

As Introduced

**129th General Assembly
Regular Session
2011-2012**

H. B. No. 479

Representatives Hagan, C., Blessing

**Cosponsors: Speaker Batchelder Representatives Gardner, Grossman,
Stebelton, Sears, Boose, Damschroder, Schuring, Wachtmann, Johnson,
Beck, Gonzales, Terhar, Amstutz**

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A B I L L

To amend sections 317.08, 1336.04, 2131.08, 2131.09, 1
2329.66, 5805.06, 5808.08, 5815.24, 5815.25, and 2
5815.36 and to enact sections 1301.401, 5815.37, 3
and 5816.01 to 5816.14 of the Revised Code to 4
adopt the Ohio Legacy Trust Act; to modify certain 5
property rights in the Ohio Trust Code; to require 6
the recording of personal property transfers with 7
the county recorder upon request; to regulate the 8
temporary conveyance of trust real property for 9
financing purposes; and to make certain changes in 10
the exempt interests law, the fraudulent transfers 11
law, the secured transactions recording law, and 12
the rule against perpetuities. 13

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

Section 1. That sections 317.08, 1336.04, 2131.08, 2131.09, 14
2329.66, 5805.06, 5808.08, 5815.24, 5815.25, and 5815.36 be 15
amended and sections 1301.401, 5815.37, 5816.01, 5816.02, 5816.03, 16
5816.04, 5816.05, 5816.06, 5816.07, 5816.08, 5816.09, 5816.10, 17
5816.11, 5816.12, 5816.13, and 5816.14 of the Revised Code be 18

enacted to read as follows: 19

Sec. 317.08. (A) Except as provided in divisions (C) ~~and~~ 20
(D), and (E) of this section, the county recorder shall keep six 21
separate sets of records as follows: 22

(1) A record of deeds, in which shall be recorded all deeds 23
and other instruments of writing for the absolute and 24
unconditional sale or conveyance of lands, tenements, and 25
hereditaments; all notices as provided in sections 5301.47 to 26
5301.56 of the Revised Code; all judgments or decrees in actions 27
brought under section 5303.01 of the Revised Code; all 28
declarations and bylaws, and all amendments to declarations and 29
bylaws, as provided in Chapter 5311. of the Revised Code; 30
affidavits as provided in sections 5301.252 and 5301.56 of the 31
Revised Code; all certificates as provided in section 5311.17 of 32
the Revised Code; all articles dedicating archaeological preserves 33
accepted by the director of the Ohio historical society under 34
section 149.52 of the Revised Code; all articles dedicating nature 35
preserves accepted by the director of natural resources under 36
section 1517.05 of the Revised Code; all agreements for the 37
registration of lands as archaeological or historic landmarks 38
under section 149.51 or 149.55 of the Revised Code; all 39
conveyances of conservation easements and agricultural easements 40
under section 5301.68 of the Revised Code; all instruments 41
extinguishing agricultural easements under section 901.21 or 42
5301.691 of the Revised Code or pursuant to terms of such an 43
easement granted to a charitable organization under section 44
5301.68 of the Revised Code; all instruments or orders described 45
in division (B)(2)(b) of section 5301.56 of the Revised Code; all 46
no further action letters issued under section 122.654 or 3746.11 47
of the Revised Code; all covenants not to sue issued under section 48
3746.12 of the Revised Code, including all covenants not to sue 49

issued pursuant to section 122.654 of the Revised Code; any 50
restrictions on the use of property contained in a no further 51
action letter issued under section 122.654 of the Revised Code, 52
any restrictions on the use of property identified pursuant to 53
division (C)(3)(a) of section 3746.10 of the Revised Code, and any 54
restrictions on the use of property contained in a deed or other 55
instrument as provided in division (E) or (F) of section 3737.882 56
of the Revised Code; any easement executed or granted under 57
section 3734.22, 3734.24, 3734.25, or 3734.26 of the Revised Code; 58
any environmental covenant entered into in accordance with 59
sections 5301.80 to 5301.92 of the Revised Code; all memoranda of 60
trust, as described in division (A) of section 5301.255 of the 61
Revised Code, that describe specific real property; and all 62
agreements entered into under division (A) of section 1506.44 of 63
the Revised Code; 64

(2) A record of mortgages, in which shall be recorded all of 65
the following: 66

(a) All mortgages, including amendments, supplements, 67
modifications, and extensions of mortgages, or other instruments 68
of writing by which lands, tenements, or hereditaments are or may 69
be mortgaged or otherwise conditionally sold, conveyed, affected, 70
or encumbered; 71

(b) All executory installment contracts for the sale of land 72
executed after September 29, 1961, that by their terms are not 73
required to be fully performed by one or more of the parties to 74
them within one year of the date of the contracts; 75

(c) All options to purchase real estate, including 76
supplements, modifications, and amendments of the options, but no 77
option of that nature shall be recorded if it does not state a 78
specific day and year of expiration of its validity; 79

(d) Any tax certificate sold under section 5721.33 of the 80

Revised Code, or memorandum of it, that is presented for filing of record.	81 82
(3) A record of powers of attorney, including all memoranda of trust, as described in division (A) of section 5301.255 of the Revised Code, that do not describe specific real property;	83 84 85
(4) A record of plats, in which shall be recorded all plats and maps of town lots, of the subdivision of town lots, and of other divisions or surveys of lands, any center line survey of a highway located within the county, the plat of which shall be furnished by the director of transportation or county engineer, and all drawings and amendments to drawings, as provided in Chapter 5311. of the Revised Code;	86 87 88 89 90 91 92
(5) A record of leases, in which shall be recorded all leases, memoranda of leases, and supplements, modifications, and amendments of leases and memoranda of leases;	93 94 95
(6) A record of declarations executed pursuant to section 2133.02 of the Revised Code and durable powers of attorney for health care executed pursuant to section 1337.12 of the Revised Code.	96 97 98 99
(B) All instruments or memoranda of instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record. The recorder may index, keep, and record in one volume unemployment compensation liens, internal revenue tax liens and other liens in favor of the United States as described in division (A) of section 317.09 of the Revised Code, personal tax liens, mechanic's liens, agricultural product liens, notices of liens, certificates of satisfaction or partial release of estate tax liens, discharges of recognizances, excise and franchise tax liens on corporations, broker's liens, and liens provided for in sections 1513.33, 1513.37, 3752.13, 5111.022, and 5311.18 of the Revised Code.	100 101 102 103 104 105 106 107 108 109 110 111

The recording of an option to purchase real estate, including 112
any supplement, modification, and amendment of the option, under 113
this section shall serve as notice to any purchaser of an interest 114
in the real estate covered by the option only during the period of 115
the validity of the option as stated in the option. 116

(C) In lieu of keeping the six separate sets of records 117
required in divisions (A)(1) to (6) of this section and the 118
records required in ~~division~~ divisions (D) and (E) of this 119
section, a county recorder may record all the instruments required 120
to be recorded by this section in two separate sets of record 121
books. One set shall be called the "official records" and shall 122
contain the instruments listed in divisions (A)(1), (2), (3), (5), 123
and (6) and (D) and (E) of this section. The second set of records 124
shall contain the instruments listed in division (A)(4) of this 125
section. 126

(D) Except as provided in division (C) of this section, the 127
county recorder shall keep a separate set of records containing 128
all corrupt activity lien notices filed with the recorder pursuant 129
to section 2923.36 of the Revised Code and a separate set of 130
records containing all medicaid fraud lien notices filed with the 131
recorder pursuant to section 2933.75 of the Revised Code. 132

(E) Except as provided in division (C) of this section or as 133
otherwise provided in this division, the county recorder shall 134
keep a separate set of records containing all transfers, 135
conveyances, or assignments of any type of tangible or intangible 136
personal property or any rights or interests in that property if 137
and to the extent that any person wishes to record that personal 138
property transaction. In the discretion of the county recorder, 139
the records described in this division may be maintained in or as 140
part of the county records for miscellaneous recordings and need 141
not be kept as a separate set of records if the county records for 142
those miscellaneous recordings clearly and readily identify those 143

personal property transactions. 144

Sec. 1301.401. (A) For purposes of this section, "public 145
record" means either of the following: 146

(1) Any document described or referred to in section 317.08 147
of the Revised Code; 148

(2) Any document the filing or recording of which is required 149
or allowed under any provision of Chapter 1309. of the Revised 150
Code. 151

(B) The recording with any county recorder of any document 152
described in division (A)(1) of this section or the filing or 153
recording with the secretary of state of any document described in 154
division (A)(2) of this section shall be constructive notice to 155
the whole world of the existence and contents of either document 156
as a public record and of any transaction referred to in that 157
public record, including, but not limited to, any transfer, 158
conveyance, or assignment reflected in that record. 159

(C) Any person contesting the validity or effectiveness of 160
any transaction referred to in a public record is considered to 161
have discovered that public record and any transaction referred to 162
in the record as of the time that the record was first filed with 163
the secretary of state or tendered to a county recorder for 164
recording. 165

Sec. 1336.04. (A) A transfer made or an obligation incurred 166
by a debtor is fraudulent as to a creditor, whether the claim of 167
the creditor arose before, or within a reasonable time not to 168
exceed four years after, the transfer was made or the obligation 169
was incurred, if the debtor made the transfer or incurred the 170
obligation in either of the following ways: 171

(1) With actual and principal intent to hinder, delay, or 172
defraud any creditor of the debtor; 173

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and if either of the following applies:	174
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(a) The debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction;	177
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(b) The debtor intended to incur, or believed or reasonably should have believed that he <u>the debtor</u> would incur, debts beyond his <u>the debtor's</u> ability to pay as they became due.	181
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(B) In determining actual intent under division (A)(1) of this section, consideration may be given to all relevant factors, including, but not limited to, the following:	184
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(1) Whether the transfer or obligation was to an insider;	187
(2) Whether the debtor retained possession or control of the property transferred after the transfer;	188
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(3) Whether the transfer or obligation was disclosed or concealed;	190
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(4) Whether before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit;	192
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(5) Whether the transfer was of substantially all of the assets of the debtor;	194
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(6) Whether the debtor absconded;	196
(7) Whether the debtor removed or concealed assets;	197
(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;	198
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(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was	201
	202

incurred;	203
(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred;	204 205
(11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.	206 207 208
Sec. 2131.08. (A) Subject to sections 1746.14, 1747.09, and 2131.09 of the Revised Code, no interest in real or personal property shall be good unless it must vest, if at all, not later than twenty-one years after a life or lives in being at the creation of the interest. All estates given in tail, by deed or will, in real property lying within this state shall be and remain an absolute estate in fee simple to the issue of the first donee in tail. It is the intention by the adoption of this section to make effective in this state what is generally known as the common law rule against perpetuities, except as set forth in divisions (B) and (C) of this section.	209 210 211 212 213 214 215 216 217 218 219
(B) For the purposes of this section and subject to sections 1746.14, 1747.09, and 2131.09 of the Revised Code, the time of the creation of an interest in real or personal property subject to a power reserved by the grantor to revoke or terminate the interest shall be the time at which the reserved power expires by reason of the death of the grantor, by release of the power, or otherwise.	220 221 222 223 224 225
(C) Any interest in real or personal property that would violate the rule against perpetuities, under division (A) of this section, shall be reformed, within the limits of the rule, to approximate most closely the intention of the creator of the interest. In determining whether an interest would violate the rule and in reforming an interest, the period of perpetuities shall be measured by actual rather than possible events.	226 227 228 229 230 231 232

(D) For purposes of this section and subject to sections 233
1746.14, 1747.09, and 2131.09 of the Revised Code, the following 234
apply: 235

(1) The time of the creation of an interest in real or 236
personal property resulting from the exercise of a general power 237
of appointment exercisable in a nonfiduciary capacity by deed, 238
whether or not also exercisable by will, shall be the time at 239
which that power of appointment is exercised. 240

