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Representatives Hagan, C., Blessing

Cosponsors: Speaker Batchelder Representatives Gardner, Grossman, Stebelton, Sears, Boose, Damschroder, Schuring, Wachtmann, Johnson, Beck, Gonzales, Terhar, Amstutz, Antonio, Blair, Brenner, Bulp, Buchy, Budish, Carney, Celebrezze, Combs, Conditt, Derickson, DeVitis, Dovilla, Duffey, Foley, Hackett, Hall, Hayes, Henne, Kozlowski, Letson, McClain, McGregor, Milkovich, Newbold, O'Brien, Phillips, Pillich, Ruhl, Smith, Sprague, Stautberg, Winburn

Senators Bacon, Obhof, Wagoner, Burke, Eklund, Hite, Jordan, Kearney, LaRose, Lehner, Manning, Oelslager, Patton

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A B I L L

To amend sections 317.08, 317.32, 317.321, 1336.04, 1
1701.73, 1702.38, 1703.22, 2101.24, 2131.08, 2
2131.09, 2329.66, 2329.661, 5805.06, 5808.08, 3
5808.18, 5815.24, 5815.25, and 5815.36 and to 4
enact sections 1301.401, 1319.07, 1319.08, 5
1319.09, 5815.37, and 5816.01 to 5816.14 of the 6
Revised Code to adopt the Ohio Legacy Trust Act; 7
to modify certain property rights in the Ohio 8
Trust Code; to require the recording of personal 9
property transfers with the county recorder upon 10
request; to regulate the temporary conveyance of 11
trust real property for financing purposes; to 12
grant probate courts concurrent jurisdiction with 13
court of common pleas general divisions over 14
certain actions involving the designation or 15

removal of certain beneficiaries, title change 16
involving joint and survivorship interests, 17
alleged gifts, or the passing of assets upon death 18
other than by will, intestate succession, or 19
trust; to regulate the use and enforceability of 20
certain loan covenants in nonrecourse commercial 21
loan transactions; and to make certain changes in 22
the exempt interests law, the fraudulent transfers 23
law, the secured transactions recording law, and 24
the rule against perpetuities. 25

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

Section 1. That sections 317.08, 317.32, 317.321, 1336.04, 26
1701.73, 1702.38, 1703.22, 2101.24, 2131.08, 2131.09, 2329.66, 27
2329.661, 5805.06, 5808.08, 5808.18, 5815.24, 5815.25, and 5815.36 28
be amended and sections 1301.401, 1319.07, 1319.08, 1319.09, 29
5815.37, 5816.01, 5816.02, 5816.03, 5816.04, 5816.05, 5816.06, 30
5816.07, 5816.08, 5816.09, 5816.10, 5816.11, 5816.12, 5816.13, and 31
5816.14 of the Revised Code be enacted to read as follows: 32

Sec. 317.08. (A) Except as provided in divisions (C) ~~and~~ 33
(D), and (E) of this section, the county recorder shall keep six 34
separate sets of records as follows: 35

(1) A record of deeds, in which shall be recorded all deeds 36
and other instruments of writing for the absolute and 37
unconditional sale or conveyance of lands, tenements, and 38
hereditaments; all notices as provided in sections 5301.47 to 39
5301.56 of the Revised Code; all judgments or decrees in actions 40
brought under section 5303.01 of the Revised Code; all 41
declarations and bylaws, and all amendments to declarations and 42
bylaws, as provided in Chapter 5311. of the Revised Code; 43
affidavits as provided in sections 5301.252 and 5301.56 of the 44

Revised Code; all certificates as provided in section 5311.17 of 45
the Revised Code; all articles dedicating archaeological preserves 46
accepted by the director of the Ohio historical society under 47
section 149.52 of the Revised Code; all articles dedicating nature 48
preserves accepted by the director of natural resources under 49
section 1517.05 of the Revised Code; all agreements for the 50
registration of lands as archaeological or historic landmarks 51
under section 149.51 or 149.55 of the Revised Code; all 52
conveyances of conservation easements and agricultural easements 53
under section 5301.68 of the Revised Code; all instruments 54
extinguishing agricultural easements under section 901.21 or 55
5301.691 of the Revised Code or pursuant to terms of such an 56
easement granted to a charitable organization under section 57
5301.68 of the Revised Code; all instruments or orders described 58
in division (B)(2)(b) of section 5301.56 of the Revised Code; all 59
no further action letters issued under section 122.654 or 3746.11 60
of the Revised Code; all covenants not to sue issued under section 61
3746.12 of the Revised Code, including all covenants not to sue 62
issued pursuant to section 122.654 of the Revised Code; any 63
restrictions on the use of property contained in a no further 64
action letter issued under section 122.654 of the Revised Code, 65
any restrictions on the use of property identified pursuant to 66
division (C)(3)(a) of section 3746.10 of the Revised Code, and any 67
restrictions on the use of property contained in a deed or other 68
instrument as provided in division (E) or (F) of section 3737.882 69
of the Revised Code; any easement executed or granted under 70
section 3734.22, 3734.24, 3734.25, or 3734.26 of the Revised Code; 71
any environmental covenant entered into in accordance with 72
sections 5301.80 to 5301.92 of the Revised Code; all memoranda of 73
trust, as described in division (A) of section 5301.255 of the 74
Revised Code, that describe specific real property; and all 75
agreements entered into under division (A) of section 1506.44 of 76
the Revised Code; 77

(2) A record of mortgages, in which shall be recorded all of	78
the following:	79
(a) All mortgages, including amendments, supplements,	80
modifications, and extensions of mortgages, or other instruments	81
of writing by which lands, tenements, or hereditaments are or may	82
be mortgaged or otherwise conditionally sold, conveyed, affected,	83
or encumbered;	84
(b) All executory installment contracts for the sale of land	85
executed after September 29, 1961, that by their terms are not	86
required to be fully performed by one or more of the parties to	87
them within one year of the date of the contracts;	88
(c) All options to purchase real estate, including	89
supplements, modifications, and amendments of the options, but no	90
option of that nature shall be recorded if it does not state a	91
specific day and year of expiration of its validity;	92
(d) Any tax certificate sold under section 5721.33 of the	93
Revised Code, or memorandum of it, that is presented for filing of	94
record.	95
(3) A record of powers of attorney, including all memoranda	96
of trust, as described in division (A) of section 5301.255 of the	97
Revised Code, that do not describe specific real property;	98
(4) A record of plats, in which shall be recorded all plats	99
and maps of town lots, of the subdivision of town lots, and of	100
other divisions or surveys of lands, any center line survey of a	101
highway located within the county, the plat of which shall be	102
furnished by the director of transportation or county engineer,	103
and all drawings and amendments to drawings, as provided in	104
Chapter 5311. of the Revised Code;	105
(5) A record of leases, in which shall be recorded all	106
leases, memoranda of leases, and supplements, modifications, and	107
amendments of leases and memoranda of leases;	108

(6) A record of declarations executed pursuant to section 109
2133.02 of the Revised Code and durable powers of attorney for 110
health care executed pursuant to section 1337.12 of the Revised 111
Code. 112

(B) All instruments or memoranda of instruments entitled to 113
record shall be recorded in the proper record in the order in 114
which they are presented for record. The recorder may index, keep, 115
and record in one volume unemployment compensation liens, internal 116
revenue tax liens and other liens in favor of the United States as 117
described in division (A) of section 317.09 of the Revised Code, 118
personal tax liens, mechanic's liens, agricultural product liens, 119
notices of liens, certificates of satisfaction or partial release 120
of estate tax liens, discharges of recognizances, excise and 121
franchise tax liens on corporations, broker's liens, and liens 122
provided for in sections 1513.33, 1513.37, 3752.13, 5111.022, and 123
5311.18 of the Revised Code. 124

The recording of an option to purchase real estate, including 125
any supplement, modification, and amendment of the option, under 126
this section shall serve as notice to any purchaser of an interest 127
in the real estate covered by the option only during the period of 128
the validity of the option as stated in the option. 129

(C) In lieu of keeping the six separate sets of records 130
required in divisions (A)(1) to (6) of this section and the 131
records required in ~~division~~ divisions (D) and (E) of this 132
section, a county recorder may record all the instruments required 133
to be recorded by this section in two separate sets of record 134
books. One set shall be called the "official records" and shall 135
contain the instruments listed in divisions (A)(1), (2), (3), (5), 136
and (6) and (D) and (E) of this section. The second set of records 137
shall contain the instruments listed in division (A)(4) of this 138
section. 139

(D) Except as provided in division (C) of this section, the 140

county recorder shall keep a separate set of records containing 141
all corrupt activity lien notices filed with the recorder pursuant 142
to section 2923.36 of the Revised Code and a separate set of 143
records containing all medicaid fraud lien notices filed with the 144
recorder pursuant to section 2933.75 of the Revised Code. 145

(E)(1) The county recorder shall keep a separate set of 146
records containing all transfers, conveyances, or assignments of 147
any type of tangible or intangible personal property or any rights 148
or interests in that property if and to the extent that any person 149
wishes to record that personal property transaction and if the 150
applicable instrument is acknowledged before a notary public. If 151
the transferor is a natural person, the notice of personal 152
property transfer shall be recorded in the county in this state in 153
which the transferor maintains the transferor's principal 154
residence. If the transferor is not a natural person, the notice 155
of personal property transfer shall be recorded in the county in 156
this state in which the transferor maintains its principal place 157
of business. If the transferor does not maintain a principal 158
residence or a principal place of business in this state and the 159
transfer is to a trustee of a legacy trust formed pursuant to 160
Chapter 5816. of the Revised Code, the notice of personal property 161
transfer shall be recorded in the county in this state where that 162
trustee maintains a principal residence or principal place of 163
business. In all other instances, the notice of personal property 164
transfer shall be recorded in the county in this state where the 165
property described in the notice is located. 166

(2) The records described in division (E)(1) of this section 167
shall be maintained in or as part of the "official records" under 168
division (C) of this section. 169

Sec. 317.32. The county recorder shall charge and collect the 170
following fees, to include, except as otherwise provided in 171

division (A)(2) of this section, base fees for the recorder's 172
services and housing trust fund fees, collected pursuant to 173
section 317.36 of the Revised Code: 174

(A) ~~For~~ (1) Except as otherwise provided in division (A)(2) 175
of this section, for recording and indexing an instrument ~~when~~ if 176
the photocopy or any similar process is employed, a base fee of 177
fourteen dollars for the first two pages and a housing trust fund 178
fee of fourteen dollars, and a base fee of four dollars and a 179
housing trust fund fee of four dollars for each subsequent page, 180
size eight and one-half inches by fourteen inches, or fraction of 181
a page, including the caption page, of such instrument; 182

(2) For recording and indexing an instrument described in 183
division (E)(1) of section 317.08 of the Revised Code if the 184
photocopy or any similar process is employed, a fee of 185
twenty-eight dollars for the first two pages to be deposited into 186
the county treasury to the credit of the special fund designated 187
as "general fund moneys to supplement the equipment needs of the 188
county recorder" under section 317.321 of the Revised Code, and a 189
fee of eight dollars to be deposited in the same manner for each 190
subsequent page, size eight and one-half inches by fourteen 191
inches, or fraction of a page, including the caption page, of that 192
instrument; 193

(B) For certifying a photocopy from the record previously 194
recorded, a base fee of one dollar and a housing trust fund fee of 195
one dollar per page, size eight and one-half inches by fourteen 196
inches, or fraction of a page; for each certification ~~where~~ if the 197
recorder's seal is required, except as to instruments issued by 198
the armed forces of the United States, a base fee of fifty cents 199
and a housing trust fund fee of fifty cents; 200

