of appointment, if the 3110
future interest was in property as a result of the exercise of a 3111
power of appointment; 3112

(b) The testator, if the future interest was devised by will; 3113

(c) The settlor, if the future interest was conveyed by inter 3114
vivos trust. 3115

(B)(1)(a) As used in "surviving descendants" in divisions 3116
(B)(2)(b)(i) and (ii) of this section, "descendants" means the 3117
descendants of a deceased beneficiary or class member who would 3118

take under a class gift created in the trust. 3119

(b) As used in divisions (B)(2)(b)(i) and (ii) of this 3120
section, "surviving beneficiaries" or "surviving descendants" 3121
means beneficiaries or descendants, whichever is applicable, who 3122
survive the distribution date by at least one hundred twenty 3123
hours. 3124

(2) Unless a contrary intent appears in the instrument 3125
creating a future interest under the terms of a trust, each of the 3126
following applies: 3127

(a) A future interest under the terms of a trust is 3128
contingent on the beneficiary's surviving the distribution date by 3129
at least one hundred twenty hours. 3130

(b) If a beneficiary of a future interest under the terms of 3131
a trust does not survive the distribution date by at least one 3132
hundred twenty hours and if the beneficiary is a grandparent of 3133
the transferor, a descendant of a grandparent of the transferor, 3134
or a stepchild of the transferor, either of the following applies: 3135

(i) If the future interest is not in the form of a class gift 3136
and the deceased beneficiary leaves surviving descendants, a 3137
substitute gift is created in the beneficiary's surviving 3138
descendants. The surviving descendants take, per stirpes, the 3139
property to which the beneficiary would have been entitled had the 3140
beneficiary survived the distribution date by at least one hundred 3141
twenty hours. 3142

(ii) If the future interest is in the form of a class gift, 3143
other than a future interest to "issue," "descendants," "heirs of 3144
the body," "heirs," "next of kin," "relatives," or "family," or a 3145
class described by language of similar import, a substitute gift 3146
is created in the surviving descendants of the deceased 3147
beneficiary or beneficiaries. The property to which the 3148
beneficiaries would have been entitled had all of them survived 3149

the distribution date by at least one hundred twenty hours passes 3150
to the surviving beneficiaries and the surviving descendants of 3151
the deceased beneficiaries. Each surviving beneficiary takes the 3152
share to which the surviving beneficiary would have been entitled 3153
had the deceased beneficiaries survived the distribution date by 3154
at least one hundred twenty hours. Each deceased beneficiary's 3155
surviving descendants who are substituted for the deceased 3156
beneficiary take, per stirpes, the share to which the deceased 3157
beneficiary would have been entitled had the deceased beneficiary 3158
survived the distribution date by at least one hundred twenty 3159
hours. For purposes of division (B)(2)(b)(ii) of this section, 3160
"deceased beneficiary" means a class member who failed to survive 3161
the distribution date by at least one hundred twenty hours and 3162
left one or more surviving descendants. 3163

(C) For purposes of this section, each of the following 3164
applies: 3165

(1) Describing a class of beneficiaries as "surviving" or 3166
"living," without specifying when the beneficiaries must be 3167
surviving or living, such as a gift "for my spouse for life, then 3168
to my surviving (or living) children," is not, in the absence of 3169
other language in the trust instrument or other evidence to the 3170
contrary, a sufficient indication of an intent to negate the 3171
application of division (B)(2)(b) of this section. 3172

(2) Subject to division (C)(1) of this section, attaching 3173
words of survivorship to a future interest under the terms of a 3174
trust, such as "for my spouse for life, then to my children who 3175
survive my spouse" or "for my spouse for life, then to my 3176
then-living children" is, in the absence of other language in the 3177
trust instrument or other evidence to the contrary, a sufficient 3178
indication of an intent to negate the application of division 3179
(B)(2)(b) of this section. Words of survivorship under division 3180
(C)(2) of this section include words of survivorship that relate 3181

to the distribution date or to an earlier or an unspecified time, 3182
whether those words of survivorship are expressed as 3183
condition-precedent, condition-subsequent, or in any other form. 3184

(3) A residuary clause in a will is not a sufficient 3185
indication of an intent that is contrary to the application of 3186
this section, whether or not the will specifically provides that 3187
lapsed or failed devises are to pass under the residuary clause. A 3188
residuary clause in a revocable trust instrument is not a 3189
sufficient indication of an intent that is contrary to the 3190
application of this section unless the distribution date is the 3191
date of the settlor's death and the revocable trust instrument 3192
specifically provides that upon lapse or failure the nonresiduary 3193
devise, or nonresiduary devises in general, pass under the 3194
residuary clause. 3195