(2) The time of the creation of an interest in real or 241
personal property resulting from the termination, without 242
exercise, of a general power of appointment exercisable in a 243
nonfiduciary capacity by deed, whether or not also exercisable by 244
will, shall be the time at which that power of appointment 245
terminates by reason of the death of the power holder, by release 246
of the power, or otherwise. 247

(E) Divisions (B) and (C) of this section shall be effective 248
with respect to interests in real or personal property created by 249
wills of decedents dying after December 31, 1967, with respect to 250
interests in real or personal property created by inter vivos 251
instruments executed after December 31, 1967, and with respect to 252
interests in real or personal property created by inter vivos 253
instruments executed on or before December 31, 1967, that by 254
reason of division (B) of this section will be treated as 255
interests created after December 31, 1967. Divisions (B) and (C) 256
of this section shall be effective with respect to interests in 257
real or personal property created by the exercise of a power of 258
appointment if divisions (B) and (C) of this section apply to the 259
instrument that exercises the power, whether or not divisions (B) 260
and (C) of this section apply to the instrument that creates the 261
power. 262

(F) Divisions (D) and (G) of this section are intended to be 263
a statement of the common law of this state and shall be effective 264

with respect to interests in real or personal property whenever 265
created. 266

(G) For purposes of this section: 267

(1) "General power of appointment" has the same meaning as in 268
section 2131.09 of the Revised Code. 269

(2) "Exercisable by deed" in reference to a power of 270
appointment means a power that can be exercised during the power 271
holder's lifetime by an instrument that takes effect immediately. 272

Sec. 2131.09. (A) A trust of real or personal property 273
created by an employer as part of a stock bonus plan, pension 274
plan, disability or death benefit plan, or profit-sharing plan, 275
for the benefit of some or all of the employees, to which 276
contributions are made by the employer or employees, or both, for 277
the purpose of distributing to the employees or their 278
beneficiaries the earnings or the principal, or both earnings and 279
principal, of the fund so held in trust is not invalid as 280
violating the rule against perpetuities, any other existing law 281
against perpetuities, or any law restricting or limiting the 282
duration of trusts; but the trust may continue for the time that 283
is necessary to accomplish the purposes for which it was created. 284

The income arising from any trust within the classifications 285
mentioned in this division may be accumulated in accordance with 286
the terms of the trust for as long a time as is necessary to 287
accomplish the purposes for which the trust was created, 288
notwithstanding any law limiting the period during which trust 289
income may be accumulated. 290

No rule of law against perpetuities or the suspension of the 291
power of alienation of the title to property invalidates any trust 292
within the classifications mentioned in this division unless the 293
trust is terminated by decree of a court in a suit instituted 294

within two years after June 25, 1951. 295

(B)(1) No rule of law against perpetuities or suspension of 296
the power of alienation of the title to property, any other 297
existing law against perpetuities, or any law restricting or 298
limiting the duration of trusts shall apply with respect to any 299
interest in real or personal property held in trust if ~~the~~ both of 300
the following apply: 301

(a) The instrument creating the trust specifically states 302
that the rule against perpetuities or the provisions of division 303
~~(B)(A)~~ of section 2131.08 of the Revised Code shall not apply to 304
the trust ~~and if either the.~~ 305

(b) The trustee ~~of the trust~~ has unlimited power ~~to sell all~~ 306
~~trust assets,~~ or if one or more persons, ~~one of whom may be the~~ 307
~~trustee,~~ has have the unlimited power to direct the trustee or to 308
approve the trustee's decision, either to sell all trust assets or 309
to terminate the entire trust. 310

(2) Division (B)(1) of this section shall apply to the 311
interpretation of a testamentary or inter vivos trust instrument 312
that creates an interest in real or personal property in relation 313
to which one or more of the following conditions ~~applies~~ apply: 314

(a) The instrument creating the testamentary or inter vivos 315
trust is executed in this state. 316

(b) The sole trustee or one of the trustees is domiciled in 317
this state. 318

(c) The testamentary or inter vivos trust is administered in 319
this state or the situs of a substantial portion of the assets 320
subject to the testamentary portion of the testamentary or inter 321
vivos trust is in this state, even though some part or all of 322
those assets are physically deposited for safekeeping in a state 323
other than this state. 324

(d) The instrument creating the testamentary or inter vivos trust states that the law of this state is to apply.

(3) ~~Division~~ Subject to division (C) of this section, ~~division (B) of this section shall be effective with respect to all of the following:~~

(a) An interest in real or personal property in trust created ~~by wills of decedents under the terms of a will of a decedent dying on or after the effective date of this amendment~~ March 22, 1999;

(b) An interest in real or personal property created ~~by~~ under the terms of an inter vivos or testamentary trust instrument executed on or after ~~the effective date of this amendment~~ March 22, 1999;

(c) An interest in real or personal property in trust created by the exercise of a general power of appointment on or after ~~the effective date of this amendment~~ March 22, 1999;

(d) An interest in real or personal property in trust created by the exercise of a nongeneral power of appointment over any portion of a trust that meets the requirements of division (B) of this section, but only if the date of creation of that nongeneral power of appointment is on or after the effective date of this section.

~~(4) Division (B) of this section shall not apply to the exercise of a power of appointment other than a general power of appointment.~~

(C) The exercise of a nongeneral power of appointment granted over any portion of a trust to which the rule against perpetuities does not apply because the terms of the trust meet the requirements of division (B) of this section shall nevertheless be subject to section 2131.08 of the Revised Code, except that interests created pursuant to the exercise of a nongeneral power

of appointment that has a date of creation on or after the 356
effective date of this section shall be required to vest not later 357
than one thousand years after the date of creation of that power. 358

(D) For purposes of this section, the instrument creating a 359
trust subject to a power reserved by the grantor to amend, revoke, 360
or terminate the trust shall include the original instrument 361
establishing the trust and all amendments to the instrument made 362
prior to the time at which the reserved power expires by reason of 363
the death of the grantor, by release of the power, or otherwise. 364

(E) The amendment of division (B)(1) of this section and 365
divisions (D) and (F) of this section are intended to clarify the 366
provisions of this section as originally enacted and apply to 367
trust instruments that are in existence prior to, on, or after the 368
effective date of this section. 369

(F) For purposes of this section, ~~"general:~~ 370

(1) "General power of appointment" means a power that is 371
exercisable in favor of the individual possessing the power, the 372
person's individual's estate, the person's individual's creditors, 373
or the creditors of the person's individual's estate other than 374
either of the following: 375

(a) A power that is limited by an ascertainable standard as 376
defined in section 5801.01 of the Revised Code; 377

(b) A power of withdrawal held by an individual, but only to 378
the extent that it does not exceed the amount specified in section 379
2041(b)(2) or 2514(e) of the "Internal Revenue Code of 1986," 100 380
Stat. 2085, 26 U.S.C. 1 et seq., as amended. 381

(2) "Nongeneral power of appointment" means any power of 382
appointment that is not a general power of appointment. 383

(3) The "date of creation" of a nongeneral power of 384
appointment created by the exercise of one or more powers of 385

appointment, except by the exercise of a general power of 386
appointment exercisable by deed, shall be the date of creation of 387
the first of those powers of appointment to be exercised. 388

(4) "Exercisable by deed" has the same meaning as in section 389
2131.08 of the Revised Code. 390

Sec. 2329.66. (A) Every person who is domiciled in this state 391
may hold property exempt from execution, garnishment, attachment, 392
or sale to satisfy a judgment or order, as follows: 393

~~(1)(a) In the case of a judgment or order regarding money~~ 394
~~owed for health care services rendered or health care supplies~~ 395
~~provided to the person or a dependent of the person, one parcel or~~ 396
~~item of real or personal property that the person or a dependent~~ 397
~~of the person uses as a residence. Division (A)(1)(a) of this~~ 398
~~section does not preclude, affect, or invalidate the creation~~ 399
~~under this chapter of a judgment lien upon the exempted property~~ 400
~~but only delays the enforcement of the lien until the property is~~ 401
~~sold or otherwise transferred by the owner or in accordance with~~ 402
~~other applicable laws to a person or entity other than the~~ 403
~~surviving spouse or surviving minor children of the judgment~~ 404
~~debtor. Every person who is domiciled in this state may hold~~ 405
~~exempt from a judgment lien created pursuant to division (A)(1)(a)~~ 406
~~of this section the person's interest, not to exceed twenty~~ 407
~~thousand two hundred dollars, in the exempted property.~~ 408

~~(b) In the case of all other judgments and orders, the~~ The 409
~~person's interest, not to exceed twenty thousand two hundred~~ 410
~~dollars,~~ in one parcel or item of real or personal property that 411
the person or a dependent of the person uses as a residence and in 412
any real and personal property that the person has devoted to 413
agricultural use. For purposes of division (A)(1) of this section, 414
"parcel" means a tract of improved real property as identified on 415
the records of the auditor of the county in which the real 416

<u>property is located.</u>	417
(2) The person's interest, not to exceed three thousand two hundred twenty-five dollars, in one motor vehicle;	418 419
(3) The person's interest, not to exceed four hundred dollars, in cash on hand, money due and payable, money to become due within ninety days, tax refunds, and money on deposit with a bank, savings and loan association, credit union, public utility, landlord, or other person, other than personal earnings.	420 421 422 423 424
(4)(a) The person's interest, not to exceed five hundred twenty-five dollars in any particular item or ten thousand seven hundred seventy-five dollars in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, firearms, and hunting and fishing equipment that are held primarily for the personal, family, or household use of the person;	425 426 427 428 429 430 431
(b) The person's aggregate interest in one or more items of jewelry, not to exceed one thousand three hundred fifty dollars, held primarily for the personal, family, or household use of the person or any of the person's dependents.	432 433 434 435
(5) The person's interest, not to exceed an aggregate of two thousand twenty-five dollars, in all implements, professional books, or tools of the person's profession, trade, or business, including agriculture;	436 437 438 439
(6)(a) The person's interest in a beneficiary fund set apart, appropriated, or paid by a benevolent association or society, as exempted by section 2329.63 of the Revised Code;	440 441 442
(b) The person's interest in contracts of life or endowment insurance or annuities, as exempted by section 3911.10 of the Revised Code;	443 444 445
(c) The person's interest in a policy of group insurance or	446

the proceeds of a policy of group insurance, as exempted by	447
section 3917.05 of the Revised Code;	448
(d) The person's interest in money, benefits, charity,	449
relief, or aid to be paid, provided, or rendered by a fraternal	450
benefit society, as exempted by section 3921.18 of the Revised	451
Code;	452
(e) The person's interest in the portion of benefits under	453
policies of sickness and accident insurance and in lump sum	454
payments for dismemberment and other losses insured under those	455
policies, as exempted by section 3923.19 of the Revised Code.	456
(7) The person's professionally prescribed or medically	457
necessary health aids;	458
(8) The person's interest in a burial lot, including, but not	459
limited to, exemptions under section 517.09 or 1721.07 of the	460
Revised Code;	461
(9) The person's interest in the following:	462
(a) Moneys paid or payable for living maintenance or rights,	463
as exempted by section 3304.19 of the Revised Code;	464
(b) Workers' compensation, as exempted by section 4123.67 of	465
the Revised Code;	466
(c) Unemployment compensation benefits, as exempted by	467
section 4141.32 of the Revised Code;	468
(d) Cash assistance payments under the Ohio works first	469
program, as exempted by section 5107.75 of the Revised Code;	470
(e) Benefits and services under the prevention, retention,	471
and contingency program, as exempted by section 5108.08 of the	472
Revised Code;	473
(f) Disability financial assistance payments, as exempted by	474
section 5115.06 of the Revised Code;	475