(C) For manual or typewritten recording of assignment or 201
satisfaction of mortgage or lease or any other marginal entry, a 202

base fee of four dollars and a housing trust fund fee of four	203
dollars;	204
(D) For entering any marginal reference by separate recorded	205
instrument, a base fee of two dollars and a housing trust fund fee	206
of two dollars for each marginal reference set out in that	207
instrument, in addition to the fees set forth in division (A) <u>(1)</u>	208
of this section;	209
(E) For indexing in the real estate mortgage records,	210
pursuant to section 1309.519 of the Revised Code, financing	211
statements covering crops growing or to be grown, timber to be	212
cut, minerals or the like, including oil and gas, accounts subject	213
to section 1309.301 of the Revised Code, or fixture filings made	214
pursuant to section 1309.334 of the Revised Code, a base fee of	215
two dollars and a housing trust fund fee of two dollars for each	216
name indexed;	217
(F) For recording manually any plat not exceeding six lines,	218
a base fee of two dollars and a housing trust fund fee of two	219
dollars, and for each additional line, a base fee of ten cents and	220
a housing trust fund fee of ten cents;	221
(G) For filing zoning resolutions, including text and maps,	222
in the office of the recorder as required under sections 303.11	223
and 519.11 of the Revised Code, a base fee of twenty-five dollars	224
and a housing trust fund fee of twenty-five dollars, regardless of	225
the size or length of the resolutions;	226
(H) For filing zoning amendments, including text and maps, in	227
the office of the recorder as required under sections 303.12 and	228
519.12 of the Revised Code, a base fee of ten dollars and a	229
housing trust fund fee of ten dollars regardless of the size or	230
length of the amendments;	231
(I) For photocopying a document, other than at the time of	232
recording and indexing as provided for in division (A) <u>(1) or (2)</u>	233

of this section, a base fee of one dollar and a housing trust fund 234
fee of one dollar per page, size eight and one-half inches by 235
fourteen inches, or fraction thereof; 236

(J) For local facsimile transmission of a document, a base 237
fee of one dollar and a housing trust fund fee of one dollar per 238
page, size eight and one-half inches by fourteen inches, or 239
fraction thereof; for long distance facsimile transmission of a 240
document, a base fee of two dollars and a housing trust fund fee 241
of two dollars per page, size eight and one-half inches by 242
fourteen inches, or fraction thereof; 243

(K) For recording a declaration executed pursuant to section 244
2133.02 of the Revised Code or a durable power of attorney for 245
health care executed pursuant to section 1337.12 of the Revised 246
Code, or both a declaration and a durable power of attorney for 247
health care, a base fee of at least fourteen dollars but not more 248
than twenty dollars and a housing trust fund fee of at least 249
fourteen dollars but not more than twenty dollars. 250

In any county in which the recorder employs the photostatic 251
or any similar process for recording maps, plats, or prints the 252
recorder shall determine, charge, and collect for the recording or 253
rerecording of any map, plat, or print, a base fee of five cents 254
and a housing trust fund fee of five cents per square inch, for 255
each square inch of the map, plat, or print filed for that 256
recording or rerecording, with a minimum base fee of twenty 257
dollars and a minimum housing trust fund fee of twenty dollars; 258
for certifying a copy from the record, a base fee of two cents and 259
a housing trust fund fee of two cents per square inch of the 260
record, with a minimum base fee of two dollars and a minimum 261
housing trust fund fee of two dollars. 262

The fees provided in this section shall be paid upon the 263
presentation of the instruments for record or upon the application 264
for any certified copy of the record, except that the payment of 265

fees associated with the filing and recording of, or the copying 266
of, notices of internal revenue tax liens and notices of other 267
liens in favor of the United States as described in division (A) 268
of section 317.09 of the Revised Code and certificates of 269
discharge or release of those liens, shall be governed by section 270
317.09 of the Revised Code, and the payment of fees for providing 271
copies of instruments conveying or extinguishing agricultural 272
easements to the office of farmland preservation in the department 273
of agriculture under division (H) of section 5301.691 of the 274
Revised Code shall be governed by that division. 275

Sec. 317.321. (A) Not later than the first day of October of 276
any year, the county recorder may submit to the board of county 277
commissioners a proposal for the acquisition or maintenance of 278
micrographic or other equipment or for contract services or a 279
proposal to reserve funds for the office's future equipment needs 280
if the county recorder has no immediate plans for the acquisition 281
of equipment or services. ~~The~~ Either proposal shall be in writing 282
and shall include at least the following: 283

(1) A request that an amount not to exceed seven dollars of 284
the fee collected for filing or recording a document for which a 285
fee is charged as required by division (A)(1) of section 317.32 of 286
the Revised Code or by section 1309.525 or 5310.15 of the Revised 287
Code and the amount of the fees collected under division (A)(2) of 288
section 317.32 of the Revised Code be placed in the county 289
treasury and designated as "general fund moneys to supplement the 290
equipment needs of the county recorder"; 291

(2) The number of years, not to exceed five, for which the 292
county recorder requests that the amount requested under division 293
(A)(1) of this section be given the designation specified in that 294
division; 295

(3) An estimate of the total amount of fees that will be 296

generated for filing or recording a document for which a fee is 297
charged as required by division (A)(1) or (2) of section 317.32 of 298
the Revised Code or by section 1309.525 or 5310.15 of the Revised 299
Code; 300

(4) An estimate of the total amount of fees for filing or 301
recording a document for which a fee is charged as required by 302
division (A)(1) or (2) of section 317.32 of the Revised Code or by 303
section 1309.525 or 5310.15 of the Revised Code that will be 304
designated as "general fund moneys to supplement the equipment 305
needs of the county recorder" if the request submitted under 306
division (A)(1) of this section is approved by the board of county 307
commissioners. 308

~~The A proposal for the acquisition or maintenance of 309
micrographic or other equipment or for contract services may 310
include a description or summary of the micrographic or other 311
equipment, or maintenance thereof of the micrographic or other 312
equipment, that the county recorder proposes to acquire, or the 313
nature of contract services that the county recorder proposes to 314
utilize. If A proposal to reserve funds for the office's future 315
equipment needs if the county recorder has no immediate plans for 316
the acquisition of equipment or services, the proposal shall 317
explain the general needs of the office for equipment and shall 318
state that the intent of the proposal is to reserve funds for the 319
office's future equipment needs. 320~~

(B) The board of county commissioners shall receive ~~the~~ 321
either proposal and the clerk shall enter it on the journal. At 322
the same time, the board shall establish a date, not sooner than 323
fifteen ~~nor~~ or later than thirty days after the board's receipt of 324
the proposal, on which to meet with the recorder to review the 325
proposal. 326

(C)(1) Not later than the fifteenth day of December of any 327
year in which a proposal for the acquisition or maintenance of 328

micrographic or other equipment or for contract services is 329
submitted under division (A) of this section, the board of county 330
commissioners shall approve, reject, or modify the proposal and 331
notify the county recorder of its action on the proposal. If the 332
board rejects or modifies the proposal, it shall make a written 333
finding that the request is for a purpose other than for 334
acquiring, leasing, or otherwise obtaining micrographic or other 335
equipment or contracts for use by the county recorder or that the 336
amount requested for the acquisition or maintenance of 337
micrographic or other equipment or for contract services is 338
excessive as determined by the board. If the board approves the 339
proposal, it shall request the establishment of a special fund 340
under section 5705.12 of the Revised Code for any fees designated 341
as "general fund moneys to supplement the equipment needs of the 342
county recorder." 343

(2) Not later than the fifteenth day of December of any year 344
in which a proposal to reserve funds for the office's future 345
equipment needs is submitted under division (A) of this section, 346
the board of county commissioners shall approve the proposal, 347
notify the county recorder of its action on the proposal, and 348
request the establishment of a special fund under section 5705.12 349
of the Revised Code for any fees designated as "general fund 350
moneys to supplement the equipment needs of the county recorder." 351

(D) The acquisition or maintenance of micrographic or other 352
equipment and the acquisition of contract services shall be 353
specifically governed by sections 307.80 to 307.806, 307.84 to 354
307.846, 307.86 to 307.92, and 5705.38, and by division (D) of 355
section 5705.41 of the Revised Code. 356

Sec. 1301.401. (A) For purposes of this section, "public 357
record" means either of the following: 358

(1) Any document described or referred to in section 317.08 359

of the Revised Code; 360

(2) Any document the filing or recording of which is required 361
or allowed under any provision of Chapter 1309. of the Revised 362
Code. 363

(B) The recording with any county recorder of any document 364
described in division (A)(1) of this section or the filing or 365
recording with the secretary of state of any document described in 366
division (A)(2) of this section shall be constructive notice to 367
the whole world of the existence and contents of either document 368
as a public record and of any transaction referred to in that 369
public record, including, but not limited to, any transfer, 370
conveyance, or assignment reflected in that record. 371

(C) Any person contesting the validity or effectiveness of 372
any transaction referred to in a public record is considered to 373
have discovered that public record and any transaction referred to 374
in the record as of the time that the record was first filed with 375
the secretary of state or tendered to a county recorder for 376
recording. 377

Sec. 1319.07. As used in sections 1319.07 to 1319.09 of the 378
Revised Code: 379

(A) "Nonrecourse carveout" means a specific exemption, if 380
any, to the nonrecourse provisions set forth in the loan documents 381
for a nonrecourse loan that has the effect of creating, if 382
specified events occur, personal liability of the borrower or 383
guarantor or other surety of the loan for all or some amounts owed 384
to the lender. 385

(B) "Nonrecourse loan" means a commercial loan secured by a 386
mortgage on real property located in this state and evidenced by 387
loan documents that meet any of the following: 388

(1) Provide that the lender will not enforce the liability or 389

obligation of the borrower by an action or proceeding in which a 390
money judgment is sought against the borrower; 391

(2) Provide that any judgment in any action or proceeding on 392
the loan is enforceable against the borrower only to the extent of 393
the borrower's interest in the mortgaged property and other 394
collateral security given for the loan; 395

(3) Provide that the lender will not seek a deficiency 396
judgment against the borrower; 397

(4) Provide that there is no recourse against the borrower 398
personally for the loan; 399

(5) Include any combination of divisions (B)(1) to (4) of 400
this section or any other provisions to the effect that the loan 401
is without personal liability to the borrower beyond the 402
borrower's interest in the mortgaged property and other collateral 403
security given for the loan. 404

(C) "Nonrecourse provisions" means one or more of the 405
provisions described in divisions (B)(1) to (5) of this section, 406
whether or not the loan is subject to a nonrecourse carveout or 407
carveouts. 408

(D) "Postclosing solvency covenant" means any provision of 409
the loan documents for a nonrecourse loan, whether expressed as a 410
covenant, representation, warranty, or default, that relates 411
solely to the solvency of the borrower, including, without 412
limitation, a provision requiring that the borrower maintain 413
adequate capital or have the ability to pay the borrower's debts, 414
with respect to any period of time after the date the loan is 415
initially funded. "Postclosing solvency covenant" does not include 416
a covenant not to file a voluntary bankruptcy or other voluntary 417
insolvency proceeding or not to collude in an involuntary 418
proceeding. 419

Sec. 1319.08. (A) A postclosing solvency covenant shall not 420
be used, directly or indirectly, as a nonrecourse carveout or as 421
the basis for any claim or action against a borrower or any 422
guarantor or other surety on a nonrecourse loan. 423

(B) A provision in the documents for a nonrecourse loan that 424
does not comply with division (A) of this section is invalid and 425
unenforceable. 426

Sec. 1319.09. Section 1319.08 of the Revised Code does not 427
prohibit a loan that is secured by a mortgage on real property 428
located in this state from being fully recourse to the borrower or 429
guarantor, including, but not limited to, as a result of a 430
postclosing solvency covenant, if the loan documents for that loan 431
do not contain nonrecourse loan provisions. 432

Sec. 1336.04. (A) A transfer made or an obligation incurred 433
by a debtor is fraudulent as to a creditor, whether the claim of 434
the creditor arose before, or within a reasonable time not to 435
exceed four years after, the transfer was made or the obligation 436
was incurred, if the debtor made the transfer or incurred the 437
obligation in either of the following ways: 438

(1) With actual intent to hinder, delay, or defraud any 439
creditor of the debtor; 440

(2) Without receiving a reasonably equivalent value in 441
exchange for the transfer or obligation, and if either of the 442
following applies: 443

(a) The debtor was engaged or was about to engage in a 444
business or a transaction for which the remaining assets of the 445
debtor were unreasonably small in relation to the business or 446
transaction; 447

(b) The debtor intended to incur, or believed or reasonably 448

should have believed that ~~he~~ the debtor would incur, debts beyond 449
~~his~~ the debtor's ability to pay as they became due. 450