(D) If, after the application of divisions (B) and (C) of 3196
this section there is no surviving taker of the property, and a 3197
contrary intent does not appear in the instrument creating the 3198
future interest, the property passes in the following order: 3199

(1) If the future interest was created by the exercise of a 3200
power of appointment, the property passes under the donor's 3201
gift-in-default clause, if any, which clause is treated as 3202
creating a future interest under the terms of a trust. 3203

(2) If no taker is produced under division (D)(1) of this 3204
section and the trust was created in a nonresiduary devise in the 3205
transferor's will or in a codicil to the transferor's will, the 3206
property passes under the residuary clause in the transferor's 3207
will. For purposes of division (D)(2) of this section, the 3208
residuary clause is treated as creating a future interest under 3209
the terms of a trust. 3210

(3) If no taker is produced under divisions (D)(1) and (2) of 3211
this section, the transferor is deceased, and the trust was 3212

created in a nonresiduary gift under the terms of a revocable trust of the transferor, the property passes under the residuary clause in the transferor's revocable trust instrument. For purposes of division (D)(3) of this section, the residuary clause in the transferor's revocable trust instrument is treated as creating a future interest under the terms of a trust.

(4) If no taker is produced under divisions (D)(1), (2), and (3) of this section, the property passes to those persons who would succeed to the transferor's intestate estate and in the shares as provided in the intestate succession law of the transferor's domicile if the transferor died on the distribution date. Notwithstanding division (A)(10) of this section, for purposes of division (D)(4) of this section, if the future interest was created by the exercise of a power of appointment, "transferor" means the donor if the power is a nongeneral power, or the donee if the power is a general power.

(E) This section applies to all trusts that become irrevocable on or after the effective date of this section. This section does not apply to any trust that was irrevocable before the effective date of this section even if property was added to the trust on or after that effective date.

Sec. 5809.031. (A) Notwithstanding any other provision of the Ohio Uniform Prudent Investor Act, unless otherwise provided by the terms of the trust, the duties of a trustee with respect to the acquisition, retention, or ownership of a life insurance policy as a trust asset do not include any of the following duties:

(1) To determine whether the policy is or remains a proper investment;

(2) To diversify the investment in the policy relative to any other life insurance policies or to any other trust assets;

(3) To exercise or not to exercise any option, right, or privilege available under the policy, including the payment of premiums, unless there is sufficient cash or there are other readily marketable trust assets from which to pay the premiums or there are other trust assets that were designated by the settlor or any other person transferring those assets to the trust to be used for that purpose, regardless of whether that exercise or nonexercise results in the lapse or termination of the policy; 3244
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(4) To investigate the financial strength or changes in the financial strength of the life insurance company maintaining the policy; 3252
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(5) To inquire about changes in the health or financial condition of the insured or insureds under the policy. 3255
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(B) The trustee, the attorney who drafted a trust, or any person who was consulted with regard to the creation of a trust, in the absence of fraud, is not liable to the beneficiaries of the trust or to any other person for any loss arising from the absence of the duties specified in divisions (A)(1) to (5) of this section. 3257
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(C) Unless otherwise provided by the terms of the trust, this section applies to a trust established before, on, or after the effective date of this section and to a life insurance policy acquired, retained, or owned by a trustee before, on, or after the effective date of this section. 3263
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Sec. 5810.13. (A) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing all of the following information: 3268
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(1) A statement that the trust exists and the date the trust instrument was executed; 3272
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(2) The identity of the settlor;	3274
(3) The identity and address of the currently acting trustee;	3275
(4) The powers of the trustee;	3276
(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;	3277 3278
(6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee.	3279 3280 3281
(B) Any trustee may sign or otherwise authenticate a certification of trust.	3282 3283
(C) A certification of trust shall state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.	3284 3285 3286 3287
(D) A certification of trust is not required to contain the dispositive terms of a trust.	3288 3289
(E) <u>A certification of trust may establish the identity of the trustee and any succession of trustees under division (B) or (C) of section 5810.14 of the Revised Code.</u>	3290 3291 3292
<u>(F)</u> A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.	3293 3294 3295 3296 3297
(F) <u>(G)</u> A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all	3298 3299 3300 3301 3302 3303

or part of the trust instrument is held by the person relying upon 3304
the certification. 3305