(g) Payments under section 24 or 32 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. 476
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(10)(a) Except in cases in which the person was convicted of 478
or pleaded guilty to a violation of section 2921.41 of the Revised 479
Code and in which an order for the withholding of restitution from 480
payments was issued under division (C)(2)(b) of that section, in 481
cases in which an order for withholding was issued under section 482
2907.15 of the Revised Code, in cases in which an order for 483
forfeiture was issued under division (A) or (B) of section 484
2929.192 of the Revised Code, and in cases in which an order was 485
issued under section 2929.193 of the Revised Code, and only to the 486
extent provided in the order, and except as provided in sections 487
3105.171, 3105.63, 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 488
of the Revised Code, the person's ~~right~~ rights to or interests in 489
a pension, benefit, annuity, retirement allowance, or accumulated 490
contributions, the person's ~~right~~ rights to or interests in a 491
participant account in any deferred compensation program offered 492
by the Ohio public employees deferred compensation board, a 493
government unit, or a municipal corporation, or the person's other 494
accrued or accruing rights or interests, as exempted by section 495
145.56, 146.13, 148.09, 742.47, 3307.41, 3309.66, or 5505.22 of 496
the Revised Code, and the person's ~~right~~ rights to or interests in 497
benefits from the Ohio public safety officers death benefit fund; 498

(b) Except as provided in sections 3119.80, 3119.81, 3121.02, 499
3121.03, and 3123.06 of the Revised Code, the person's ~~right~~ 500
rights to receive or interests in receiving a payment or other 501
benefits under any pension, annuity, or similar plan or contract, 502
not including a payment or benefit from a stock bonus or 503
profit-sharing plan or a payment included in division (A)(6)(b) or 504
(10)(a) of this section, on account of illness, disability, death, 505
age, or length of service, to the extent reasonably necessary for 506
the support of the person and any of the person's dependents, 507

except if all the following apply: 508

(i) The plan or contract was established by or under the 509
auspices of an insider that employed the person at the time the 510
person's rights or interests under the plan or contract arose. 511

(ii) The payment is on account of age or length of service. 512

(iii) The plan or contract is not qualified under the 513
"Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as 514
amended. 515

(c) Except for any portion of the assets that were deposited 516
for the principal purpose of evading the payment of any debt and 517
except as provided in sections 3119.80, 3119.81, 3121.02, 3121.03, 518
and 3123.06 of the Revised Code, the person's ~~right~~ rights or 519
interests in the assets held in, or to directly or indirectly 520
receive any payment or benefit under, any individual retirement 521
account, individual retirement annuity, "Roth IRA," "529 plan," or 522
education individual retirement account that provides payments or 523
benefits by reason of illness, disability, death, retirement, or 524
age or provides payments or benefits for purposes of education, to 525
the extent that the assets, payments, or benefits described in 526
division (A)(10)(c) of this section are attributable to or derived 527
from any of the following or from any earnings, dividends, 528
interest, appreciation, or gains on any of the following: 529

(i) Contributions of the person that were less than or equal 530
to the applicable limits on deductible contributions to an 531
individual retirement account or individual retirement annuity in 532
the year that the contributions were made, whether or not the 533
person was eligible to deduct the contributions on the person's 534
federal tax return for the year in which the contributions were 535
made; 536

(ii) Contributions of the person that were less than or equal 537
to the applicable limits on contributions to a Roth IRA or 538

education individual retirement account in the year that the 539
contributions were made; 540

(iii) Contributions of the person that are within the 541
applicable limits on rollover contributions under subsections 219, 542
402(c), 403(a)(4), 403(b)(8), 408(b), 408(d)(3), 408A(c)(3)(B), 543
408A(d)(3), and 530(d)(5) of the "Internal Revenue Code of 1986," 544
100 Stat. 2085, 26 U.S.C.A. 1, as amended; 545

(iv) Contributions by any person into any plan, fund, or 546
account that is formed, created, or administered pursuant to, or 547
is otherwise subject to, section 529 of the "Internal Revenue Code 548
of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. 549

(d) Except for any portion of the assets that were deposited 550
for the principal purpose of evading the payment of any debt and 551
except as provided in sections 3119.80, 3119.81, 3121.02, 3121.03, 552
and 3123.06 of the Revised Code, the person's ~~right~~ rights or 553
interests in the assets held in, or to receive any payment under, 554
any Keogh or "H.R. 10" plan that provides benefits by reason of 555
illness, disability, death, retirement, or age, to the extent 556
reasonably necessary for the support of the person and any of the 557
person's dependents. 558

(e) The person's rights to or interests in any assets held 559
in, or to directly or indirectly receive any payment or benefit 560
under, any individual retirement account, individual retirement 561
annuity, "Roth IRA," "529 plan," or education individual 562
retirement account that a decedent, upon or by reason of the 563
decedent's death, directly or indirectly left to or for the 564
benefit of the person, either outright or in trust or otherwise, 565
including, but not limited to, any of those rights or interests in 566
assets or to receive payments or benefits that were transferred, 567
conveyed, or otherwise transmitted by the decedent by means of a 568
will, trust, exercise of a power of appointment, beneficiary 569
designation, transfer or payment on death designation, or any 570

other method or procedure. 571

(f) The exemptions under divisions (A)(10)(a) to (e) of this section also shall apply or otherwise be available to an alternate payee under a qualified domestic relations order (QDRO) or other similar court order. 572
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(g) A person's interest in any plan, program, instrument, or device described in divisions (A)(10)(a) to (e) of this section shall be considered an exempt interest even if the plan, program, instrument, or device in question, due to an error made in good faith, failed to satisfy any criteria applicable to that plan, program, instrument, or device under the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. 576
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(11) The person's right to receive spousal support, child support, an allowance, or other maintenance to the extent reasonably necessary for the support of the person and any of the person's dependents; 583
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(12) The person's right to receive, or moneys received during the preceding twelve calendar months from, any of the following: 587
588

(a) An award of reparations under sections 2743.51 to 2743.72 of the Revised Code, to the extent exempted by division (D) of section 2743.66 of the Revised Code; 589
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(b) A payment on account of the wrongful death of an individual of whom the person was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the person and any of the person's dependents; 592
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(c) Except in cases in which the person who receives the payment is an inmate, as defined in section 2969.21 of the Revised Code, and in which the payment resulted from a civil action or appeal against a government entity or employee, as defined in section 2969.21 of the Revised Code, a payment, not to exceed twenty thousand two hundred dollars, on account of personal bodily 596
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injury, not including pain and suffering or compensation for 602
actual pecuniary loss, of the person or an individual for whom the 603
person is a dependent; 604

(d) A payment in compensation for loss of future earnings of 605
the person or an individual of whom the person is or was a 606
dependent, to the extent reasonably necessary for the support of 607
the debtor and any of the debtor's dependents. 608

(13) Except as provided in sections 3119.80, 3119.81, 609
3121.02, 3121.03, and 3123.06 of the Revised Code, personal 610
earnings of the person owed to the person for services in an 611
amount equal to the greater of the following amounts: 612

(a) If paid weekly, thirty times the current federal minimum 613
hourly wage; if paid biweekly, sixty times the current federal 614
minimum hourly wage; if paid semimonthly, sixty-five times the 615
current federal minimum hourly wage; or if paid monthly, one 616
hundred thirty times the current federal minimum hourly wage that 617
is in effect at the time the earnings are payable, as prescribed 618
by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 619
U.S.C. 206(a)(1), as amended; 620

(b) Seventy-five per cent of the disposable earnings owed to 621
the person. 622

(14) The person's right in specific partnership property, as 623
exempted by division (B)(3) of section 1775.24 of the Revised Code 624
or the person's rights in a partnership pursuant to section 625
1776.50 of the Revised Code, except as otherwise set forth in 626
section 1776.50 of the Revised Code; 627

(15) A seal and official register of a notary public, as 628
exempted by section 147.04 of the Revised Code; 629

(16) The person's interest in a tuition unit or a payment 630
under section 3334.09 of the Revised Code pursuant to a tuition 631
payment contract, as exempted by section 3334.15 of the Revised 632

Code; 633

(17) Any other property that is specifically exempted from 634
execution, attachment, garnishment, or sale by federal statutes 635
other than the "Bankruptcy Reform Act of 1978," 92 Stat. 2549, 11 636
U.S.C.A. 101, as amended; 637

(18) The person's aggregate interest in any property, not to 638
exceed one thousand seventy-five dollars, except that division 639
(A)(18) of this section applies only in bankruptcy proceedings. 640

(B) On April 1, 2010, and on the first day of April in each 641
third calendar year after 2010, the Ohio judicial conference shall 642
adjust each dollar amount set forth in this section to reflect ~~the~~ 643
change any increase in the consumer price index for all urban 644
consumers, as published by the United States department of labor, 645
or, if that index is no longer published, a generally available 646
comparable index, for the three-year period ending on the 647
thirty-first day of December of the preceding year. Any 648
adjustments required by this division shall be rounded to the 649
nearest twenty-five dollars. 650

The Ohio judicial conference shall prepare a memorandum 651
specifying the adjusted dollar amounts. The judicial conference 652
shall transmit the memorandum to the director of the legislative 653
service commission, and the director shall publish the memorandum 654
in the register of Ohio. (Publication of the memorandum in the 655
register of Ohio shall continue until the next memorandum 656
specifying an adjustment is so published.) The judicial conference 657
also may publish the memorandum in any other manner it concludes 658
will be reasonably likely to inform persons who are affected by 659
its adjustment of the dollar amounts. 660

(C) As used in this section: 661

(1) "Disposable earnings" means net earnings after the 662
garnishee has made deductions required by law, excluding the 663

deductions ordered pursuant to section 3119.80, 3119.81, 3121.02, 664
3121.03, or 3123.06 of the Revised Code. 665

(2) "Insider" means: 666

(a) If the person who claims an exemption is an individual, a 667
relative of the individual, a relative of a general partner of the 668
individual, a partnership in which the individual is a general 669
partner, a general partner of the individual, or a corporation of 670
which the individual is a director, officer, or in control; 671

(b) If the person who claims an exemption is a corporation, a 672
director or officer of the corporation; a person in control of the 673
corporation; a partnership in which the corporation is a general 674
partner; a general partner of the corporation; or a relative of a 675
general partner, director, officer, or person in control of the 676
corporation; 677

(c) If the person who claims an exemption is a partnership, a 678
general partner in the partnership; a general partner of the 679
partnership; a person in control of the partnership; a partnership 680
in which the partnership is a general partner; or a relative in, a 681
general partner of, or a person in control of the partnership; 682

(d) An entity or person to which or whom any of the following 683
applies: 684

(i) The entity directly or indirectly owns, controls, or 685
holds with power to vote, twenty per cent or more of the 686
outstanding voting securities of the person who claims an 687
exemption, unless the entity holds the securities in a fiduciary 688
or agency capacity without sole discretionary power to vote the 689
securities or holds the securities solely to secure to debt and 690
the entity has not in fact exercised the power to vote. 691

(ii) The entity is a corporation, twenty per cent or more of 692
whose outstanding voting securities are directly or indirectly 693
owned, controlled, or held with power to vote, by the person who 694

claims an exemption or by an entity to which division (C)(2)(d)(i) 695
of this section applies. 696

(iii) A person whose business is operated under a lease or 697
operating agreement by the person who claims an exemption, or a 698
person substantially all of whose business is operated under an 699
operating agreement with the person who claims an exemption. 700

(iv) The entity operates the business or all or substantially 701
all of the property of the person who claims an exemption under a 702
lease or operating agreement. 703

(e) An insider, as otherwise defined in this section, of a 704
person or entity to which division (C)(2)(d)(i), (ii), (iii), or 705
(iv) of this section applies, as if the person or entity were a 706
person who claims an exemption; 707

(f) A managing agent of the person who claims an exemption. 708

(3) "Participant account" has the same meaning as in section 709
148.01 of the Revised Code. 710

(4) "Government unit" has the same meaning as in section 711
148.06 of the Revised Code. 712

(D) For purposes of this section, "interest" shall be 713
determined as follows: 714

(1) In bankruptcy proceedings, as of the date a petition is 715
filed with the bankruptcy court commencing a case under Title 11 716
of the United States Code; 717

(2) In all cases other than bankruptcy proceedings, as of the 718
date of an appraisal, if necessary under section 2329.68 of the 719
Revised Code, or the issuance of a writ of execution. 720

An interest, as determined under division (D)(1) or (2) of 721
this section, shall not include the amount of any lien otherwise 722
valid pursuant to section 2329.661 of the Revised Code. 723

Sec. 5805.06. (A) Whether or not the terms of a trust contain a spendthrift provision, all of the following apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) ~~With~~ Except to the extent that a trust is established pursuant to, or otherwise is wholly or partially governed by or subject to Chapter 5816. of the Revised Code, with respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a an irrevocable trust has more than one settlor, the amount distributable to or for a settlor's benefit that the creditor or assignee of a particular settlor may reach may not exceed ~~the~~ that settlor's interest in the portion of the trust attributable to that settlor's contribution. The right of a creditor or assignee to reach a settlor's interest in an irrevocable trust shall be subject to Chapter 5816. of the Revised Code to the extent that that chapter applies to that trust.