(B) In determining actual intent under division (A)(1) of 451
this section, consideration may be given to all relevant factors, 452
including, but not limited to, the following: 453

(1) Whether the transfer or obligation was to an insider; 454

(2) Whether the debtor retained possession or control of the 455
property transferred after the transfer; 456

(3) Whether the transfer or obligation was disclosed or 457
concealed; 458

(4) Whether before the transfer was made or the obligation 459
was incurred, the debtor had been sued or threatened with suit; 460

(5) Whether the transfer was of substantially all of the 461
assets of the debtor; 462

(6) Whether the debtor absconded; 463

(7) Whether the debtor removed or concealed assets; 464

(8) Whether the value of the consideration received by the 465
debtor was reasonably equivalent to the value of the asset 466
transferred or the amount of the obligation incurred; 467

(9) Whether the debtor was insolvent or became insolvent 468
shortly after the transfer was made or the obligation was 469
incurred; 470

(10) Whether the transfer occurred shortly before or shortly 471
after a substantial debt was incurred; 472

(11) Whether the debtor transferred the essential assets of 473
the business to a lienholder who transferred the assets to an 474
insider of the debtor. 475

Sec. 1701.73. (A)(1) Upon the adoption of any amendment or 476

amended articles, a certificate containing a copy of the 477
resolution adopting the amendment or amended articles, a statement 478
of the manner of its adoption, and, in the case of adoption of the 479
resolution by the incorporators or directors, a statement of the 480
basis for such adoption, shall be filed with the secretary of 481
state, and thereupon the articles shall be amended accordingly, 482
any change of shares provided for in the amendment or amended 483
articles shall become effective, and the amended articles shall 484
supersede the existing articles. 485

(2) Except as provided in division (A)(3) of this section, 486
when an amendment or amended articles are adopted by the directors 487
pursuant to section 1701.70 of the Revised Code, the corporation 488
shall send notice of the amendment or amended articles, and a copy 489
or summary ~~thereof~~ of the amendment or amended articles, by mail, 490
overnight delivery service, or any other means of communication 491
authorized by the shareholder to whom the notice and copy or 492
summary are sent, to each shareholder of the corporation of record 493
as of the date on which the directors approved the amendment or 494
amended articles. The notice shall be sent to the shareholders 495
within twenty days after the filing of the certificate required by 496
division (A)(1) of this section. 497

(3) Any corporation that files periodic reports with the 498
United States securities and exchange commission pursuant to 499
section 13 of the "Securities Exchange Act of 1934," 48 Stat. 881, 500
15 U.S.C. 78m, as amended, or section 15(d) of the "Securities 501
Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78o(d), as amended, 502
may satisfy the notice to shareholders of record requirement of 503
division (A)(2) of this section by including a copy or summary of 504
the amendment or amended articles in a report filed in accordance 505
with those provisions within twenty days after the filing of the 506
certificate required by division (A)(1) of this section. 507

(B) When an amendment or amended articles are adopted by the 508

incorporators, the certificate described in division (A)(1) of 509
this section shall be signed by each of them. 510

(C) When an amendment or amended articles are adopted by the 511
directors or by the shareholders, the certificate described in 512
division (A)(1) of this section shall be signed by any authorized 513
officer. 514

(D) A copy of an amendment or amended articles changing the 515
name of a corporation or its principal office in this state, 516
certified by the secretary of state, may be filed for record in 517
the office of the county recorder of any county in this state, and 518
for such recording, the county recorder shall charge and collect 519
the same fee as provided for in division (A)(1) of section 317.32 520
of the Revised Code. The copy shall be recorded in the records of 521
deeds. 522

Sec. 1702.38. (A) The articles may be amended from time to 523
time in any respect if the articles as amended set forth all the 524
provisions that are required in, and only those provisions that 525
may properly be in, original articles filed at the time of 526
adopting the amendment, other than with respect to the initial 527
directors, except that a public benefit corporation shall not 528
amend its articles in such manner that it will cease to be a 529
public benefit corporation. 530

(B) Without limiting the generality of the authority 531
described in division (A) of this section, the articles may be 532
amended to: 533

(1) Change the name of the corporation; 534

(2) Change the place in this state where its principal office 535
is to be located; 536

(3) Change, enlarge, or diminish its purpose or purposes; 537

(4) Change any provision of the articles or add any provision 538

that may properly be included in the articles. 539

(C)(1) The voting members present in person, by use of 540
authorized communications equipment, by mail, or, if permitted, by 541
proxy at a meeting held for that purpose, may adopt an amendment 542
by the affirmative vote of a majority of the voting members 543
present if a quorum is present or, if the articles or the 544
regulations provide or permit, by the affirmative vote of a 545
greater or lesser proportion or number of the voting members, and 546
by the affirmative vote of the voting members of any particular 547
class that is required by the articles or the regulations. 548

(2) For purposes of division (C)(1) of this section, 549
participation by a voting member at a meeting through the use of 550
any of the means of communication described in that division 551
constitutes presence in person of that voting member at the 552
meeting for purposes of determining a quorum. 553

(D) In addition to or in lieu of adopting an amendment to the 554
articles, the voting members may adopt amended articles by the 555
same action or vote as that required to adopt the amendment. 556

(E) The directors may adopt amended articles to consolidate 557
the original articles and all previously adopted amendments to the 558
articles that are in force at the time, or the voting members at a 559
meeting held for that purpose may adopt the amended articles by 560
the same vote as that required to adopt an amendment. 561

(F) Amended articles shall set forth all the provisions that 562
are required in, and only the provisions that may properly be in, 563
original articles filed at the time of adopting the amended 564
articles, other than with respect to the initial directors, and 565
shall contain a statement that they supersede the existing 566
articles. 567

(G) Upon the adoption of any amendment or amended articles, a 568
certificate containing a copy of the resolution adopting the 569

amendment or amended articles, a statement of the manner of its 570
adoption, and, in the case of adoption of the resolution by the 571
directors, a statement of the basis for such adoption, shall be 572
filed with the secretary of state, and upon that filing the 573
articles shall be amended accordingly, and the amended articles 574
shall supersede the existing articles. The certificate shall be 575
signed by any authorized officer of the corporation. 576

(H) A copy of an amendment or amended articles changing the 577
name of a corporation or its principal office in this state, 578
certified by the secretary of state, may be filed for record in 579
the office of the county recorder of any county in this state, and 580
for that recording the county recorder shall charge and collect 581
the same fee as provided for in division (A)(1) of section 317.32 582
of the Revised Code. That copy shall be recorded in the records of 583
deeds. 584

Sec. 1703.22. An amendment changing the name of a foreign 585
corporation may be filed for record with the county recorder of 586
any county when accompanied by a certificate from the secretary of 587
state of this state certifying that an amendment evidencing a 588
change in the corporate name has been filed in the secretary of 589
state's office. For such recording the recorder shall charge and 590
collect the same fee as provided for in division (A)(1) of section 591
317.32 of the Revised Code. 592

Sec. 2101.24. (A)(1) Except as otherwise provided by law, the 593
probate court has exclusive jurisdiction: 594

(a) To take the proof of wills and to admit to record 595
authenticated copies of wills executed, proved, and allowed in the 596
courts of any other state, territory, or country. If the probate 597
judge is unavoidably absent, any judge of the court of common 598
pleas may take proof of wills and approve bonds to be given, but 599

the record of these acts shall be preserved in the usual records 600
of the probate court. 601

(b) To grant and revoke letters testamentary and of 602
administration; 603

(c) To direct and control the conduct and settle the accounts 604
of executors and administrators and order the distribution of 605
estates; 606

(d) To appoint the attorney general to serve as the 607
administrator of an estate pursuant to section 2113.06 of the 608
Revised Code; 609

(e) To appoint and remove guardians, conservators, and 610
testamentary trustees, direct and control their conduct, and 611
settle their accounts; 612

(f) To grant marriage licenses; 613

(g) To make inquests respecting persons who are so mentally 614
impaired as a result of a mental or physical illness or 615
disability, or mental retardation, or as a result of chronic 616
substance abuse, that they are unable to manage their property and 617
affairs effectively, subject to guardianship; 618

(h) To qualify assignees, appoint and qualify trustees and 619
commissioners of insolvents, control their conduct, and settle 620
their accounts; 621

(i) To authorize the sale of lands, equitable estates, or 622
interests in lands or equitable estates, and the assignments of 623
inchoate dower in such cases of sale, on petition by executors, 624
administrators, and guardians; 625

(j) To authorize the completion of real property contracts on 626
petition of executors and administrators; 627

(k) To construe wills; 628

(l) To render declaratory judgments, including, but not 629

limited to, those rendered pursuant to section 2107.084 of the Revised Code;	630 631
(m) To direct and control the conduct of fiduciaries and settle their accounts;	632 633
(n) To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee;	634 635
(o) To terminate a testamentary trust in any case in which a court of equity may do so;	636 637
(p) To hear and determine actions to contest the validity of wills;	638 639
(q) To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption;	640 641 642
(r) To hear and determine an action commenced pursuant to section 3107.41 of the Revised Code to obtain the release of information pertaining to the birth name of the adopted person and the identity of the adopted person's biological parents and biological siblings;	643 644 645 646 647
(s) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;	648 649
(t) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;	650 651
(u) To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;	652 653 654
(v) To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337.16 of the Revised Code;	655 656 657
(w) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised	658 659

Code;	660
(x) To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with certain patients allegedly in a terminal condition or in a permanently unconscious state pursuant to division (E) of section 2133.08 of the Revised Code, in accordance with that division;	661 662 663 664 665 666
(y) To hear and determine applications that pertain to the withholding or withdrawal of nutrition and hydration from certain patients allegedly in a permanently unconscious state pursuant to section 2133.09 of the Revised Code, in accordance with that section;	667 668 669 670 671
(z) To hear and determine applications of attending physicians in accordance with division (B) of section 2133.15 of the Revised Code;	672 673 674
(aa) To hear and determine actions relative to the use or continuation of comfort care in connection with certain principals under durable powers of attorney for health care, declarants under declarations, or patients in accordance with division (E) of either section 1337.16 or 2133.12 of the Revised Code;	675 676 677 678 679
(bb) To hear and determine applications for an order relieving an estate from administration under section 2113.03 of the Revised Code;	680 681 682
(cc) To hear and determine applications for an order granting a summary release from administration under section 2113.031 of the Revised Code;	683 684 685
(dd) To hear and determine actions relating to the exercise of the right of disposition, in accordance with section 2108.90 of the Revised Code;	686 687 688
(ee) To hear and determine actions relating to the	689

disinterment and reinterment of human remains under section 517.23 690
of the Revised Code; 691

(ff) To hear and determine petitions for an order for 692
treatment of a person suffering from alcohol and other drug abuse 693
filed under section 3793.34 of the Revised Code and to order 694
treatment of that nature in accordance with, and take other 695
actions afforded to the court under, sections 3793.31 to 3793.39 696
of the Revised Code. 697

(2) In addition to the exclusive jurisdiction conferred upon 698
the probate court by division (A)(1) of this section, the probate 699
court shall have exclusive jurisdiction over a particular subject 700
matter if both of the following apply: 701

(a) Another section of the Revised Code expressly confers 702
jurisdiction over that subject matter upon the probate court. 703

(b) No section of the Revised Code expressly confers 704
jurisdiction over that subject matter upon any other court or 705
agency. 706

(B)(1) The probate court has concurrent jurisdiction with, 707
and the same powers at law and in equity as, the general division 708
of the court of common pleas to issue writs and orders, and to 709
hear and determine actions as follows: 710

(a) If jurisdiction relative to a particular subject matter 711
is stated to be concurrent in a section of the Revised Code or has 712
been construed by judicial decision to be concurrent, any action 713
that involves that subject matter; 714

(b) Any action that involves an inter vivos trust; a trust 715
created pursuant to section 5815.28 of the Revised Code; a 716
charitable trust or foundation; subject to divisions (A)(1)(u) and 717
(z) of this section, a power of attorney, including, but not 718
limited to, a durable power of attorney; the medical treatment of 719
a competent adult; or a writ of habeas corpus; 720

(c) Subject to section 2101.31 of the Revised Code, any 721
action with respect to a probate estate, guardianship, trust, or 722
post-death dispute that involves any of the following: 723