~~(G)~~(H) A person who in good faith enters into a transaction 3306
in reliance upon a certification of trust may enforce the 3307
transaction against the trust property as if the representations 3308
contained in the certification were correct. 3309

~~(H)~~(I) This section does not affect the use or validity of a 3310
memorandum of trust under section 5301.255 of the Revised Code. 3311

~~(I)~~(J) This section does not limit the right of a person to 3312
obtain a copy of the trust instrument in a judicial proceeding 3313
concerning the trust. 3314

Sec. 5810.14. (A) Personal property may be transferred to a 3315
trustee as authorized by section 5804.01 of the Revised Code by 3316
executing the necessary written instrument that identifies the 3317
personal property transferred and identifies the trustee by name 3318
followed by the designation "trustee." 3319

(B) The future transfer of personal property to a trustee as 3320
a designated beneficiary, including, but not limited to, a 3321
transfer on death designation or payable on death designation, 3322
participation in a joint ownership arrangement, or any other 3323
contractual transfer arrangement, that is made by executing the 3324
necessary written instrument identifying the trustee by name 3325
followed by the designation "trustee" shall be considered a 3326
transfer of the personal property to the trustee serving at the 3327
time of the future transfer. A certification of trust under 3328
section 5810.13 of the Revised Code may establish the identity of 3329
the trustee and any succession of trustees under this division. 3330

(C) A written instrument transferring personal property to a 3331
trust or a written instrument providing for the future transfer of 3332
personal property to a trust, by identifying the trust without 3333

identifying the trustee, shall be considered a transfer of the 3334
personal property to the trustee serving at the time of transfer. 3335
A certification of trust under section 5810.13 of the Revised Code 3336
may establish the identity of the trustee and any succession of 3337
trustees under this division. 3338

(D) An instrument of transfer under this section may, but is 3339
not required to, contain any additional identifying information, 3340
including the trust name, the name of the settlor, the date of 3341
trust creation, and the date of applicable trust amendments. 3342

(E) Nothing in this section is intended to affect the 3343
operation of section 5301.03 of the Revised Code. 3344

(F) Nothing in this section is intended to affect or be in 3345
conflict with division (E) of section 5301.071 of the Revised Code 3346
that addresses transfers of real property to or from trusts and 3347
trustees. 3348

Section 2. That existing sections 1337.092, 1337.12, 2101.24, 3349
2109.21, 2111.02, 2111.12, 2111.121, 5301.071, 5747.02, 5801.10, 3350
5808.14, 5808.17, and 5810.13 and sections 1337.09, 1337.091, 3351
1337.093, 1337.18, 1337.19, 1337.20, and 2107.52 of the Revised 3352
Code are hereby repealed. 3353

Section 3. Sections 1337.092, 1337.12, 2109.21, 2111.02, 3354
2111.12, and 2111.121, as amended by this act; sections 1337.21, 3355
1337.22, 1337.23, 1337.24, 1337.25, 1337.26, 1337.27, 1337.28, 3356
1337.29, 1337.30, 1337.31, 1337.32, 1337.33, 1337.34, 1337.35, 3357
1337.36, 1337.37, 1337.38, 1337.39, 1337.40, 1337.41, 1337.42, 3358
1337.43, 1337.44, 1337.45, 1337.46, 1337.47, 1337.48, 1337.49, 3359
1337.50, 1337.51, 1337.52, 1337.53, 1337.54, 1337.55, 1337.56, 3360
1337.57, 1337.58, 1337.59, 1337.60, 1337.61, 1337.62, 1337.63, and 3361
1337.64, as enacted by this act; and the repeal of sections 3362
1337.09, 1337.091, 1337.093, 1337.18, 1337.19, and 1337.20 of the 3363

Revised Code by this act, shall take effect October 1, 2010. 3364

Section 4. Section 2101.24 of the Revised Code is presented 3365
in this act as a composite of the section as amended by both Sub. 3366
H.B. 416 and Sub. H.B. 426 of the 126th General Assembly. The 3367
General Assembly, applying the principle stated in division (B) of 3368
section 1.52 of the Revised Code that amendments are to be 3369
harmonized if reasonably capable of simultaneous operation, finds 3370
that the composite is the resulting version of the section in 3371
effect prior to the effective date of the section as presented in 3372
this act. 3373