(3) With respect to a trust described in 42 U.S.C. section 1396p(d)(4)(A) or (C), the court may limit the award of a settlor's creditor under division (A)(1) or (2) of this section to the relief that is appropriate under the circumstances, considering among any other factors determined appropriate by the court, the supplemental needs of the beneficiary.

(B) For purposes of this section, all of the following apply:

(1) The holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power during the period the power may be exercised.

(2) Upon the lapse, release, or waiver of the power of withdrawal, the holder is treated as the settlor of the trust only

to the extent the value of the property affected by the lapse, 754
release, or waiver exceeds the greatest of the following amounts: 755

(a) The amount specified in section 2041(b)(2) or 2514(e) of 756
the Internal Revenue Code; 757

(b) If the donor of the property subject to the holder's 758
power of withdrawal is not married at the time of the transfer of 759
the property to the trust, the amount specified in section 2503(b) 760
of the Internal Revenue Code; 761

(c) If the donor of the property subject to the holder's 762
power of withdrawal is married at the time of the transfer of the 763
property to the trust, twice the amount specified in section 764
2503(b) of the Internal Revenue Code. 765

(3) None of the following shall be considered an amount that 766
can be distributed to or for the benefit of the settlor: 767

(a) Trust property that could be or is distributed to or for 768
the benefit of the settlor only as a result of the exercise of a 769
power of appointment held in a nonfiduciary capacity by any person 770
other than the settlor; 771

(b) Trust property that could be or is distributed to or for 772
the benefit of the settlor of a trust pursuant to the power of the 773
trustee to make distributions or pursuant to the power of another 774
in a fiduciary capacity to direct distributions, if and to the 775
extent that the distributions are or could be made from trust 776
property the value of which was included in the gross estate of 777
the settlor's spouse for federal estate tax purposes under section 778
2041 or 2044 of the Internal Revenue Code or that was treated as a 779
transfer by the settlor's spouse under section 2514 or 2519 of the 780
Internal Revenue Code. 781

(4) In connection with any tax owed or paid by the settlor in 782
connection with any tax levied on any trust income or principal, 783
no trust property shall be considered an amount that can be 784

distributed to or for the benefit of the settlor solely because 785
trust property, whether pursuant to the exercise of a 786
discretionary power by any person other than the settlor or 787
pursuant to the terms of the trust instrument, could or must be 788
paid to a taxing authority, is paid to a taxing authority, or 789
could or must be distributed to or for the benefit of the settlor 790
to reimburse the settlor for paying that tax. 791

Sec. 5808.08. (A) While a trust is revocable, the trustee may 792
follow a direction of the settlor that is contrary to the terms of 793
the trust. 794

(B) As provided in section 5815.25 of the Revised Code, a 795
trustee is not liable for losses resulting from certain actions or 796
failures to act when other persons are granted certain powers with 797
respect to the administration of the trust. 798

(C) The terms of a trust may confer upon a trustee or other 799
person a power to direct the modification or termination of the 800
trust. 801

(D) A Except to the extent otherwise provided by the terms of 802
a trust, a person other than a beneficiary who holds a power to 803
direct, including, but not limited to, a power to direct the 804
modification or termination of a trust, is presumptively a 805
fiduciary who, as a fiduciary, is required to act in good faith 806
with regard to the purposes of the trust and the interests of the 807
beneficiaries. The holder of a power to direct is liable for any 808
loss that results from breach of a fiduciary duty. 809

Sec. 5815.24. (A) As used in this section, "fiduciary" means 810
a trustee under any expressed, implied, resulting, or constructive 811
trust; an executor, administrator, public administrator, 812
committee, guardian, conservator, curator, receiver, trustee in 813
bankruptcy, or assignee for the benefit of creditors; a partner, 814

agent, officer of a public or private corporation, or public 815
officer; or any other person acting in a fiduciary capacity for 816
any person, trust, or estate. 817

(B) A fiduciary, or a custodian, who is a transferee of real 818
or personal property that is held by a fiduciary other than the 819
person or entity serving as the transferee, is not required to 820
inquire into any act, or audit any account, of the transferor 821
fiduciary, unless the transferee is specifically directed to do so 822
in the instrument governing the transferee or unless the 823
transferee has actual knowledge of conduct of the transferor that 824
would constitute a breach of the transferor's fiduciary 825
responsibilities. 826

(C) If a trustee is authorized or directed in a trust 827
instrument to pay or advance all or any part of the trust property 828
to the personal representative of a decedent's estate for the 829
payment of the decedent's legal obligations, death taxes, 830
bequests, or expenses of administration, the trustee is not liable 831
for the application of the trust property paid or advanced to the 832
personal representative and is not liable for any act or omission 833
of the personal representative with respect to the trust property, 834
unless the trustee has actual knowledge, prior to the payment or 835
advancement of the trust property, that the personal 836
representative does not intend to use the trust property for such 837
purposes. 838

(D) Regardless of whether a beneficiary is subject to the 839
claims of any creditor, a trustee may pay any expense incurred by 840
a beneficiary to the extent that payment is permitted by the 841
instrument governing the trust, and the trustee may make those 842
payments even if the payments exhaust the income and principal of 843
the trust. A trustee is not liable to any creditor of a 844
beneficiary for paying the expenses of a beneficiary as allowed by 845
this division. 846

Sec. 5815.25. (A) As used in this section, "fiduciary" means 847
a trustee under any testamentary, inter vivos, or other trust, an 848
executor or administrator, or any other person who is acting in a 849
fiduciary capacity for any person, trust, or estate. 850

(B) ~~When~~ If an instrument or other applicable written 851
agreement describes, appoints, or directs a fiduciary to handle 852
only the administrative duties and responsibilities of a trust, 853
that administrative fiduciary shall not have any duties, 854
responsibilities, or liabilities to the trust beneficiaries or to 855
other persons interested in a trust except for those 856
administrative duties and responsibilities specifically described 857
in the instrument or written agreement. The administrative duties 858
and responsibilities of a trust under this division may include 859
any of the following: 860

(1) Opening and maintaining bank, brokerage, financial, or 861
other custodial accounts to receive trust income or contributions 862
and from which trust expenditures, bills, and distributions may be 863
disbursed; 864

(2) Maintaining and handling trust records, reports, 865
correspondence, or communications; 866

(3) Maintaining an office for trust business; 867

(4) Filing any trust tax returns; 868

(5) Employing agents in connection with the fiduciary's 869
administrative duties; 870

(6) Taking custody of or storing trust property; 871

(7) Any other similar administrative duties for the trust. 872

(C) If an instrument under which a fiduciary acts reserves to 873
the grantor, or vests in an advisory or investment committee or in 874
one or more other persons, including one or more fiduciaries, to 875
the exclusion of the fiduciary or of one or more of several 876

fiduciaries, any power, including, but not limited to, the 877
authority to direct the acquisition, disposition, or retention of 878
any investment or the power to authorize any act that an excluded 879
fiduciary may propose, any excluded fiduciary is not liable, 880
either individually or as a fiduciary, for either of the 881
following: 882

(1) Any loss that results from compliance with an authorized 883
direction of the grantor, committee, person, or persons; 884

(2) Any loss that results from a failure to take any action 885
proposed by an excluded fiduciary that requires a prior 886
authorization of the grantor, committee, person, or persons if 887
that excluded fiduciary timely sought but failed to obtain that 888
authorization. 889

~~(C)~~(D) Any administrative fiduciary as described in division 890
(B) of this section or any excluded fiduciary as described in 891
division ~~(B)~~(C) of this section is relieved from any obligation to 892
perform investment reviews and make recommendations with respect 893
to any investments to the extent the grantor, an advisory or 894
investment committee, or one or more other persons have authority 895
to direct the acquisition, disposition, or retention of any 896
investment. 897

~~(D)~~(E) This section does not apply to the extent that the 898
instrument under which an administrative fiduciary as described in 899
division (B) of this section or an excluded fiduciary as described 900
in division ~~(B)~~(C) of this section ~~acts~~ contains provisions that 901
are inconsistent with this section. 902

Sec. 5815.36. (A) As used in this section: 903

(1) "Disclaimant" means any person, any guardian or personal 904
representative of a person or estate of a person, or any 905
attorney-in-fact or agent of a person having a general or specific 906

authority to act granted in a written instrument, who is any of 907
the following: 908

(a) With respect to testamentary instruments and intestate 909
succession, an heir, next of kin, devisee, legatee, donee, person 910
succeeding to a disclaimed interest, surviving joint tenant, 911
surviving tenant by the entirety, surviving tenant of a tenancy 912
with a right of survivorship, beneficiary under a testamentary 913
instrument, or person designated to take pursuant to a power of 914
appointment exercised by a testamentary instrument; 915

(b) With respect to nontestamentary instruments, a grantee, 916
donee, person succeeding to a disclaimed interest, surviving joint 917
tenant, surviving tenant by the entirety, surviving tenant of a 918
tenancy with a right of survivorship, beneficiary under a 919
nontestamentary instrument, or person designated to take pursuant 920
to a power of appointment exercised by a nontestamentary 921
instrument; 922

(c) With respect to fiduciary rights, privileges, powers, and 923
immunities, a fiduciary under a testamentary or nontestamentary 924
instrument. Division (A)(1)(c) of this section does not authorize 925
a fiduciary who disclaims fiduciary rights, privileges, powers, 926
and immunities to cause the rights of any beneficiary to be 927
disclaimed unless the instrument creating the fiduciary 928
relationship authorizes the fiduciary to make such a disclaimer. 929

(d) Any person entitled to take an interest in property upon 930
the death of a person or upon the occurrence of any other event. 931

(2) "Personal representative" includes any fiduciary as 932
defined in section 2109.01 of the Revised Code and any executor, 933
trustee, guardian, or other person or entity having a fiduciary 934
relationship with regard to any interest in property passing to 935
the fiduciary, executor, trustee, guardian, or other person or 936
entity by reason of a disclaimant's death. 937

(3) "Property" means all forms of property, real and 938
personal, tangible and intangible. 939

(B)(1) A disclaimant, other than a fiduciary under an 940
instrument who is not authorized by the instrument to disclaim the 941
interest of a beneficiary, may disclaim, in whole or in part, the 942
succession to any property by executing and by delivering, filing, 943
or recording a written disclaimer instrument in the manner 944
provided in this section. 945

(2) A disclaimant who is a fiduciary under an instrument may 946
disclaim, in whole or in part, any right, power, privilege, or 947
immunity, by executing and by delivering, filing, or recording a 948
written disclaimer instrument in the manner provided in this 949
section. 950