(i) A designation or removal of a beneficiary of a life 724
insurance policy, annuity contract, retirement plan, brokerage 725
account, security account, bank account, real property, or 726
tangible personal property; 727

(ii) A designation or removal of a payable-on-death 728
beneficiary or transfer-on-death beneficiary; 729

(iii) A change in the title to any asset involving a joint 730
and survivorship interest; 731

(iv) An alleged gift; 732

(v) The passing of assets upon the death of an individual 733
otherwise than by will, intestate succession, or trust. 734

(2) Any action that involves a concurrent jurisdiction 735
subject matter and that is before the probate court may be 736
transferred by the probate court, on its order, to the general 737
division of the court of common pleas. 738

(C) The probate court has plenary power at law and in equity 739
to dispose fully of any matter that is properly before the court, 740
unless the power is expressly otherwise limited or denied by a 741
section of the Revised Code. 742

(D) The jurisdiction acquired by a probate court over a 743
matter or proceeding is exclusive of that of any other probate 744
court, except when otherwise provided by law. 745

Sec. 2131.08. (A) Subject to sections 1746.14, 1747.09, and 746
2131.09 of the Revised Code, no interest in real or personal 747
property shall be good unless it must vest, if at all, not later 748
than twenty-one years after a life or lives in being at the 749
creation of the interest. All estates given in tail, by deed or 750

will, in real property lying within this state shall be and remain 751
an absolute estate in fee simple to the issue of the first donee 752
in tail. It is the intention by the adoption of this section to 753
make effective in this state what is generally known as the common 754
law rule against perpetuities, except as set forth in divisions 755
(B) and (C) of this section. 756

(B) For the purposes of this section and subject to sections 757
1746.14, 1747.09, and 2131.09 of the Revised Code, the time of the 758
creation of an interest in real or personal property subject to a 759
power reserved by the grantor to revoke or terminate the interest 760
shall be the time at which the reserved power expires by reason of 761
the death of the grantor, by release of the power, or otherwise. 762

(C) Any interest in real or personal property that would 763
violate the rule against perpetuities, under division (A) of this 764
section, shall be reformed, within the limits of the rule, to 765
approximate most closely the intention of the creator of the 766
interest. In determining whether an interest would violate the 767
rule and in reforming an interest, the period of perpetuities 768
shall be measured by actual rather than possible events. 769

(D) For purposes of this section and subject to sections 770
1746.14, 1747.09, and 2131.09 of the Revised Code, the following 771
apply: 772

(1) The time of the creation of an interest in real or 773
personal property resulting from the exercise of a general power 774
of appointment exercisable in a nonfiduciary capacity by deed, 775
whether or not also exercisable by will, shall be the time at 776
which that power of appointment is exercised. 777

(2) The time of the creation of an interest in real or 778
personal property resulting from the termination, without 779
exercise, of a general power of appointment exercisable in a 780
nonfiduciary capacity by deed, whether or not also exercisable by 781

will, shall be the time at which that power of appointment 782
terminates by reason of the death of the power holder, by release 783
of the power, or otherwise. 784

(E) Divisions (B) and (C) of this section shall be effective 785
with respect to interests in real or personal property created by 786
wills of decedents dying after December 31, 1967, with respect to 787
interests in real or personal property created by inter vivos 788
instruments executed after December 31, 1967, and with respect to 789
interests in real or personal property created by inter vivos 790
instruments executed on or before December 31, 1967, that by 791
reason of division (B) of this section will be treated as 792
interests created after December 31, 1967. Divisions (B) and (C) 793
of this section shall be effective with respect to interests in 794
real or personal property created by the exercise of a power of 795
appointment if divisions (B) and (C) of this section apply to the 796
instrument that exercises the power, whether or not divisions (B) 797
and (C) of this section apply to the instrument that creates the 798
power. 799

(F) Divisions (D) and (G) of this section are intended to be 800
a statement of the common law of this state and shall be effective 801
with respect to interests in real or personal property whenever 802
created. 803

(G) For purposes of this section: 804

(1) "General power of appointment" has the same meaning as in 805
section 2131.09 of the Revised Code. 806

(2) "Exercisable by deed" in reference to a power of 807
appointment means a power that can be exercised during the power 808
holder's lifetime by an instrument that takes effect immediately. 809

Sec. 2131.09. (A) A trust of real or personal property 810
created by an employer as part of a stock bonus plan, pension 811

plan, disability or death benefit plan, or profit-sharing plan, 812
for the benefit of some or all of the employees, to which 813
contributions are made by the employer or employees, or both, for 814
the purpose of distributing to the employees or their 815
beneficiaries the earnings or the principal, or both earnings and 816
principal, of the fund so held in trust is not invalid as 817
violating the rule against perpetuities, any other existing law 818
against perpetuities, or any law restricting or limiting the 819
duration of trusts; but the trust may continue for the time that 820
is necessary to accomplish the purposes for which it was created. 821

The income arising from any trust within the classifications 822
mentioned in this division may be accumulated in accordance with 823
the terms of the trust for as long a time as is necessary to 824
accomplish the purposes for which the trust was created, 825
notwithstanding any law limiting the period during which trust 826
income may be accumulated. 827

No rule of law against perpetuities or the suspension of the 828
power of alienation of the title to property invalidates any trust 829
within the classifications mentioned in this division unless the 830
trust is terminated by decree of a court in a suit instituted 831
within two years after June 25, 1951. 832

(B)(1) No rule of law against perpetuities or suspension of 833
the power of alienation of the title to property, any other 834
existing law against perpetuities, or any law restricting or 835
limiting the duration of trusts shall apply with respect to any 836
interest in real or personal property held in trust if ~~the~~ both of 837
the following apply: 838

(a) The instrument creating the trust specifically states 839
that the rule against perpetuities or the provisions of division 840
~~(B)~~(A) of section 2131.08 of the Revised Code shall not apply to 841
the trust ~~and if either the,~~ 842

(b) ~~The trustee of the trust~~ has unlimited power ~~to sell all~~ 843
~~trust assets,~~ or if one or more persons, ~~one of whom may be the~~ 844
~~trustee,~~ has have the unlimited power to direct the trustee or to 845
approve the trustee's decision, either to sell all trust assets or 846
to terminate the entire trust. 847

(2) Division (B)(1) of this section shall apply to the 848
interpretation of a testamentary or inter vivos trust instrument 849
that creates an interest in real or personal property in relation 850
to which one or more of the following conditions ~~applies~~ apply: 851

(a) The instrument creating the testamentary or inter vivos 852
trust is executed in this state. 853

(b) The sole trustee or one of the trustees is domiciled in 854
this state. 855

(c) The testamentary or inter vivos trust is administered in 856
this state or the situs of a substantial portion of the assets 857
subject to the testamentary portion of the testamentary or inter 858
vivos trust is in this state, even though some part or all of 859
those assets are physically deposited for safekeeping in a state 860
other than this state. 861

(d) The instrument creating the testamentary or inter vivos 862
trust states that the law of this state is to apply. 863

(3) ~~Division~~ Subject to division (C) of this section, 864
division (B) of this section shall be effective with respect to 865
all of the following: 866

(a) An interest in real or personal property in trust created 867
~~by wills of decedents~~ under the terms of a will of a decedent 868
dying on or after ~~the effective date of this amendment~~ March 22, 869
1999; 870

(b) An interest in real or personal property created ~~by~~ under 871
the terms of an inter vivos or testamentary trust instrument 872

executed on or after ~~the effective date of this amendment~~ March 873
22, 1999; 874

(c) An interest in real or personal property in trust created 875
by the exercise of a general power of appointment on or after ~~the~~ 876
~~effective date of this amendment~~ March 22, 1999; 877

(d) An interest in real or personal property in trust created 878
by the exercise of a nongeneral power of appointment over any 879
portion of a trust that meets the requirements of division (B) of 880
this section, but only if the date of creation of that nongeneral 881
power of appointment is on or after the effective date of this 882
section. 883

~~(4) Division (B) of this section shall not apply to the~~ 884
~~exercise of a power of appointment other than a general power of~~ 885
~~appointment.~~ 886

(C) The exercise of a nongeneral power of appointment granted 887
over any portion of a trust to which the rule against perpetuities 888
does not apply because the terms of the trust meet the 889
requirements of division (B) of this section shall nevertheless be 890
subject to section 2131.08 of the Revised Code, except that 891
interests created pursuant to the exercise of a nongeneral power 892
of appointment that has a date of creation on or after the 893
effective date of this section shall be required to vest not later 894
than one thousand years after the date of creation of that power. 895

(D) For purposes of this section, the instrument creating a 896
trust subject to a power reserved by the grantor to amend, revoke, 897
or terminate the trust shall include the original instrument 898
establishing the trust and all amendments to the instrument made 899
prior to the time at which the reserved power expires by reason of 900
the death of the grantor, by release of the power, or otherwise. 901

(E) The amendment of division (B)(1) of this section and 902
divisions (D) and (F) of this section are intended to clarify the 903

provisions of this section as originally enacted and apply to 904
trust instruments that are in existence prior to, on, or after the 905
effective date of this section. 906

(F) For purposes of this section, ~~"general:~~ 907

(1) "General power of appointment" means a power that is 908
exercisable in favor of the individual possessing the power, the 909
person's individual's estate, the person's individual's creditors, 910
or the creditors of the person's individual's estate other than 911
either of the following: 912

(a) A power that is limited by an ascertainable standard as 913
defined in section 5801.01 of the Revised Code; 914

(b) A power of withdrawal held by an individual, but only to 915
the extent that it does not exceed the amount specified in section 916
2041(b)(2) or 2514(e) of the "Internal Revenue Code of 1986," 100 917
Stat. 2085, 26 U.S.C. 1 et seq., as amended. 918

(2) "Nongeneral power of appointment" means any power of 919
appointment that is not a general power of appointment. 920

(3) The "date of creation" of a nongeneral power of 921
appointment created by the exercise of one or more powers of 922
appointment, except by the exercise of a general power of 923
appointment exercisable by deed, shall be the date of creation of 924
the first of those powers of appointment to be exercised. 925

(4) "Exercisable by deed" has the same meaning as in section 926
2131.08 of the Revised Code. 927

Sec. 2329.66. (A) Every person who is domiciled in this state 928
may hold property exempt from execution, garnishment, attachment, 929
or sale to satisfy a judgment or order, as follows: 930

(1)(a) In the case of a judgment or order regarding money 931
owed for health care services rendered or health care supplies 932
provided to the person or a dependent of the person, one parcel or 933

item of real or personal property that the person or a dependent 934
of the person uses as a residence. Division (A)(1)(a) of this 935
section does not preclude, affect, or invalidate the creation 936
under this chapter of a judgment lien upon the exempted property 937
but only delays the enforcement of the lien until the property is 938
sold or otherwise transferred by the owner or in accordance with 939
other applicable laws to a person or entity other than the 940
surviving spouse or surviving minor children of the judgment 941
debtor. Every person who is domiciled in this state may hold 942
exempt from a judgment lien created pursuant to division (A)(1)(a) 943
of this section the person's interest, not to exceed ~~twenty one~~ one 944
hundred twenty-five thousand ~~two hundred~~ dollars, in the exempted 945
property. 946

(b) In the case of all other judgments and orders, the 947
person's interest, not to exceed ~~twenty one hundred twenty-five~~ 948
thousand ~~two hundred~~ dollars, in one parcel or item of real or 949
personal property that the person or a dependent of the person 950
uses as a residence. 951

(c) For purposes of divisions (A)(1)(a) and (b) of this 952
section, "parcel" means a tract of real property as identified on 953
the records of the auditor of the county in which the real 954
property is located. 955

(2) The person's interest, not to exceed three thousand two 956
hundred twenty-five dollars, in one motor vehicle; 957

(3) The person's interest, not to exceed four hundred 958
dollars, in cash on hand, money due and payable, money to become 959
due within ninety days, tax refunds, and money on deposit with a 960
bank, savings and loan association, credit union, public utility, 961
landlord, or other person, other than personal earnings. 962