(3) The written instrument of disclaimer shall be signed and 951
acknowledged by the disclaimant and shall contain all of the 952
following: 953

(a) A reference to the donative instrument; 954

(b) A description of the property, part of property, or 955
interest disclaimed, and of any fiduciary right, power, privilege, 956
or immunity disclaimed; 957

(c) A declaration of the disclaimer and its extent. 958

(4) The guardian of the estate of a minor or an incompetent, 959
or the personal representative of a deceased person, whether or 960
not authorized by the instrument to disclaim, with the consent of 961
the probate division of the court of common pleas may disclaim, in 962
whole or in part, the succession to any property, or interest in 963
property, that the ward, if an adult and competent, or the 964
deceased, if living, might have disclaimed. The guardian or 965
personal representative, or any interested person may file an 966
application with the probate division of the court of common pleas 967
that has jurisdiction of the estate, asking that the court order 968

the guardian or personal representative to execute and deliver, 969
file, or record the disclaimer on behalf of the ward, estate, or 970
deceased person. The court shall order the guardian or personal 971
representative to execute and deliver, file, or record the 972
disclaimer if the court finds, upon hearing after notice to 973
interested parties and such other persons as the court shall 974
direct, that: 975

(a) It is in the best interests of those interested in the 976
estate of the person and of those who will take the disclaimed 977
interest; 978

(b) It would not materially, adversely affect the minor or 979
incompetent, or the beneficiaries of the estate of the decedent, 980
taking into consideration other available resources and the age, 981
probable life expectancy, physical and mental condition, and 982
present and reasonably anticipated future needs of the minor or 983
incompetent or the beneficiaries of the estate of the decedent. 984

A written instrument of disclaimer ordered by the court under 985
this division shall be executed and be delivered, filed, or 986
recorded within the time and in the manner in which the person 987
could have disclaimed if the person were living, an adult, and 988
competent. 989

(C) A partial disclaimer of property that is subject to a 990
burdensome interest created by the donative instrument is not 991
effective unless the disclaimed property constitutes a gift that 992
is separate and distinct from undisclaimed gifts. 993

(D) The disclaimant shall deliver, file, or record the 994
disclaimer, or cause the same to be done, prior to accepting any 995
benefits of the disclaimed interest and at any time after the 996
latest of the following dates: 997

(1) The effective date of the donative instrument if both the 998
taker and the taker's interest in the property are finally 999

ascertained on that date; 1000

(2) The date of the occurrence of the event upon which both 1001
the taker and the taker's interest in the property become finally 1002
ascertainable; 1003

(3) The date on which the disclaimant attains eighteen years 1004
of age or is no longer an incompetent, without tendering or 1005
repaying any benefit received while the disclaimant was under 1006
eighteen years of age or an incompetent, and even if a guardian of 1007
a minor or incompetent had filed an application pursuant to 1008
division (B)(4) of this section and the probate division of the 1009
court of common pleas involved did not consent to the guardian 1010
executing a disclaimer. 1011

(E) No disclaimer instrument is effective under this section 1012
if either of the following applies under the terms of the 1013
disclaimer instrument: 1014

(1) The disclaimant has power to revoke the disclaimer. 1015

(2) The disclaimant may transfer, or direct to be 1016
transferred, to self the entire legal and equitable ownership of 1017
the property subject to the disclaimer instrument. 1018

(F)(1) Subject to division (F)(2) of this section, if the 1019
interest disclaimed is created by a nontestamentary instrument, 1020
including, but not limited to, a transfer on death designation 1021
affidavit pursuant to section 5302.22 of the Revised Code, the 1022
disclaimer instrument shall be delivered personally or by 1023
certified mail to the trustee or other person who has legal title 1024
to, or possession of, the property disclaimed. If the interest 1025
disclaimed is created by a transfer on death designation affidavit 1026
pursuant to section 5302.22 of the Revised Code, the disclaimer 1027
instrument shall be filed with the county recorder of the county 1028
in which the real property that is the subject of that affidavit 1029
is located. 1030

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

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

(4) If an interest in real estate is disclaimed, an executed copy of the disclaimer instrument also shall be recorded in the office of the recorder of the county in which the real estate is located. The disclaimer instrument shall include a description of the real estate with sufficient certainty to identify it, and shall contain a reference to the record of the instrument that created the interest disclaimed. If title to the real estate is

registered under Chapters 5309. and 5310. of the Revised Code, the 1063
disclaimer interest shall be entered as a memorial on the last 1064
certificate of title. A spouse of a disclaimant has no dower or 1065
other interest in the real estate disclaimed. 1066

(G) If a donative instrument expressly provides for the 1067
distribution of property, part of property, or interest in 1068
property if there is a disclaimer, the property, part of property, 1069
or interest disclaimed shall be distributed or disposed of, and 1070
accelerated or not accelerated, in accordance with the donative 1071
instrument. In the absence of express provisions to the contrary 1072
in the donative instrument, the property, part of property, or 1073
interest in property disclaimed, and any future interest that is 1074
to take effect in possession or enjoyment at or after the 1075
termination of the interest disclaimed, shall descend, be 1076
distributed, or otherwise be disposed of, and shall be 1077
accelerated, in the following manner: 1078

(1) If intestate or testate succession is disclaimed, as if 1079
the disclaimant had predeceased the decedent; 1080

(2) If the disclaimant is one designated to take pursuant to 1081
a power of appointment exercised by a testamentary instrument, as 1082
if the disclaimant had predeceased the donee of the power; 1083

(3) If the donative instrument is a nontestamentary 1084
instrument, as if the disclaimant had died before the effective 1085
date of the nontestamentary instrument; 1086

(4) If the disclaimer is of a fiduciary right, power, 1087
privilege, or immunity, as if the right, power, privilege, or 1088
immunity was never in the donative instrument. 1089

(H) A disclaimer pursuant to this section is effective as of, 1090
and relates back for all purposes to, the date upon which the 1091
taker and the taker's interest have been finally ascertained. 1092

(I) A disclaimant who has a present and future interest in 1093

property, and disclaims the disclaimant's present interest in 1094
whole or in part, is considered to have disclaimed the 1095
disclaimant's future interest to the same extent, unless a 1096
contrary intention appears in the disclaimer instrument or the 1097
donative instrument. A disclaimant is not precluded from 1098
receiving, as an alternative taker, a beneficial interest in the 1099
property disclaimed, unless a contrary intention appears in the 1100
disclaimer instrument or in the donative instrument. 1101

(J) The disclaimant's right to disclaim under this section is 1102
barred if the disclaimant does any of the following: 1103

(1) Assigns, conveys, encumbers, pledges, or transfers, or 1104
contracts to assign, convey, encumber, pledge, or transfer, the 1105
property or any interest in it; 1106

(2) Waives in writing the disclaimant's right to disclaim and 1107
executes and delivers, files, or records the waiver in the manner 1108
provided in this section for a disclaimer instrument; 1109

(3) Accepts the property or an interest in it; 1110

(4) Permits or suffers a sale or other disposition of the 1111
property pursuant to judicial action against the disclaimant. 1112

(K) Neither a fiduciary's application for appointment or 1113
assumption of duties as a fiduciary nor a beneficiary's 1114
application for appointment as a personal representative or 1115
fiduciary waives or bars the disclaimant's right to disclaim a 1116
right, power, privilege, or immunity as a personal representative 1117
or fiduciary or the beneficiary's right to disclaim property. 1118

(L) The right to disclaim under this section exists 1119
irrespective of any limitation on the interest of the disclaimant 1120
in the nature of a spendthrift provision or similar restriction. 1121

(M) A disclaimer instrument or written waiver of the right to 1122
disclaim that has been executed and delivered, filed, or recorded 1123

as required by this section is final and binding upon all persons. 1124

(N)(1) The right to disclaim and the procedures for 1125
disclaimer established by this section are in addition to, and do 1126
not exclude or abridge, any other rights or procedures that exist 1127
or formerly existed under any other section of the Revised Code or 1128
at common law to assign, convey, release, refuse to accept, 1129
renounce, waive, or disclaim property. 1130

(2) A disclaimer is not considered a transfer or conveyance 1131
by the disclaimant, and no creditor of a disclaimant may avoid a 1132
disclaimer. 1133

(3) This section shall take precedence over any other section 1134
of the Revised Code that conflicts with this section. 1135

(O)(1) No person is liable for distributing or disposing of 1136
property in a manner inconsistent with the terms of a valid 1137
disclaimer if the distribution or disposition is otherwise proper 1138
and the person has no actual knowledge of the disclaimer. 1139

(2) No person is liable for distributing or disposing of 1140
property in reliance upon the terms of a disclaimer that is 1141
invalid because the right of disclaimer has been waived or barred 1142
if the distribution or disposition is otherwise proper and the 1143
person has no actual knowledge of the facts that constitute a 1144
waiver or bar to the right to disclaim. 1145

(P)(1) A disclaimant may disclaim pursuant to this section 1146
any interest in property that is in existence on September 27, 1147
1976, if either the interest in the property or the taker of the 1148
interest in the property is not finally ascertained on that date. 1149

(2) No disclaimer executed pursuant to this section destroys 1150
or diminishes an interest in property that exists on September 27, 1151
1976, in any person other than the disclaimant. 1152

(Q) This section may be applied separately to different 1153

interests or powers created in the disclaimant by the same 1154
testamentary or nontestamentary instrument. 1155

Sec. 5815.37. (A) If any interest in real property held by 1156
any trustee of an express trust that is wholly or partially 1157
governed by a law of this state or any interest in real property 1158
located in this state that is held by the trustee of a trust 1159
wholly governed by the law of one or more jurisdictions other than 1160
this state is temporarily conveyed to any beneficiary of that 1161
trust and reconveyed back to any trustee of that trust, the 1162
interest in the real property shall be subject to divisions (B) 1163
and (C) of this section if all of the following apply: 1164

(1) That temporary conveyance is for the principal purpose of 1165
enabling some or all of that interest in the real property to be 1166
used as collateral in a loan transaction. 1167

(2) The loan proceeds will be delivered to the trustee of the 1168
trust or will otherwise be principally used for the benefit of one 1169
or more beneficiaries of the trust. 1170

(3) The interest in the real property is reconveyed back to 1171
one or more trustees of the trust within a reasonable time after 1172
the reconveying beneficiary acquired actual notice that the lender 1173
has perfected the lender's collateral rights in and to the 1174
interest in the real property. 1175

(4) The lender in question is any of the following: 1176

(a) A bank, thrift, savings bank, savings and loan 1177
association, credit union, or any other similar financial 1178
institution if the activities of the other similar financial 1179
institution are subject to supervision by the Ohio superintendent 1180
of financial institutions, the federal deposit insurance 1181
corporation, the comptroller of the currency, the office of thrift 1182
supervision, any other comparable state or federal regulatory 1183

agency or entity, or a successor of any of them; 1184

(b) An insurance company subject to supervision by the Ohio 1185
department of insurance or any comparable agency established by 1186
the law of any other jurisdiction; 1187

(c) Any other corporation, limited liability company, 1188
partnership, or other similar or comparable entity the routine and 1189
regular business activities of which commonly include the making 1190
of commercial or residential loans that are wholly or partially 1191
secured by real property. 1192

(B) If a temporary conveyance and reconveyance of an interest 1193
in real property is made for the principal purpose of allowing a 1194
lender to acquire, perfect, foreclose on, or exercise collateral 1195
rights in and to the real property interest in question, the 1196
temporary conveyance to a beneficiary shall be disregarded for all 1197
other purposes, and the reconveyance back to a trustee shall 1198
relate back to the date immediately preceding that reconveyance on 1199
which the interest in the real property was transferred to any 1200
trustee of the trust in a transaction other than a loan 1201
transaction described in division (A)(1) of this section. 1202