(4)(a) The person's interest, not to exceed five hundred 963
twenty-five dollars in any particular item or ten thousand seven 964

hundred seventy-five dollars in aggregate value, in household 965
furnishings, household goods, wearing apparel, appliances, books, 966
animals, crops, musical instruments, firearms, and hunting and 967
fishing equipment that are held primarily for the personal, 968
family, or household use of the person; 969

(b) The person's aggregate interest in one or more items of 970
jewelry, not to exceed one thousand three hundred fifty dollars, 971
held primarily for the personal, family, or household use of the 972
person or any of the person's dependents. 973

(5) The person's interest, not to exceed an aggregate of two 974
thousand twenty-five dollars, in all implements, professional 975
books, or tools of the person's profession, trade, or business, 976
including agriculture; 977

(6)(a) The person's interest in a beneficiary fund set apart, 978
appropriated, or paid by a benevolent association or society, as 979
exempted by section 2329.63 of the Revised Code; 980

(b) The person's interest in contracts of life or endowment 981
insurance or annuities, as exempted by section 3911.10 of the 982
Revised Code; 983

(c) The person's interest in a policy of group insurance or 984
the proceeds of a policy of group insurance, as exempted by 985
section 3917.05 of the Revised Code; 986

(d) The person's interest in money, benefits, charity, 987
relief, or aid to be paid, provided, or rendered by a fraternal 988
benefit society, as exempted by section 3921.18 of the Revised 989
Code; 990

(e) The person's interest in the portion of benefits under 991
policies of sickness and accident insurance and in lump sum 992
payments for dismemberment and other losses insured under those 993
policies, as exempted by section 3923.19 of the Revised Code. 994

(7) The person's professionally prescribed or medically necessary health aids;	995 996
(8) The person's interest in a burial lot, including, but not limited to, exemptions under section 517.09 or 1721.07 of the Revised Code;	997 998 999
(9) The person's interest in the following:	1000
(a) Moneys paid or payable for living maintenance or rights, as exempted by section 3304.19 of the Revised Code;	1001 1002
(b) Workers' compensation, as exempted by section 4123.67 of the Revised Code;	1003 1004
(c) Unemployment compensation benefits, as exempted by section 4141.32 of the Revised Code;	1005 1006
(d) Cash assistance payments under the Ohio works first program, as exempted by section 5107.75 of the Revised Code;	1007 1008
(e) Benefits and services under the prevention, retention, and contingency program, as exempted by section 5108.08 of the Revised Code;	1009 1010 1011
(f) Disability financial assistance payments, as exempted by section 5115.06 of the Revised Code;	1012 1013
(g) Payments under section 24 or 32 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended.	1014 1015
(10)(a) Except in cases in which the person was convicted of or pleaded guilty to a violation of section 2921.41 of the Revised Code and in which an order for the withholding of restitution from payments was issued under division (C)(2)(b) of that section, in cases in which an order for withholding was issued under section 2907.15 of the Revised Code, in cases in which an order for forfeiture was issued under division (A) or (B) of section 2929.192 of the Revised Code, and in cases in which an order was issued under <u>section</u> 2929.193 of the Revised Code, and only to the	1016 1017 1018 1019 1020 1021 1022 1023 1024

extent provided in the order, and except as provided in sections 1025
3105.171, 3105.63, 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 1026
of the Revised Code, the person's ~~right~~ rights to or interests in 1027
a pension, benefit, annuity, retirement allowance, or accumulated 1028
contributions, the person's ~~right~~ rights to or interests in a 1029
participant account in any deferred compensation program offered 1030
by the Ohio public employees deferred compensation board, a 1031
government unit, or a municipal corporation, or the person's other 1032
accrued or accruing rights or interests, as exempted by section 1033
145.56, 146.13, 148.09, 742.47, 3307.41, 3309.66, or 5505.22 of 1034
the Revised Code, and the person's ~~right~~ rights to or interests in 1035
benefits from the Ohio public safety officers death benefit fund; 1036

(b) Except as provided in sections 3119.80, 3119.81, 3121.02, 1037
3121.03, and 3123.06 of the Revised Code, the person's ~~right~~ 1038
rights to receive or interests in receiving a payment or other 1039
benefits under any pension, annuity, or similar plan or contract, 1040
not including a payment or benefit from a stock bonus or 1041
profit-sharing plan or a payment included in division (A)(6)(b) or 1042
(10)(a) of this section, on account of illness, disability, death, 1043
age, or length of service, to the extent reasonably necessary for 1044
the support of the person and any of the person's dependents, 1045
except if all the following apply: 1046

(i) The plan or contract was established by or under the 1047
auspices of an insider that employed the person at the time the 1048
person's rights or interests under the plan or contract arose. 1049

(ii) The payment is on account of age or length of service. 1050

(iii) The plan or contract is not qualified under the 1051
"Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as 1052
amended. 1053

(c) Except for any portion of the assets that were deposited 1054
for the purpose of evading the payment of any debt and except as 1055

provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 1056
3123.06 of the Revised Code, the person's ~~right~~ rights or 1057
interests in the assets held in, or to directly or indirectly 1058
receive any payment or benefit under, any individual retirement 1059
account, individual retirement annuity, "Roth IRA," "529 plan," or 1060
education individual retirement account that provides payments or 1061
benefits by reason of illness, disability, death, retirement, or 1062
age or provides payments or benefits for purposes of education, to 1063
the extent that the assets, payments, or benefits described in 1064
division (A)(10)(c) of this section are attributable to or derived 1065
from any of the following or from any earnings, dividends, 1066
interest, appreciation, or gains on any of the following: 1067

(i) Contributions of the person that were less than or equal 1068
to the applicable limits on deductible contributions to an 1069
individual retirement account or individual retirement annuity in 1070
the year that the contributions were made, whether or not the 1071
person was eligible to deduct the contributions on the person's 1072
federal tax return for the year in which the contributions were 1073
made; 1074

(ii) Contributions of the person that were less than or equal 1075
to the applicable limits on contributions to a Roth IRA or 1076
education individual retirement account in the year that the 1077
contributions were made; 1078

(iii) Contributions of the person that are within the 1079
applicable limits on rollover contributions under subsections 219, 1080
402(c), 403(a)(4), 403(b)(8), 408(b), 408(d)(3), 408A(c)(3)(B), 1081
408A(d)(3), and 530(d)(5) of the "Internal Revenue Code of 1986," 1082
100 Stat. 2085, 26 U.S.C.A. 1, as amended; 1083

(iv) Contributions by any person into any plan, fund, or 1084
account that is formed, created, or administered pursuant to, or 1085
is otherwise subject to, section 529 of the "Internal Revenue Code 1086
of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. 1087

(d) Except for any portion of the assets that were deposited 1088
for the purpose of evading the payment of any debt and except as 1089
provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 1090
3123.06 of the Revised Code, the person's ~~right~~ rights or 1091
interests in the assets held in, or to receive any payment under, 1092
any Keogh or "H.R. 10" plan that provides benefits by reason of 1093
illness, disability, death, retirement, or age, to the extent 1094
reasonably necessary for the support of the person and any of the 1095
person's dependents. 1096

(e) The person's rights to or interests in any assets held 1097
in, or to directly or indirectly receive any payment or benefit 1098
under, any individual retirement account, individual retirement 1099
annuity, "Roth IRA," "529 plan," or education individual 1100
retirement account that a decedent, upon or by reason of the 1101
decedent's death, directly or indirectly left to or for the 1102
benefit of the person, either outright or in trust or otherwise, 1103
including, but not limited to, any of those rights or interests in 1104
assets or to receive payments or benefits that were transferred, 1105
conveyed, or otherwise transmitted by the decedent by means of a 1106
will, trust, exercise of a power of appointment, beneficiary 1107
designation, transfer or payment on death designation, or any 1108
other method or procedure. 1109

(f) The exemptions under divisions (A)(10)(a) to (e) of this 1110
section also shall apply or otherwise be available to an alternate 1111
payee under a qualified domestic relations order (QDRO) or other 1112
similar court order. 1113

(g) A person's interest in any plan, program, instrument, or 1114
device described in divisions (A)(10)(a) to (e) of this section 1115
shall be considered an exempt interest even if the plan, program, 1116
instrument, or device in question, due to an error made in good 1117
faith, failed to satisfy any criteria applicable to that plan, 1118
program, instrument, or device under the "Internal Revenue Code of 1119

1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. 1120

(11) The person's right to receive spousal support, child 1121
support, an allowance, or other maintenance to the extent 1122
reasonably necessary for the support of the person and any of the 1123
person's dependents; 1124

(12) The person's right to receive, or moneys received during 1125
the preceding twelve calendar months from, any of the following: 1126

(a) An award of reparations under sections 2743.51 to 2743.72 1127
of the Revised Code, to the extent exempted by division (D) of 1128
section 2743.66 of the Revised Code; 1129

(b) A payment on account of the wrongful death of an 1130
individual of whom the person was a dependent on the date of the 1131
individual's death, to the extent reasonably necessary for the 1132
support of the person and any of the person's dependents; 1133

(c) Except in cases in which the person who receives the 1134
payment is an inmate, as defined in section 2969.21 of the Revised 1135
Code, and in which the payment resulted from a civil action or 1136
appeal against a government entity or employee, as defined in 1137
section 2969.21 of the Revised Code, a payment, not to exceed 1138
twenty thousand two hundred dollars, on account of personal bodily 1139
injury, not including pain and suffering or compensation for 1140
actual pecuniary loss, of the person or an individual for whom the 1141
person is a dependent; 1142

(d) A payment in compensation for loss of future earnings of 1143
the person or an individual of whom the person is or was a 1144
dependent, to the extent reasonably necessary for the support of 1145
the debtor and any of the debtor's dependents. 1146

(13) Except as provided in sections 3119.80, 3119.81, 1147
3121.02, 3121.03, and 3123.06 of the Revised Code, personal 1148
earnings of the person owed to the person for services in an 1149
amount equal to the greater of the following amounts: 1150

(a) If paid weekly, thirty times the current federal minimum 1151
hourly wage; if paid biweekly, sixty times the current federal 1152
minimum hourly wage; if paid semimonthly, sixty-five times the 1153
current federal minimum hourly wage; or if paid monthly, one 1154
hundred thirty times the current federal minimum hourly wage that 1155
is in effect at the time the earnings are payable, as prescribed 1156
by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 1157
U.S.C. 206(a)(1), as amended; 1158

(b) Seventy-five per cent of the disposable earnings owed to 1159
the person. 1160

(14) The person's right in specific partnership property, as 1161
exempted by division (B)(3) of section 1775.24 of the Revised Code 1162
or the person's rights in a partnership pursuant to section 1163
1776.50 of the Revised Code, except as otherwise set forth in 1164
section 1776.50 of the Revised Code; 1165

(15) A seal and official register of a notary public, as 1166
exempted by section 147.04 of the Revised Code; 1167

(16) The person's interest in a tuition unit or a payment 1168
under section 3334.09 of the Revised Code pursuant to a tuition 1169
payment contract, as exempted by section 3334.15 of the Revised 1170
Code; 1171

(17) Any other property that is specifically exempted from 1172
execution, attachment, garnishment, or sale by federal statutes 1173
other than the "Bankruptcy Reform Act of 1978," 92 Stat. 2549, 11 1174
U.S.C.A. 101, as amended; 1175

(18) The person's aggregate interest in any property, not to 1176
exceed one thousand seventy-five dollars, except that division 1177
(A)(18) of this section applies only in bankruptcy proceedings. 1178

(B) On April 1, 2010, and on the first day of April in each 1179
third calendar year after 2010, the Ohio judicial conference shall 1180
adjust each dollar amount set forth in this section to reflect ~~the~~ 1181

~~change~~ any increase in the consumer price index for all urban 1182
consumers, as published by the United States department of labor, 1183
or, if that index is no longer published, a generally available 1184
comparable index, for the three-year period ending on the 1185
thirty-first day of December of the preceding year. Any 1186
adjustments required by this division shall be rounded to the 1187
nearest twenty-five dollars. 1188

The Ohio judicial conference shall prepare a memorandum 1189
specifying the adjusted dollar amounts. The judicial conference 1190
shall transmit the memorandum to the director of the legislative 1191
service commission, and the director shall publish the memorandum 1192
in the register of Ohio. (Publication of the memorandum in the 1193
register of Ohio shall continue until the next memorandum 1194
specifying an adjustment is so published.) The judicial conference 1195
also may publish the memorandum in any other manner it concludes 1196
will be reasonably likely to inform persons who are affected by 1197
its adjustment of the dollar amounts. 1198

(C) As used in this section: 1199

(1) "Disposable earnings" means net earnings after the 1200
garnishee has made deductions required by law, excluding the 1201
deductions ordered pursuant to section 3119.80, 3119.81, 3121.02, 1202
3121.03, or 3123.06 of the Revised Code. 1203

(2) "Insider" means: 1204

(a) If the person who claims an exemption is an individual, a 1205
relative of the individual, a relative of a general partner of the 1206
individual, a partnership in which the individual is a general 1207
partner, a general partner of the individual, or a corporation of 1208
which the individual is a director, officer, or in control; 1209

(b) If the person who claims an exemption is a corporation, a 1210
director or officer of the corporation; a person in control of the 1211
corporation; a partnership in which the corporation is a general 1212

partner; a general partner of the corporation; or a relative of a 1213
general partner, director, officer, or person in control of the 1214
corporation; 1215

(c) If the person who claims an exemption is a partnership, a 1216
general partner in the partnership; a general partner of the 1217
partnership; a person in control of the partnership; a partnership 1218
in which the partnership is a general partner; or a relative in, a 1219
general partner of, or a person in control of the partnership; 1220

(d) An entity or person to which or whom any of the following 1221
applies: 1222

(i) The entity directly or indirectly owns, controls, or 1223
holds with power to vote, twenty per cent or more of the 1224
outstanding voting securities of the person who claims an 1225
exemption, unless the entity holds the securities in a fiduciary 1226
or agency capacity without sole discretionary power to vote the 1227
securities or holds the securities solely to secure to debt and 1228
the entity has not in fact exercised the power to vote. 1229

(ii) The entity is a corporation, twenty per cent or more of 1230
whose outstanding voting securities are directly or indirectly 1231
owned, controlled, or held with power to vote, by the person who 1232
claims an exemption or by an entity to which division (C)(2)(d)(i) 1233
of this section applies. 1234

(iii) A person whose business is operated under a lease or 1235
operating agreement by the person who claims an exemption, or a 1236
person substantially all of whose business is operated under an 1237
operating agreement with the person who claims an exemption. 1238

(iv) The entity operates the business or all or substantially 1239
all of the property of the person who claims an exemption under a 1240
lease or operating agreement. 1241

(e) An insider, as otherwise defined in this section, of a 1242
person or entity to which division (C)(2)(d)(i), (ii), (iii), or 1243

(iv) of this section applies, as if the person or entity were a person who claims an exemption;

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

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

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

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

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

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

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

Sec. 2329.661. (A) Division (A)(1) of section 2329.66 of the Revised Code does not:

(1) Extend to a judgment rendered on a mortgage executed, or security interest given on real or personal property by a debtor or to a claim for less than four hundred dollars for manual work or labor;

(2) Impair the lien, by mortgage or otherwise, of the vendor for the purchase money of real or personal property that the debtor or a dependent of the debtor uses as a residence, or the lien of a mechanic or other person, under a statute of this state, for materials furnished or labor performed in the erection of a

dwelling house on real property, or a lien for the payment of	1273
taxes due on real property;	1274
(3) Affect or invalidate any mortgage on any real property, or any lien created by such a mortgage;	1275
	1276
<u>(4) Impair a lien for the payment of taxes, debts, or other obligations owed to this state or any agency or political subdivision of this state;</u>	1277
	1278
	1279
<u>(5) Extend to a judgment rendered against a debtor for tortious operation of a motor vehicle by the debtor that results in injury, death, or loss to person or property if that injury, death, or loss was caused at a time when the debtor failed to maintain proof of financial responsibility as defined in section 4509.01 of the Revised Code.</u>	1280
	1281
	1282
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	1284
	1285
(B) No promise, agreement, or contract shall be made or entered into that would waive the exemption laws of this state, and every promise, agreement, or contract insofar as it seeks to waive the exemption laws of this state is void.	1286
	1287
	1288
	1289
(C) Section 2329.66 of the Revised Code does not affect or invalidate any sale, contract of sale, conditional sale, security interest, or pledge of any personal property, or any lien created thereby.	1290
	1291
	1292
	1293
Sec. 5805.06. (A) Whether or not the terms of a trust contain a spendthrift provision, all of the following apply:	1294
	1295
(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.	1296
	1297
(2) With <u>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</u> 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	1298
	1299
	1300
	1301
	1302

benefit. If a an irrevocable trust has more than one settlor, the 1303
amount distributable to or for a settlor's benefit that the 1304
creditor or assignee of a particular settlor may reach may not 1305
exceed ~~the~~ that settlor's interest in the portion of the trust 1306
attributable to that settlor's contribution. The right of a 1307
creditor or assignee to reach a settlor's interest in an 1308
irrevocable trust shall be subject to Chapter 5816. of the Revised 1309
Code to the extent that that chapter applies to that trust. 1310

(3) With respect to a trust described in 42 U.S.C. section 1311
1396p(d)(4)(A) or (C), the court may limit the award of a 1312
settlor's creditor under division (A)(1) or (2) of this section to 1313
the relief that is appropriate under the circumstances, 1314
considering among any other factors determined appropriate by the 1315
court, the supplemental needs of the beneficiary. 1316

(B) For purposes of this section, all of the following apply: 1317

(1) The holder of a power of withdrawal is treated in the 1318
same manner as the settlor of a revocable trust to the extent of 1319
the property subject to the power during the period the power may 1320
be exercised. 1321

(2) Upon the lapse, release, or waiver of the power of 1322
withdrawal, the holder is treated as the settlor of the trust only 1323
to the extent the value of the property affected by the lapse, 1324
release, or waiver exceeds the greatest of the following amounts: 1325

(a) The amount specified in section 2041(b)(2) or 2514(e) of 1326
the Internal Revenue Code; 1327

(b) If the donor of the property subject to the holder's 1328
power of withdrawal is not married at the time of the transfer of 1329
the property to the trust, the amount specified in section 2503(b) 1330
of the Internal Revenue Code; 1331

(c) If the donor of the property subject to the holder's 1332
power of withdrawal is married at the time of the transfer of the 1333

property to the trust, twice the amount specified in section 1334
2503(b) of the Internal Revenue Code. 1335

(3) None of the following shall be considered an amount that 1336
can be distributed to or for the benefit of the settlor: 1337

(a) Trust property that could be, but has not yet been, 1338
distributed to or for the benefit of the settlor only as a result 1339
of the exercise of a power of appointment held in a nonfiduciary 1340
capacity by any person other than the settlor; 1341

(b) Trust property that could be, but has not yet been, 1342
distributed to or for the benefit of the settlor of a trust 1343
pursuant to the power of the trustee to make distributions or 1344
pursuant to the power of another in a fiduciary capacity to direct 1345
distributions, if and to the extent that the distributions could 1346
be made from trust property the value of which was included in the 1347
gross estate of the settlor's spouse for federal estate tax 1348
purposes under section 2041 or 2044 of the Internal Revenue Code 1349
or that was treated as a transfer by the settlor's spouse under 1350
section 2514 or 2519 of the Internal Revenue Code; 1351

(c) Trust property that, pursuant to the exercise of a 1352
discretionary power by a person other than the settlor, could be 1353
paid to a taxing authority or to reimburse the settlor for any 1354
income tax on trust income or principal that is payable by the 1355
settlor under the law imposing the tax. 1356

Sec. 5808.08. (A) While a trust is revocable, the trustee may 1357
follow a direction of the settlor that is contrary to the terms of 1358
the trust. 1359

(B) As provided in section 5815.25 of the Revised Code, a 1360
trustee is not liable for losses resulting from certain actions or 1361
failures to act when other persons are granted certain powers with 1362
respect to the administration of the trust. 1363

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

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

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

(1) If a trustee of a trust, referred to in this section as the "first trust," has absolute power under the terms of the first trust to make distributions of principal to one or more current beneficiaries, that trustee may exercise that power by distributing all or any part of the principal subject to the power, and all or any part of any income that is not otherwise currently required to be distributed, to the trustee of another trust, referred to in this section as the "second trust," that is for the benefit of one or more current beneficiaries of the first trust. The second trust may be a trust under the trust instrument for the first trust or under a different governing instrument, including a governing instrument created by the trustee of the first trust. A trustee of a first trust who is authorized to make distributions to the trustee of a second trust pursuant to division (A) of this section may do so at any time, whether or not the trustee of the first trust would otherwise have made a distribution at that time to, or for the benefit of, any

beneficiary pursuant to the terms of the first trust. 1395

(2) In determining whether a trustee has absolute power to 1396
make distributions of principal to any current beneficiary and the 1397
identity of the current beneficiaries, all of the following apply: 1398

(a) An absolute power to distribute principal includes any 1399
power to make distributions of principal that is not limited by 1400
reasonably definite standards or ascertainable standards, whether 1401
or not the word "absolute" is used in the trust instrument. 1402

(b) A power to make distributions of principal for purposes 1403
that include best interests, welfare, comfort or happiness, or 1404
words of similar import, if not otherwise limited by reasonably 1405
definite standards or ascertainable standards, constitutes an 1406
absolute power not limited by reasonably definite standards or 1407
ascertainable standards, regardless of any requirement to take 1408
into account other resources of the current beneficiary or 1409
beneficiaries to whom those distributions may be made. 1410

(c) If the current beneficiaries of the first trust are 1411
defined, in whole or in part, as a class of persons, that class 1412
includes any person who falls within that class of persons after 1413
the distribution to the second trust. 1414

(d) A power to make distributions for the benefit of a 1415
beneficiary is considered a power to make distributions to that 1416
beneficiary. 1417

(3) If property is distributed pursuant to the authority 1418
described in division (A) of this section, the governing 1419
instrument for the second trust may do either or both of the 1420
following: 1421

(a) Grant a power of appointment to one or more of the 1422
beneficiaries for whose benefit the property was so distributed, 1423
including a power to appoint trust property to the power holder, 1424
the power holder's creditors, the power holder's estate, the 1425

creditors of the power holder's estate, or any other person, 1426
whether or not that person is a beneficiary of the first trust or 1427
the second trust; 1428

(b) Provide that, at a time or upon an event specified in 1429
that governing instrument, the remaining trust property shall 1430
thereafter be held for the benefit of the beneficiaries of the 1431
first trust upon terms and conditions that are substantially 1432
identical to the terms and conditions of the trust instrument for 1433
the first trust, except that any current beneficiary or 1434
beneficiaries for whose benefit the property could have been, but 1435
was not, so distributed may be excluded from having any beneficial 1436
interest in the second trust. 1437

(4) For purposes of division (A)(3) of this section, "terms 1438
and conditions" refer only to those terms and conditions that 1439
govern the interests of the beneficiaries. 1440

(5) For purposes of division (A) of this section, charitable 1441
organizations that are not expressly designated in the terms of 1442
the first trust to receive distributions but to which the trustee 1443
of the first trust, in the discretion of the trustee, or in the 1444
discretion of any other person directing the trustee and acting in 1445
a fiduciary capacity, may at any time make a distribution, are 1446
considered beneficiaries of the first trust. 1447

(B) Unless the trust instrument expressly provides otherwise 1448
and subject to the limitations set forth in this section, a 1449
trustee of a first trust who has power, other than absolute power 1450
as described in division (A) of this section, under the terms of 1451
the first trust to make distributions of principal to one or more 1452
current beneficiaries may exercise that power by distributing all 1453
or any part of the principal subject to the power, and all or any 1454
part of any income that is not otherwise currently required to be 1455
distributed, to the trustee of a second trust. The second trust 1456
may be a trust under the trust instrument for the first trust or 1457

under a different governing instrument, including a governing 1458
instrument created by the trustee of the first trust. The power 1459
described in this division may be exercised whether or not there 1460
is a current need to distribute trust principal under any standard 1461
contained in the first trust. The exercise of a trustee's power 1462
under this division is valid only if the governing instrument for 1463
the second trust does not materially change the interests of the 1464
beneficiaries of the first trust. For purposes of this division, a 1465
power to make distributions for the benefit of a beneficiary shall 1466
be considered a power to make distributions to that beneficiary. 1467