(C) In connection with any temporary conveyance and 1203
reconveyance of an interest in real property pursuant to division 1204
(A) of this section, the following shall survive unimpaired after 1205
any reconveyance back to a trustee made pursuant to division 1206
(A)(3) of this section: 1207

(1) The rights, duties, and obligations of a lender under the 1208
documents governing the loan transaction, including, but not 1209
limited to, any of the following to the extent they are provided 1210
for in those documents: 1211

(a) A lender's collateral rights in and to any interest in 1212
real property that is reconveyed to a trustee; 1213

(b) The lender's rights under any mortgage, deed of trust, 1214

lien, encumbrance, or any other similar or comparable instrument 1215
or arrangement used to give the lender collateral rights in and to 1216
the interest being reconveyed, including, but not limited to, a 1217
lender's right to foreclose on that interest in real property; 1218

(c) The lender's obligations to make loans or advances or to 1219
provide any person with any notice called for by the documents 1220
governing the loan transaction. 1221

(2) The rights, duties, and obligations of any debtor under 1222
any documents governing the loan transaction, including, but not 1223
limited to, the following to the extent they are provided for in 1224
those documents: 1225

(a) The duty to repay the lender or any other person who is 1226
entitled to receive payments under the documents governing the 1227
loan transaction; 1228

(b) The duty to honor any agreements or covenants made by the 1229
debtor in the documents governing the loan transaction; 1230

(c) The right to receive any advances, loans, notices, or 1231
other benefits called for by the documents governing the loan 1232
transaction. 1233

(D) The following apply for purposes of division (A)(1) of 1234
this section: 1235

(1) A court shall liberally construe the temporary conveyance 1236
to a beneficiary of the trust in question in determining whether 1237
the principal purpose of the temporary conveyance is to enable 1238
some or all of the interest in the real property to be used as 1239
collateral in a loan transaction. 1240

(2) An interest in real property shall be considered to be 1241
used as collateral if, as part of a lending transaction, that 1242
interest is wholly or partially made subject to a mortgage, deed 1243
of trust, lien, encumbrance, or any other similar or comparable 1244

instrument or arrangement used to give the lender collateral 1245
rights in and to that interest. 1246

(E) A court shall liberally construe division (A)(2) of this 1247
section in determining whether the loan proceeds referred to in 1248
that division will be principally used for the benefit of one or 1249
more beneficiaries of the trust in question. 1250

(F) For purposes of division (A)(3) of this section, any 1251
reconveyance to a trustee shall be considered to have occurred 1252
within a reasonable time if it is made within one hundred twenty 1253
days of the date on which the reconveying beneficiary acquired 1254
actual notice that the lender has perfected the lender's 1255
collateral rights in and to the interest in the real property. In 1256
all other cases, a court shall consider all relevant facts and 1257
circumstances in determining whether a beneficiary has reconveyed 1258
the interest in the real property back to a trustee within a 1259
reasonable time after the reconveying beneficiary acquired that 1260
actual notice. 1261

(G)(1) A court shall liberally construe division (A)(4) of 1262
this section in determining whether a corporation, limited 1263
liability company, partnership, or other similar or comparable 1264
entity qualifies as a lender within the meaning of that division. 1265

(2) Subject to the rule of liberal interpretation set forth 1266
in division (G)(1) of this section, the Ohio superintendent of 1267
financial institutions may from time to time issue regulations 1268
setting forth a nonexhaustive list of entities that qualify as a 1269
lender within the meaning of division (A)(4) of this section and 1270
also may from time to time issue regulations setting forth 1271
specific entities or classes of entities that do not qualify as a 1272
lender within the meaning of that division. 1273

(H) An interest in real property may be subject to or 1274
involved in more than one loan transaction undertaken pursuant to 1275

<u>this section.</u>	1276
<u>Sec. 5816.01. This chapter may be cited as the Ohio legacy trust act.</u>	1277 1278
<u>Sec. 5816.02. As used in this chapter, unless the context otherwise requires:</u>	1279 1280
<u>(A)(1) "Advisor" means a person to whom both of the following apply:</u>	1281 1282
<u>(a) The person satisfies the eligibility criteria specified in division (A) of section 5816.11 of the Revised Code.</u>	1283 1284
<u>(b) The person is given the authority by the terms of a legacy trust to remove or appoint one or more trustees of the trust or to direct, consent to, or disapprove a trustee's actual or proposed investment, distribution, or other decisions.</u>	1285 1286 1287 1288
<u>(2) Any person to whom division (A)(1) of this section applies is considered an advisor even if that person is denominated by another title, such as protector.</u>	1289 1290 1291
<u>(B) "Asset" means property of a transferor but does not include any of the following:</u>	1292 1293
<u>(1) Property to the extent it is encumbered by a valid lien;</u>	1294
<u>(2) Property to the extent it is exempt at the time of a qualified disposition under any applicable nonbankruptcy law, including, but not limited to, section 2329.66 of the Revised Code;</u>	1295 1296 1297 1298
<u>(3) Property held in the form of a tenancy by the entirety to the extent that, under the law governing the entirety estate at the time of a qualified disposition, it is not subject to process by a creditor holding a claim against only one tenant;</u>	1299 1300 1301 1302
<u>(4) Any property transferred from a nonlegacy trust to a</u>	1303

legacy trust to the extent that the property would not be subject 1304
to attachment under the applicable nonbankruptcy law governing 1305
that nonlegacy trust. 1306

(C) "Bankruptcy Code" means the United States Bankruptcy 1307
Code, 11 U.S.C. Chapter 11, as amended. 1308

(D) "Beneficiary" has the same meaning as in section 5801.01 1309
of the Revised Code. 1310

(E) "Claim" means a right to payment, whether or not the 1311
right is reduced to judgment or is liquidated, unliquidated, 1312
fixed, contingent, matured, unmatured, disputed, undisputed, 1313
legal, equitable, secured, or unsecured. 1314

(F) "Creditor" means a person who has a claim against a 1315
transferor and any transferee or assignee of, or successor to, 1316
that claim. 1317

(G) "Debt" means a liability on a claim. 1318

(H) "Disposition" means a transfer, conveyance, or assignment 1319
of property, including, but not limited to, a partial, contingent, 1320
undivided, or co-ownership interest in property. "Disposition" 1321
includes the exercise of a general power so as to cause a transfer 1322
of property to a trustee or trustees but does not include any of 1323
the following: 1324

(1) The release or relinquishment of an interest in property 1325
that, until the release or relinquishment, was the subject of a 1326
qualified disposition; 1327

(2) The exercise of a limited power so as to cause a transfer 1328
of property to a trustee or trustees; 1329

(3) A disclaimer of an interest in a trust, bequest, devise, 1330
or inheritance. 1331

(I) "Internal Revenue Code" means the "Internal Revenue Code 1332
of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended. 1333

(J) "Investment decision" means any participation in any decision regarding the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of or rights in investments. 1334
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(K)(1) "Legacy trust" means a trust evidenced by a written trust instrument to which all of the following apply: 1338
1339

(a) The trust has, names, or appoints at least one qualified trustee for or in connection with the property that is the subject of a qualified disposition. 1340
1341
1342

(b) The trust expressly incorporates the laws of this state to wholly or partially govern its validity, construction, and administration. 1343
1344
1345

(c) The trust expressly states that it is irrevocable. 1346

(d) The trust has a spendthrift provision applicable to the interests of any beneficiary in the trust property, including any interests of a transferor in the trust property. 1347
1348
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(2) A trust that satisfies the criteria specified in division (K)(1) of this section is considered a legacy trust even if the trust instrument also allows for one or more nonqualified trustees and regardless of the language used to satisfy those criteria. 1350
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(L) "Lien" has the same meaning as in section 1336.01 of the Revised Code. 1354
1355

(M) "Nonlegacy trust" means any trust other than a legacy trust. 1356
1357

(N) "Nonqualified trustee" means any trustee other than a qualified trustee. 1358
1359

(O) "Person" has the same meaning as in section 5801.01 of the Revised Code. 1360
1361

(P) "Property" has the same meaning as in section 5801.01 of the Revised Code. 1362
1363

(O) "Qualified affidavit" means an affidavit that meets the requirements of section 5816.06 of the Revised Code. 1364
1365

(R) "Qualified disposition" means a disposition by or from a transferor to any trustee of a trust that is, was, or becomes a legacy trust. 1366
1367
1368

(S) "Qualified trustee" means a person who is not a transferor and to whom both of the following apply: 1369
1370

(1)(a) The person, if a natural person, is a resident of this state. 1371
1372

(b) The person, if not a natural person, is authorized by the law of this state or by a court of competent jurisdiction of this state to act as a trustee and whose activities are subject to supervision by the Ohio superintendent of banks, the federal deposit insurance corporation, the comptroller of the currency, or the office of thrift supervision or a successor of any of them. 1373
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(2) The person maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records for the legacy trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the legacy trust, or otherwise materially participates in the administration of the legacy trust. 1379
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(T) "Spendthrift provision" has the same meaning as in section 5801.01 of the Revised Code. 1386
1387

(U) "Spouse" and "former spouse" means only the person to whom a transferor was married on or before a qualified disposition is made. 1388
1389
1390

(V) "Transferor" means a person who directly or indirectly makes a disposition. 1391
1392

(W) "Valid lien" has the same meaning as in section 1336.01 1393

of the Revised Code. 1394

Sec. 5816.03. (A) In addition to any other method allowed by 1395
law, the spendthrift provision of a legacy trust may be stated as 1396
provided in division (B) of section 5805.01 of the Revised Code. 1397

(B) Except as otherwise provided in this section, the 1398
spendthrift provisions of a legacy trust shall restrain both 1399
voluntary and involuntary transfer of a transferor's interest in 1400
that trust. Any spendthrift provision in a legacy trust is 1401
enforceable under any applicable nonbankruptcy law within the 1402
meaning of section 541(c)(2) of the Bankruptcy Code regardless of 1403
whether or not the relevant legacy trust instrument makes any 1404
reference to that enforceability. In addition to the restraints 1405
required by this division, a legacy trust and its spendthrift 1406
provisions may provide for any other restraints on alienation that 1407
are permitted by any law of this state. 1408

(C) Notwithstanding division (B) of this section or the terms 1409
of any spendthrift provision, but subject to divisions (D), (E), 1410
and (F) of this section, a transferor's interest in property that 1411
is the subject of a qualified disposition may be attached or 1412
otherwise involuntarily alienated in connection with any debt that 1413
the transferor owes pursuant to an agreement or court order for 1414
either of the following: 1415

(1) The payment of child or spousal support or alimony to or 1416
for the transferor's spouse, former spouse, child, or children, or 1417
to any governmental agency that is designated by statute, rule, or 1418
regulation to be the payee of that child or spousal support or 1419
alimony; 1420

(2) The division or distribution of property in favor of the 1421
transferor's spouse or former spouse. 1422

(D) A transferor's interest in property that is transferred 1423

pursuant to a qualified disposition and the transferor's 1424
beneficial interest in a legacy trust shall not be subject to any 1425
claim for forced heirship or legitime. 1426

(E) A transferor's interest in property that is transferred 1427
pursuant to a qualified disposition and the transferor's 1428
beneficial interest in a legacy trust shall not be subject to a 1429
distributive award under section 3105.171 of the Revised Code or 1430
to any similar award under the law of another jurisdiction, to any 1431
person other than the transferor's spouse or former spouse. A 1432
court shall liberally construe and apply this provision in finding 1433
that such similarity exists. 1434

(F) Nothing in this section shall deprive any beneficiary of 1435
any exemption rights that the beneficiary may have under any 1436
applicable law after the trust property is received by that 1437
beneficiary. 1438