(C) The exercise of the power to make distributions to a 1468
second trust under division (A) or (B) of this section is subject 1469
to the following additional limitations: 1470

(1)(a) The distribution to the trustee of the second trust 1471
shall not result in the reduction, limitation, or modification of 1472
any of the following rights or interests of a beneficiary of the 1473
first trust if the right or interest has come into effect with 1474
respect to the beneficiary: 1475

(i) The current right to a mandatory distribution of income 1476
or principal of the first trust; 1477

(ii) The current mandatory annuity or unitrust interest in 1478
the property of the first trust; 1479

(iii) The right annually to withdraw a percentage of the 1480
value of the first trust or a specified dollar amount. 1481

(b) For purposes of division (C)(1)(a)(i) of this section, a 1482
beneficiary's current right to a distribution of income is not 1483
considered to be mandatory if, under the terms of the first trust, 1484
current distributions of principal may be made to any person other 1485
than that current beneficiary. 1486

(2) If any transfer to the first trust qualified, or if not 1487
for the provisions of division (A) or (B) of this section would 1488

have qualified, for a marital or charitable deduction for purposes 1489
of any federal income, gift, or estate tax under the Internal 1490
Revenue Code, or for purposes of any state income, gift, estate, 1491
or inheritance tax, the governing instrument for the second trust 1492
shall not include or omit any term that, if included in or omitted 1493
from the trust instrument for the first trust, would have 1494
prevented the first trust from qualifying for that deduction, or 1495
would have reduced the amount of the deduction, under the same 1496
provisions of the Internal Revenue Code or under the same 1497
provisions of the applicable state law under which the transfer to 1498
the first trust so qualified. 1499

(3) If any transfer to the first trust has been treated, or 1500
if not for the provisions of division (A) or (B) of this section 1501
would have been treated, as a gift qualifying for the exclusion 1502
from the gift tax described in section 2503(b) of the Internal 1503
Revenue Code, the governing instrument for the second trust shall 1504
not include or omit any term that, if included in or omitted from 1505
the trust instrument for the first trust, would have prevented any 1506
gift to the first trust from so qualifying under the same 1507
provisions of section 2503 of the Internal Revenue Code under 1508
which the transfer to the first trust so qualified. 1509

(4) If the assets of the first trust include any shares of 1510
stock in an S corporation, as defined in section 1361 of the 1511
Internal Revenue Code, and the first trust is, or if not for the 1512
provisions of division (A) or (B) of this section would be, a 1513
permitted shareholder under any provision of section 1361 of the 1514
Internal Revenue Code, the governing instrument for the second 1515
trust shall not include or omit any term that, if included in or 1516
omitted from the trust instrument for the first trust, would have 1517
prevented the first trust from qualifying as a permitted 1518
shareholder of shares of stock in an S corporation under the same 1519
provisions of section 1361 of the Internal Revenue Code under 1520

which the first trust so qualified. 1521

(5) If any transfer to the first trust has been treated, or 1522
if not for the provisions of division (A) or (B) of this section 1523
would have been treated, as a gift qualifying for a zero inclusion 1524
ratio for purposes of the federal generation-skipping transfer tax 1525
under section 2642(c) of the Internal Revenue Code, the governing 1526
instrument for the second trust shall not include or omit any term 1527
that, if included in or omitted from the trust instrument for the 1528
first trust, would have prevented the transfer to the first trust 1529
from so qualifying. 1530

(6) If the assets of the first trust include any interest 1531
subject to the minimum distribution rules of section 401(a)(9) of 1532
the Internal Revenue Code and the treasury regulations issued 1533
under that section, the governing instrument for the second trust 1534
shall not include or omit any term that, if included in or omitted 1535
from the trust instrument for the first trust, would have 1536
shortened the maximum distribution period otherwise allowable 1537
under section 401(a)(9) of the Internal Revenue Code and the 1538
treasury regulations with respect to that interest under the first 1539
trust. 1540

(7)(a) As used in division (C)(7) of this section, "tax 1541
benefit" means any federal or state tax deduction, exemption, 1542
exclusion, or other tax benefit not otherwise listed in division 1543
(C) of this section. 1544

(b) If the trust instrument for the first trust expressly 1545
indicates an intention to qualify for any tax benefit or if the 1546
terms of the trust instrument for the first trust are clearly 1547
designed to enable the first trust to qualify for a tax benefit, 1548
and if the first trust did qualify, or if not for the provisions 1549
of division (A) or (B) of this section would have qualified, for 1550
any tax benefit, the governing instrument for the second trust 1551
shall not include or omit any term that, if included in or omitted 1552

from the trust instrument for the first trust, would have 1553
prevented the first trust from qualifying for that tax benefit. 1554

(8) The distribution to the trustee of the second trust shall 1555
not result in either of the following: 1556

(a) An increase in, or a change in the method of determining, 1557
the compensation of the trustee unless the increase in, or change 1558
in the method of determining, that compensation has been consented 1559
to by all of the persons, other than the trustee of the second 1560
trust, who are current beneficiaries of the second trust or is 1561
approved by the court having jurisdiction over the trust. However, 1562
an increase in compensation of the trustee arising solely because 1563
the duration of the second trust is longer than the duration of 1564
the first trust is not considered an increase in, or a change in 1565
the method of determining, the compensation of the trustee. 1566

(b) A reduction in the standard of care applicable to the 1567
actions of the trustee of the first trust or the second trust or 1568
an exoneration of the trustee of the first trust or the second 1569
trust from liability for actions taken in bad faith or with 1570
willful disregard of the duties of either trustee, including by 1571
increasing the extent to which the trustee is entitled to 1572
indemnification from the trust, as provided in the terms of the 1573
first trust and under any law of this state. 1574

(D) The exercise of the power to distribute trust income or 1575
principal to the trustee of a second trust under division (A) or 1576
(B) of this section shall be by an instrument in writing, signed 1577
by the trustee of the first trust and filed with the records of 1578
the first trust. 1579

(E) The power to distribute trust income or principal to the 1580
trustee of a second trust under division (A) or (B) of this 1581
section shall not be exercised in a manner contrary to any 1582
provision of section 2131.08 of the Revised Code to the extent 1583

applicable to the first trust, and after applying the provisions 1584
of ~~division (B) of~~ section 2131.09 of the Revised Code to the 1585
extent applicable to the first trust. Solely for purposes of 1586
applying under this division the provisions of ~~section~~ sections 1587
2131.08 and ~~division (B) of section~~ 2131.09 of the Revised Code, 1588
the exercise of the power to distribute trust income or principal 1589
to the trustee of a second trust under division (A) or (B) of this 1590
section is considered the exercise of a nongeneral power of 1591
appointment ~~other than a general power of appointment within the~~ 1592
~~meaning of~~ as defined in division ~~(B)(4)(F)~~ of section 2131.09 of 1593
the Revised Code. 1594

(F) The trustee of the first trust shall notify all current 1595
beneficiaries of the first trust, in writing, of the intended 1596
distribution to the trustee of a second trust pursuant to division 1597
(A) or (B) of this section not later than thirty days prior to 1598
that distribution. The distribution may be made prior to the 1599
expiration of thirty days from the date on which that notice is 1600
given to all current beneficiaries of the first trust if all of 1601
those current beneficiaries waive the thirty-day period from 1602
receipt of that notice. The trustee's giving of notice of an 1603
intended distribution under this division or the waiver or 1604
expiration of that thirty-day period from receipt of the notice do 1605
not limit the right of any beneficiary to object to the exercise 1606
of the trustee's power to distribute trust principal as provided 1607
in any other applicable provision of the Ohio Trust Code. 1608

(G) Any person, other than the trustee, who has a power 1609
exercisable in a fiduciary capacity to direct the trustee to make 1610
any distribution of principal that, if held by the trustee, would 1611
be a power to make a distribution as described in division (A) or 1612
(B) of this section, may exercise that power by directing the 1613
trustee to make a distribution under either division (A) or (B) of 1614
this section, whichever would be applicable if that person were 1615

the trustee, subject to all of the limitations described in this 1616
section that apply to a trustee's exercise of that power. 1617

(H) The exercise of the power to distribute trust income or 1618
principal to the trustee of a second trust under division (A) or 1619
(B) of this section is not prohibited by a spendthrift clause or a 1620
provision in the trust instrument that prohibits the amendment or 1621
revocation of the trust. 1622

(I) For purposes of division (A) of section 5808.14 of the 1623
Revised Code, a trustee who acts reasonably and in good faith in 1624
exercising the power to distribute trust income or principal to 1625
the trustee of a second trust in accordance with division (A) or 1626
(B) of this section, is presumed to have acted in accordance with 1627
the terms and purposes of the trust and the interests of the 1628
beneficiaries. 1629

(J) Nothing in this section is intended to create or imply a 1630
duty to exercise a power to distribute income or principal of a 1631
trust, and no inference of impropriety shall arise as a result of 1632
a trustee not exercising the power to make any distribution to the 1633
trustee of a second trust under division (A) or (B) of this 1634
section. 1635

(K) If the first trust is a testamentary trust established 1636
under the will of a testator who was domiciled in this state at 1637
the time of the testator's death, the power to distribute trust 1638
income or principal to the trustee of a second trust under 1639
division (A) or (B) of this section may be exercised only if 1640
approved by the court, if any, that has jurisdiction over the 1641
testamentary trust. 1642

(L) Divisions (A) and (B) of this section do not apply to 1643
either of the following: 1644

(1) Any trust during any period that the trust may be revoked 1645
or amended by its settlor; 1646

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

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

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

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

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

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

(4) Otherwise include any terms and conditions governing the distribution in further trust that the settlor of the trust

determines. 1678

(O)(1) Division (A) of this section is intended to be a 1679
codification of the common law of this state in effect prior to 1680
~~the enactment of this section~~ March 22, 2012, and applies to 1681
distributions, whenever made, from any trust that is governed by 1682
the law of this state or that has its principal place of 1683
administration in this state, whether that trust was created 1684
before, on, or after ~~the effective date of this section~~ March 22, 1685
2012. 1686

(2) Division (B) of this section applies to distributions 1687
made on or after ~~the effective date of this section~~ March 22, 1688
2012, from any trust that is governed by the law of this state or 1689
that has its principal place of administration in this state, 1690
whether that trust was created before, on, or after ~~the effective~~ 1691
~~date of this section~~ March 22, 2012. 1692

Sec. 5815.24. (A) As used in this section, "fiduciary" means 1693
a trustee under any expressed, implied, resulting, or constructive 1694
trust; an executor, administrator, public administrator, 1695
committee, guardian, conservator, curator, receiver, trustee in 1696
bankruptcy, or assignee for the benefit of creditors; a partner, 1697
agent, officer of a public or private corporation, or public 1698
officer; or any other person acting in a fiduciary capacity for 1699
any person, trust, or estate. 1700

(B) A fiduciary, or a custodian, who is a transferee of real 1701
or personal property that is held by a fiduciary other than the 1702
person or entity serving as the transferee, is not required to 1703
inquire into any act, or audit any account, of the transferor 1704
fiduciary, unless the transferee is specifically directed to do so 1705
in the instrument governing the transferee or unless the 1706
transferee has actual knowledge of conduct of the transferor that 1707
would constitute a breach of the transferor's fiduciary 1708

responsibilities. 1709

(C) If a trustee is authorized or directed in a trust 1710
instrument to pay or advance all or any part of the trust property 1711
to the personal representative of a decedent's estate for the 1712
payment of the decedent's legal obligations, death taxes, 1713
bequests, or expenses of administration, the trustee is not liable 1714
for the application of the trust property paid or advanced to the 1715
personal representative and is not liable for any act or omission 1716
of the personal representative with respect to the trust property, 1717
unless the trustee has actual knowledge, prior to the payment or 1718
advancement of the trust property, that the personal 1719
representative does not intend to use the trust property for such 1720
purposes. 1721

(D) Regardless of whether a beneficiary is subject to the 1722
claims of any creditor, a trustee may pay any expense incurred by 1723
a beneficiary to the extent that payment is permitted by the 1724
instrument governing the trust, and the trustee may make those 1725
payments even if the payments exhaust the income and principal of 1726
the trust. A trustee is not liable to any creditor of a 1727
beneficiary for paying the expenses of a beneficiary as allowed by 1728
this division. 1729