Sec. 5816.04. To the extent conferred by the governing legacy 1439
trust instrument, a transferor to a legacy trust may have any or 1440
all of the rights, powers, and interests described in section 1441
5816.05 of the Revised Code. A transferor shall have no rights, 1442
powers, or interests in, over, to, or regarding the corpus or 1443
income of a legacy trust unless those rights, powers, or interests 1444
are granted, permitted, or recognized by both section 5816.05 of 1445
the Revised Code and the governing legacy trust instrument. Any 1446
written, verbal, tacit, express, or implied agreement or 1447
understanding or any other agreement or understanding purporting 1448
to grant, permit, or recognize any greater rights, powers, or 1449
interests than are provided in this section or the governing 1450
legacy trust instrument is void. Any portion of a legacy trust 1451
instrument that is not voided under this section shall remain 1452
valid and effective. 1453

Sec. 5816.05. A legacy trust may allow or provide for any or 1454
all of the following rights, powers, interests, or provisions, 1455
none of which grants, or is considered to be, either alone or in 1456
any combination, a right or power to revoke a trust or to 1457
voluntarily or involuntarily transfer an interest in that trust: 1458

(A) A provision that, upon the happening of a defined event, 1459
results in the termination of a transferor's right to mandatory 1460
income or principal; 1461

(B) The power of a transferor to veto a distribution from the 1462
trust; 1463

(C) A power of appointment, other than a power to appoint to 1464
a transferor, a creditor of the transferor, the estate of the 1465
transferor, or a creditor of the transferor's estate, that is 1466
exercisable by will or by other written instrument of a transferor 1467
effective upon the death of the transferor or during the lifetime 1468
of the transferor; 1469

(D) The right of a transferor to receive trust income as set 1470
forth in the trust instrument. 1471

(E) Both of the following: 1472

(1) A transferor's potential or actual receipt of income or 1473
principal from a charitable remainder unitrust or charitable 1474
remainder annuity trust as those terms are defined in section 664 1475
of the Internal Revenue Code; 1476

(2) The transferor's right, at any time and from time to time 1477
by written instrument delivered to the trustee, to release the 1478
transferor's retained interest in that unitrust or annuity trust, 1479
in whole or in part, in favor of one or more charitable 1480
organizations that have a succeeding beneficial interest in that 1481
unitrust or annuity trust; 1482

(F) The power of a transferor to consume, invade, or 1483

appropriate property of the trust, but only if limited in each 1484
calendar year to five per cent of the value of the trust principal 1485
at the time of the exercise of the power; 1486

(G) A transferor's potential or actual receipt or use of 1487
principal or income of the trust if the potential or actual 1488
receipt or use is or would be the result of any of the following 1489
that applies with respect to one or more of the qualified 1490
trustees: 1491

(1) A qualified trustee's acting in the trustee's discretion. 1492
For purposes of division (G)(1) of this section, a qualified 1493
trustee shall have discretion with respect to the distribution or 1494
use of principal or income unless the discretion is expressly 1495
denied to the trustee by the terms of the trust instrument. 1496

(2) A qualified trustee's acting pursuant to a standard in 1497
the trust instrument that governs the distribution or use of 1498
principal or income; 1499

(3) A qualified trustee's acting at the direction of an 1500
advisor who is acting in the advisor's discretion or pursuant to a 1501
standard in the trust instrument that governs the distribution or 1502
use of principal or income. If an advisor is authorized to direct 1503
that distribution or use, the advisor's authority shall be 1504
discretionary unless otherwise expressly stated in the trust 1505
instrument. 1506

(H) The right of a transferor to remove any advisor and 1507
appoint a new advisor who satisfies the eligibility criteria set 1508
forth in division (A) of section 5816.11 of the Revised Code; 1509

(I) The right of a transferor to remove any trustee and 1510
appoint a new trustee; 1511

(J) A transferor's potential or actual use of real property 1512
or tangible personal property, including, but not limited to, 1513
property held under a qualified personal residence trust as 1514

described in section 2702(c) of the Internal Revenue Code and 1515
regulations promulgated under that section, or a transferor's 1516
possession and enjoyment of a qualified interest as defined in 1517
section 2702(b) of the Internal Revenue Code; 1518

(K) Any provision requiring or permitting the potential or 1519
actual use of trust income or principal to pay, in whole or in 1520
part, income taxes due on the income of the trust, including, but 1521
not limited to, any provision permitting that use in the 1522
discretion of any one or more of the qualified trustees acting in 1523
the qualified trustee's discretion or at the direction of an 1524
advisor who is acting in the advisor's discretion; 1525

(L) The ability of a qualified trustee, whether pursuant to 1526
the qualified trustee's discretion or the terms of the legacy 1527
trust instrument or at the direction of an advisor, to pay after 1528
the death of a transferor all or any part of the debts of the 1529
transferor outstanding on or before the transferor's death, the 1530
expenses of administering the transferor's estate, or any estate, 1531
gift, generation skipping transfer, or inheritance tax; 1532

(M) Any provision that pours back after the death of a 1533
transferor all or part of the trust property to the transferor's 1534
estate or any trust; 1535

(N) Any other rights, powers, interests, or provisions 1536
permitted or allowed by any other section of this chapter. 1537

Sec. 5816.06. (A) Except as otherwise provided in this 1538
section, a transferor shall sign a qualified affidavit before or 1539
substantially contemporaneously with making a qualified 1540
disposition. 1541

(B) A qualified affidavit shall be notarized and shall 1542
contain all of the following statements under oath: 1543

(1) The property being transferred to the trust was not 1544

derived from unlawful activities. 1545

(2) The transferor has full right, title, and authority to transfer the property to the legacy trust. 1546
1547

(3) The transferor will not be rendered insolvent immediately after the transfer of the property to the legacy trust. 1548
1549

(4) The transferor does not intend to defraud any creditor by transferring the property to the legacy trust. 1550
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(5) There are no pending or threatened court actions against the transferor, except for any court action identified by the affidavit or an attachment to the affidavit. 1552
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(6) The transferor is not involved in any administrative proceeding, except for any proceeding identified by the affidavit or an attachment to the affidavit. 1555
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(7) The transferor does not contemplate at the time of the transfer the filing for relief under the Bankruptcy Code. 1558
1559

(C) A qualified affidavit is considered defective if it materially fails to meet the requirements set forth in division (B) of this section, but a qualified affidavit is not considered defective due to any one or more of the following: 1560
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(1) Any nonsubstantive variances from the language set forth in division (B) of this section; 1564
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(2) Any statements or representations in addition to those set forth in division (B) of this section if the statements or representations do not materially contradict the statements or representations required by that division; 1566
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(3) Any technical errors in the form, substance, or method of administering an oath if those errors were not the fault of the affiant, and the affiant reasonably relied upon another person to prepare or administer the oath. 1570
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(D)(1) A qualified affidavit is not required from a 1574

transferor who is not a beneficiary of the legacy trust that 1575
receives the disposition. 1576

(2) A subsequent qualified affidavit is not required in 1577
connection with any qualified disposition made after the execution 1578
of an earlier qualified affidavit if that disposition is a part 1579
of, is required by, or is the direct result of, a prior qualified 1580
disposition that was made in connection with that earlier 1581
qualified affidavit. 1582

(E) If a qualified affidavit is required by this section and 1583
a transferor fails to timely sign a qualified affidavit or signs a 1584
defective qualified affidavit, subject to the normal rules of 1585
evidence, that failure or defect may be considered as evidence in 1586
any proceeding commenced pursuant to section 5816.07 of the 1587
Revised Code, but the legacy trust or the validity of any 1588
attempted qualified disposition shall not be affected in any other 1589
way due to that failure or defect. 1590

Sec. 5816.07. (A) Notwithstanding any provision of law to the 1591
contrary, no creditor may bring an action of any kind, including, 1592
but not limited to, an action to enforce a judgment entered by a 1593
court or other body having adjudicative authority, an action at 1594
law or in equity, or an action for an attachment or other final or 1595
provisional remedy, against any person who made or received a 1596
qualified disposition, against or involving any property that is 1597
the subject of a qualified disposition or is otherwise held by or 1598
for any trustee as part of a legacy trust, or against any trustee 1599
of a legacy trust, except that a creditor, subject to this section 1600
and section 5816.08 of the Revised Code, may bring an action to 1601
avoid any qualified disposition of an asset on the ground that a 1602
transferor made the qualified disposition with the specific intent 1603
to defraud the specific creditor bringing the action. 1604

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(B) A creditor's cause of action or claim for relief under 1606
division (A) of this section to avoid any qualified disposition of 1607
an asset is extinguished unless that action is brought by a 1608
creditor of a transferor who meets one of the following 1609
requirements: 1610

(1) The creditor is a creditor of the transferor before the 1611
relevant qualified disposition, and the action is brought within 1612
the later of the following periods: 1613

(a) Eighteen months after the qualified disposition; 1614

(b) Six months after the qualified disposition is or 1615
reasonably could have been discovered by the creditor if the 1616
creditor files a suit against the transferor, other than an action 1617
under division (A) of this section to avoid the qualified 1618
disposition, or makes a written demand for payment on the 1619
transferor that in either case asserts a claim based on an act or 1620
omission of the transferor that occurred before the qualified 1621
disposition, and that suit is filed, or the written demand is 1622
delivered to the transferor, within three years after the 1623
qualified disposition. 1624

(2) The creditor becomes a creditor after the qualified 1625
disposition, and the action under division (A) of this section to 1626
avoid the qualified disposition is brought within eighteen months 1627
after the qualified disposition. 1628

(C) In any action to avoid the qualified disposition under 1629
this section, the burden is upon the creditor to prove the matter 1630
by clear and convincing evidence. This division is construed as 1631
providing a substantive rather than a procedural rule or right 1632
under the law of this state. 1633

(D) Notwithstanding any provision of law to the contrary, a 1634
creditor, including a creditor whose claim arose before or after a 1635
qualified disposition, or any other person shall have only the 1636

rights and remedies with respect to a qualified disposition that 1637
are provided in this section and section 5816.08 of the Revised 1638
Code, and the creditor or other person shall have no claim or 1639
cause of action against any trustee or advisor of a legacy trust 1640
or against any person involved in the counseling in connection 1641
with, or the drafting, preparation, execution, administration, or 1642
funding of, a legacy trust. 1643

(E) Notwithstanding any provision of law to the contrary, and 1644
in addition to any other limitations, restrictions, or bars 1645
imposed by this section, no action of any kind, including, but not 1646
limited to, an action to enforce a judgment entered by a court or 1647
other body having adjudicative authority, shall be brought at law 1648
or in equity against a trustee or an advisor of a legacy trust or 1649
against any person involved in the counseling in connection with, 1650
or the drafting, preparation, execution, administration, or 1651
funding of, a legacy trust if and to the extent that, in 1652
connection with the qualified disposition that forms the basis of 1653
that action, the time in which a creditor could sue to avoid that 1654
qualified disposition would have expired under this section. 1655

(F) If more than one qualified disposition is made in 1656
connection with the same legacy trust, all of the following apply: 1657

(1) Each qualified disposition will be separately evaluated, 1658
without regard to any subsequent qualified disposition, to 1659
determine whether a creditor's claim regarding that particular 1660
qualified disposition is extinguished as provided in division (B) 1661
of this section. 1662

(2) The following apply when determining the order in which 1663
property is paid, applied, or distributed from a legacy trust: 1664

(a) Any payment, application, or distribution of money is 1665
considered to have been made from or with the money most recently 1666
received or acquired by any trustee of a legacy trust except to 1667

the extent that it is proven otherwise beyond a reasonable doubt. 1668

As used in division (F)(2)(a) of this section: 1669

(i) "Money" means cash or cash equivalents. 1670

(ii) "Cash" means the coins or currency of the United States 1671
or any other nation. 1672

(iii) "Cash equivalent" includes certified or uncertified 1673
checks; money orders; bank drafts; any electronic transfer of 1674
funds; negotiable instruments; instruments indorsed in blank or in 1675
bearer form; securities issued or guaranteed by the United States, 1676
any state of the United States, or any state or federal agency; 1677
funds on deposit in any savings or checking account or any similar 1678
account; funds on deposit in any money market account or similar 1679
account; any demand deposit account, time deposit account, or 1680
savings deposit account at any bank, savings and loan association, 1681
brokerage house, or similar institution; or any other monetary 1682
instrument or device that is commonly or routinely accepted as a 1683
cash equivalent. Division (F)(2)(a)(iii) of this section shall be 1684
liberally construed and applied. 1685

(b) Any payment, application, or distribution of fungible 1686
assets other than money is considered to have been made from or 1687
with the fungible assets most recently received or acquired by any 1688
trustee of a legacy trust except to the extent that it is proven 1689
otherwise by clear and convincing evidence. For purposes of 1690
division (F)(2)(b) of this section: 1691

(i) Any asset that can be classified as either money or a 1692
fungible asset shall be classified as money. 1693

(ii) "Fungible assets" means any assets, other than money, 1694
that are interchangeable for commercial purposes and the 1695
properties of which are essentially identical. Division 1696
(F)(2)(b)(ii) of this section shall be liberally construed and 1697
applied. 1698

(c) Division (F)(2) of this section is construed as providing a substantive rather than a procedural rule or right under the law of this state. 1699
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(G) For purposes of this section, the counseling in connection with, or the drafting, preparation, execution, administration, or funding of, a legacy trust includes the counseling in connection with, or the drafting, preparation, execution, administration, or funding of, any limited partnership, limited liability company, corporation, or similar or comparable entity if the limited partnership interests, limited liability company interests, stock, or other similar or comparable ownership interests in the relevant entity are subsequently transferred to any trustee of any trust that is, was, or becomes a legacy trust. 1702
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Sec. 5816.08. All of the following apply in connection with any action brought pursuant to this section or division (A) of section 5816.07 of the Revised Code: 1712
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(A) If a qualified disposition is wholly or partially avoided, all of the following apply: 1715
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(1) That specific qualified disposition shall be avoided only to the extent necessary to satisfy a transferor's debt to the creditor who brought the action pursuant to division (A) of section 5816.07 of the Revised Code, and any part of the qualified disposition that is not used to satisfy that debt shall remain subject to the legacy trust in question. 1717
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(2) All other qualified dispositions to any trustee of the legacy trust in question, including, but not limited to, any qualified disposition of a partial, co-ownership, or undivided interest in property by a transferor other than the transferor whose qualified disposition is avoided, together with the legacy trust itself, shall remain valid and effective. 1723
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(3) If the court is satisfied that a trustee has not acted in bad faith in accepting or administering the property that is the subject of the avoided qualified disposition, all of the following apply: 1729
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(a) The trustee shall have a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorney's fees, properly incurred by the trustee in the defense of the action or proceedings to avoid the qualified disposition. 1733
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(b) The qualified disposition shall be avoided subject to the proper fees, costs, and pre-existing rights, claims, and interests of the trustee and of any predecessor trustee that has not acted in bad faith. 1738
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(c) For purposes of division (A)(3) of this section, no trustee shall be considered to have acted in bad faith merely because the trustee accepted the property that is the subject of the qualified disposition. 1742
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(4) If the court is satisfied that a beneficiary of a legacy trust has not acted in bad faith in receiving a distribution from that trust, the avoidance of the qualified disposition shall be subject to the right of the beneficiary to retain that distribution if the distribution was made upon the exercise of a trust power or discretion vested in a trustee or advisor and that power or discretion was exercised prior to the creditor's commencement of the action to avoid the qualified disposition. For purposes of division (A)(4) of this section, no beneficiary, including a beneficiary who is also a transferor of the trust, shall be considered to have acted in bad faith merely because the beneficiary accepted a distribution made in accordance with the terms of the trust instrument. 1746
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(5) A creditor has the burden of proving by clear and 1759

convincing evidence that a trustee or a beneficiary acted in bad faith under division (A)(3) or (4) of this section. Division (A)(5) of this section is construed as providing a substantive rather than a procedural rule or right under the law of this state. 1760
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(B) The court shall award reasonable attorney's fees and costs to any prevailing party in any final judgment rendered in any action wholly or partially brought under this section or division (A) of section 5816.07 of the Revised Code. 1765
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Sec. 5816.09. Any successor or replacement trustees of a legacy trust shall be determined or selected in the following manners: 1769
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(A)(1) Division (A)(2) of this section applies if in any action involving a legacy trust or any trustee of the legacy trust a court takes an action in which the court declines to apply the law of this state in determining any of the following matters: 1772
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(a) The validity, construction, or administration of the trust; 1776
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(b) The effect of any term or condition of the trust, including, but not limited to, a spendthrift provision; 1778
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(c) The rights and remedies of any creditor or other suitor in connection with a qualified disposition. 1780
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(2) Immediately upon the court's action under division (A)(1) of this section and without the need for any order of any court, any qualified trustee who is a party to that action shall cease in all respects to be a trustee of the legacy trust, and the position of trustee shall be occupied in accordance with the terms of the trust instrument that governed the legacy trust immediately before that cessation, or, if the terms of the trust instrument do not provide for another trustee and the trust would otherwise be 1782
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without a trustee, any court of this state, upon the application 1790
of any beneficiary of the legacy trust, shall appoint a successor 1791
qualified trustee upon the terms and conditions that it determines 1792
to be consistent with the purposes of the trust and this chapter. 1793
Upon a qualified trustee ceasing to be a trustee pursuant to 1794
division (A)(2) of this section, that qualified trustee shall have 1795
no power or authority other than to convey trust property to any 1796
other trustee that is appointed, installed, or serving in 1797
accordance with that division. 1798

(3) For purposes of division (A) of this section, "court" 1799
includes a judicial tribunal, an administrative tribunal, or other 1800
adjudicative body or panel. 1801

(B) In all cases other than the situation described in 1802
division (A) of this section, both of the following apply: 1803

(1) If a legacy trust ceases to have at least one qualified 1804
trustee, the vacancy in the qualified trusteeship shall be filled 1805
pursuant to section 5807.04 of the Revised Code except to the 1806
extent that the legacy trust expressly provides otherwise. 1807

(2) If a legacy trust ceases to have at least one trustee, 1808
the vacancy in the trusteeship shall be filled pursuant to section 1809
5807.04 of the Revised Code, and the successor trustee shall be a 1810
qualified trustee unless the legacy trust instrument expressly 1811
provides otherwise. 1812

Sec. 5816.10. (A) In the event of any conflict between any 1813
provision of this chapter and any provision of Chapter 1336. of 1814
the Revised Code or any other provision of law similar to any 1815
provision of Chapter 1336. of the Revised Code, the provision of 1816
this chapter shall control and prevail. 1817

(B) A statement in a trust instrument stating that it "shall 1818
be governed by the laws of Ohio" or other statement to similar 1819

effect or of similar import is considered to expressly incorporate 1820
the laws of this state to govern the validity, construction, and 1821
administration of that trust instrument and to satisfy division 1822
(K)(1)(b) of section 5816.02 of the Revised Code. 1823

(C) A disposition by a nonqualified trustee to a qualified 1824
trustee shall not be treated as other than a qualified disposition 1825
solely because the nonqualified trustee is a trustee of a 1826
nonlegacy trust. 1827

(D) A disposition to any nonqualified trustee of a legacy 1828
trust shall be treated as a qualified disposition if at the time 1829
of the disposition any of the following applies: 1830

(1) There is at least one qualified trustee serving pursuant 1831
to the terms of that legacy trust. 1832

(2) There is no qualified trustee serving but the 1833
circumstances require the appointment or installation of a 1834
qualified trustee pursuant to division (A)(2) of section 5816.09 1835
of the Revised Code. 1836

(3) There is no qualified trustee serving but within one 1837
hundred eighty days after the date of disposition a qualified 1838
trustee fills the vacancy in the qualified trusteeship or an 1839
application to appoint a qualified trustee is filed pursuant to 1840
division (B) of section 5816.09 of the Revised Code. 1841

(E) If a disposition is made by a trustee of a nonlegacy 1842
trust to a trustee of a legacy trust, both of the following apply: 1843

(1) Except to the extent expressly stated otherwise by the 1844
terms of that disposition, the disposition shall be considered a 1845
qualified disposition for the benefit of all of the persons who 1846
are the beneficiaries of both the nonlegacy trust and the legacy 1847
trust. 1848

(2) The date of the disposition to the legacy trust shall be 1849

considered to be the date on which the property that was part of 1850
the nonlegacy trust was first continuously subject to any law of a 1851
jurisdiction other than this state that is similar to this 1852
chapter. A court shall liberally construe and apply division 1853
(E)(2) of this section in finding that such continuity and 1854
similarity exist. 1855

(F) A legacy trust may contain any terms or conditions that 1856
provide for changes in or to the place of administration, situs, 1857
governing law, trustees or advisors, or the terms or conditions of 1858
the legacy trust or for other changes permitted by law. 1859

(G) Any valid lien attaching to property immediately before a 1860
disposition of that property to a trustee of a legacy trust shall 1861
survive the disposition, and the trustee shall take title to the 1862
property subject to the valid lien. Nothing in this chapter shall 1863
be construed to authorize any disposition that is prohibited by 1864
the terms of a lien agreement. 1865

(H) To the maximum extent permitted by the Ohio Constitution 1866
and the United States Constitution, the courts of this state shall 1867
exercise jurisdiction over any legacy trust or any qualified 1868
disposition and shall adjudicate any case or controversy brought 1869
before them regarding, arising out of, or related to, any legacy 1870
trust or any qualified disposition if that case or controversy is 1871
otherwise within the subject matter jurisdiction of the court. 1872
Subject to the Ohio Constitution and the United States 1873
Constitution, no court of this state shall dismiss or otherwise 1874
decline to adjudicate any case or controversy described in this 1875
division on the ground that a court of another jurisdiction has 1876
acquired or may acquire proper jurisdiction over, or may provide 1877
proper venue for, that case or controversy or the parties to the 1878
case or controversy. Nothing in this division shall be construed 1879
to do either of the following: 1880

(1) Prohibit a transfer or other reassignment of any case or 1881

controversy from one court of this state to another court of this 1882
state; 1883

(2) Expand or limit the subject matter jurisdiction of any 1884
court of this state. 1885

Sec. 5816.11. (A) Any person may serve as an advisor of a 1886
legacy trust except that a transferor may act as an advisor only 1887
in connection with investment decisions. 1888

(B) An advisor shall be considered a fiduciary unless the 1889
terms of a legacy trust instrument expressly provide otherwise. 1890

Sec. 5816.12. Except to the extent expressly provided 1891
otherwise by the terms of a legacy trust instrument, each trustee 1892
and each advisor of a legacy trust shall have the greatest 1893
discretion permitted by law in connection with all matters of 1894
trust administration, all trust distributions, and all other 1895
trustee or advisor decisions. 1896

Sec. 5816.13. No beneficiary or other person shall be 1897
considered to have a property interest in any property of a legacy 1898
trust to the extent that the distribution of that property is 1899
subject to the discretion of one or more qualified trustees or 1900
advisors, either acting alone or in conjunction with any other 1901
person, including any person authorized to veto any distributions 1902
from the legacy trust. 1903

Sec. 5816.14. This chapter applies to qualified dispositions 1904
made on or after the effective date of this section. 1905

Section 2. That existing sections 317.08, 1336.04, 2131.08, 1906
2131.09, 2329.66, 5805.06, 5808.08, 5815.24, 5815.25, and 5815.36 1907
of the Revised Code are hereby repealed. 1908