Sec. 5815.25. (A) As used in this section, "fiduciary" means 1730
a trustee under any testamentary, inter vivos, or other trust, an 1731
executor or administrator, or any other person who is acting in a 1732
fiduciary capacity for any person, trust, or estate. 1733

(B) ~~When~~ If an instrument or other applicable written 1734
agreement describes, appoints, or directs a fiduciary to handle 1735
only the administrative duties and responsibilities of a trust, 1736
that administrative fiduciary shall not have any duties, 1737
responsibilities, or liabilities to the trust beneficiaries or to 1738
other persons interested in a trust except for those 1739

administrative duties and responsibilities specifically described 1740
in the instrument or written agreement. The administrative duties 1741
and responsibilities of a trust under this division may include 1742
any of the following: 1743

(1) Opening and maintaining bank, brokerage, financial, or 1744
other custodial accounts to receive trust income or contributions 1745
and from which trust expenditures, bills, and distributions may be 1746
disbursed; 1747

(2) Maintaining and handling trust records, reports, 1748
correspondence, or communications; 1749

(3) Maintaining an office for trust business; 1750

(4) Filing any trust tax returns; 1751

(5) Employing agents in connection with the fiduciary's 1752
administrative duties; 1753

(6) Taking custody of or storing trust property; 1754

(7) Any other similar administrative duties for the trust. 1755

(C) If an instrument under which a fiduciary acts reserves to 1756
the grantor, or vests in an advisory or investment committee or in 1757
one or more other persons, including one or more fiduciaries, to 1758
the exclusion of the fiduciary or of one or more of several 1759
fiduciaries, any power, including, but not limited to, the 1760
authority to direct the acquisition, disposition, or retention of 1761
any investment or the power to authorize any act that an excluded 1762
fiduciary may propose, any excluded fiduciary is not liable, 1763
either individually or as a fiduciary, for either of the 1764
following: 1765

(1) Any loss that results from compliance with an authorized 1766
direction of the grantor, committee, person, or persons; 1767

(2) Any loss that results from a failure to take any action 1768
proposed by an excluded fiduciary that requires a prior 1769

authorization of the grantor, committee, person, or persons if 1770
that excluded fiduciary timely sought but failed to obtain that 1771
authorization. 1772

~~(C)~~(D) Any administrative fiduciary as described in division 1773
(B) of this section or any excluded fiduciary as described in 1774
division ~~(B)~~(C) of this section is relieved from any obligation to 1775
perform investment reviews and make recommendations with respect 1776
to any investments to the extent the grantor, an advisory or 1777
investment committee, or one or more other persons have authority 1778
to direct the acquisition, disposition, or retention of any 1779
investment. 1780

~~(D)~~(E) This section does not apply to the extent that the 1781
instrument under which an administrative fiduciary as described in 1782
division (B) of this section or an excluded fiduciary as described 1783
in division ~~(B)~~(C) of this section ~~acts~~ contains provisions that 1784
are inconsistent with this section. 1785

Sec. 5815.36. (A) As used in this section: 1786

(1) "Disclaimant" means any person, any guardian or personal 1787
representative of a person or estate of a person, or any 1788
attorney-in-fact or agent of a person having a general or specific 1789
authority to act granted in a written instrument, who is any of 1790
the following: 1791

(a) With respect to testamentary instruments and intestate 1792
succession, an heir, next of kin, devisee, legatee, donee, person 1793
succeeding to a disclaimed interest, surviving joint tenant, 1794
surviving tenant by the entirety, surviving tenant of a tenancy 1795
with a right of survivorship, beneficiary under a testamentary 1796
instrument, or person designated to take pursuant to a power of 1797
appointment exercised by a testamentary instrument; 1798

(b) With respect to nontestamentary instruments, a grantee, 1799

donee, person succeeding to a disclaimed interest, surviving joint 1800
tenant, surviving tenant by the entireties, surviving tenant of a 1801
tenancy with a right of survivorship, beneficiary under a 1802
nontestamentary instrument, or person designated to take pursuant 1803
to a power of appointment exercised by a nontestamentary 1804
instrument; 1805

(c) With respect to fiduciary rights, privileges, powers, and 1806
immunities, a fiduciary under a testamentary or nontestamentary 1807
instrument. Division (A)(1)(c) of this section does not authorize 1808
a fiduciary who disclaims fiduciary rights, privileges, powers, 1809
and immunities to cause the rights of any beneficiary to be 1810
disclaimed unless the instrument creating the fiduciary 1811
relationship authorizes the fiduciary to make such a disclaimer. 1812

(d) Any person entitled to take an interest in property upon 1813
the death of a person or upon the occurrence of any other event. 1814

(2) "Personal representative" includes any fiduciary as 1815
defined in section 2109.01 of the Revised Code and any executor, 1816
trustee, guardian, or other person or entity having a fiduciary 1817
relationship with regard to any interest in property passing to 1818
the fiduciary, executor, trustee, guardian, or other person or 1819
entity by reason of a disclaimant's death. 1820

(3) "Property" means all forms of property, real and 1821
personal, tangible and intangible. 1822

(B)(1) A disclaimant, other than a fiduciary under an 1823
instrument who is not authorized by the instrument to disclaim the 1824
interest of a beneficiary, may disclaim, in whole or in part, the 1825
succession to any property by executing and by delivering, filing, 1826
or recording a written disclaimer instrument in the manner 1827
provided in this section. 1828

(2) A disclaimant who is a fiduciary under an instrument may 1829
disclaim, in whole or in part, any right, power, privilege, or 1830

immunity, by executing and by delivering, filing, or recording a written disclaimer instrument in the manner provided in this section.

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

(a) A reference to the donative instrument;

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

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

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

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

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

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

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

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

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

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

(3) The date on which the disclaimant attains eighteen years of age or is no longer an incompetent, without tendering or repaying any benefit received while the disclaimant was under eighteen years of age or an incompetent, and even if a guardian of a minor or incompetent had filed an application pursuant to division (B)(4) of this section and the probate division of the

court of common pleas involved did not consent to the guardian 1893
executing a disclaimer. 1894

(E) No disclaimer instrument is effective under this section 1895
if either of the following applies under the terms of the 1896
disclaimer instrument: 1897

(1) The disclaimant has power to revoke the disclaimer. 1898

(2) The disclaimant may transfer, or direct to be 1899
transferred, to self the entire legal and equitable ownership of 1900
the property subject to the disclaimer instrument. 1901

(F)(1) Subject to division (F)(2) of this section, if the 1902
interest disclaimed is created by a nontestamentary instrument, 1903
including, but not limited to, a transfer on death designation 1904
affidavit pursuant to section 5302.22 of the Revised Code, the 1905
disclaimer instrument shall be delivered personally or by 1906
certified mail to the trustee or other person who has legal title 1907
to, or possession of, the property disclaimed. If the interest 1908
disclaimed is created by a transfer on death designation affidavit 1909
pursuant to section 5302.22 of the Revised Code, the disclaimer 1910
instrument shall be filed with the county recorder of the county 1911
in which the real property that is the subject of that affidavit 1912
is located. 1913

(2) If the interest disclaimed is created by a testamentary 1914
instrument, by intestate succession, or by a certificate of title 1915
to a motor vehicle, watercraft, or outboard motor that evidences 1916
ownership of the motor vehicle, watercraft, or outboard motor that 1917
is transferable on death pursuant to section 2131.13 of the 1918
Revised Code, the disclaimer instrument shall be filed in the 1919
probate division of the court of common pleas in the county in 1920
which proceedings for the administration of the decedent's estate 1921
have been commenced, and an executed copy of the disclaimer 1922
instrument shall be delivered personally or by certified mail to 1923

the personal representative of the decedent's estate. 1924

(3) If no proceedings for the administration of the 1925
decedent's estate have been commenced, the disclaimer instrument 1926
shall be filed in the probate division of the court of common 1927
pleas in the county in which proceedings for the administration of 1928
the decedent's estate might be commenced according to law. The 1929
disclaimer instrument shall be filed and indexed, and fees 1930
charged, in the same manner as provided by law for an application 1931
to be appointed as personal representative to administer the 1932
decedent's estate. The disclaimer is effective whether or not 1933
proceedings thereafter are commenced to administer the decedent's 1934
estate. If proceedings thereafter are commenced for the 1935
administration of the decedent's estate, they shall be filed 1936
under, or consolidated with, the case number assigned to the 1937
disclaimer instrument. 1938

(4) If an interest in real estate is disclaimed, an executed 1939
copy of the disclaimer instrument also shall be recorded in the 1940
office of the recorder of the county in which the real estate is 1941
located. The disclaimer instrument shall include a description of 1942
the real estate with sufficient certainty to identify it, and 1943
shall contain a reference to the record of the instrument that 1944
created the interest disclaimed. If title to the real estate is 1945
registered under Chapters 5309. and 5310. of the Revised Code, the 1946
disclaimer interest shall be entered as a memorial on the last 1947
certificate of title. A spouse of a disclaimant has no dower or 1948
other interest in the real estate disclaimed. 1949

(G) If a donative instrument expressly provides for the 1950
distribution of property, part of property, or interest in 1951
property if there is a disclaimer, the property, part of property, 1952
or interest disclaimed shall be distributed or disposed of, and 1953
accelerated or not accelerated, in accordance with the donative 1954
instrument. In the absence of express provisions to the contrary 1955

in the donative instrument, the property, part of property, or 1956
interest in property disclaimed, and any future interest that is 1957
to take effect in possession or enjoyment at or after the 1958
termination of the interest disclaimed, shall descend, be 1959
distributed, or otherwise be disposed of, and shall be 1960
accelerated, in the following manner: 1961

(1) If intestate or testate succession is disclaimed, as if 1962
the disclaimant had predeceased the decedent; 1963

(2) If the disclaimant is one designated to take pursuant to 1964
a power of appointment exercised by a testamentary instrument, as 1965
if the disclaimant had predeceased the donee of the power; 1966

(3) If the donative instrument is a nontestamentary 1967
instrument, as if the disclaimant had died before the effective 1968
date of the nontestamentary instrument; 1969

(4) If the disclaimer is of a fiduciary right, power, 1970
privilege, or immunity, as if the right, power, privilege, or 1971
immunity was never in the donative instrument. 1972

(H) A disclaimer pursuant to this section is effective as of, 1973
and relates back for all purposes to, the date upon which the 1974
taker and the taker's interest have been finally ascertained. 1975

(I) A disclaimant who has a present and future interest in 1976
property, and disclaims the disclaimant's present interest in 1977
whole or in part, is considered to have disclaimed the 1978
disclaimant's future interest to the same extent, unless a 1979
contrary intention appears in the disclaimer instrument or the 1980
donative instrument. A disclaimant is not precluded from 1981
receiving, as an alternative taker, a beneficial interest in the 1982
property disclaimed, unless a contrary intention appears in the 1983
disclaimer instrument or in the donative instrument. 1984

(J) The disclaimant's right to disclaim under this section is 1985
barred if the disclaimant does any of the following: 1986

(1) Assigns, conveys, encumbers, pledges, or transfers, or contracts to assign, convey, encumber, pledge, or transfer, the property or any interest in it;	1987 1988 1989
(2) Waives in writing the disclaimant's right to disclaim and executes and delivers, files, or records the waiver in the manner provided in this section for a disclaimer instrument;	1990 1991 1992
(3) Accepts the property or an interest in it;	1993
(4) Permits or suffers a sale or other disposition of the property pursuant to judicial action against the disclaimant.	1994 1995
(K) Neither a fiduciary's application for appointment or assumption of duties as a fiduciary nor a beneficiary's application for appointment as a personal representative or fiduciary waives or bars the disclaimant's right to disclaim a right, power, privilege, or immunity as a personal representative or fiduciary or the beneficiary's right to disclaim property.	1996 1997 1998 1999 2000 2001
(L) The right to disclaim under this section exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.	2002 2003 2004
(M) A disclaimer instrument or written waiver of the right to disclaim that has been executed and delivered, filed, or recorded as required by this section is final and binding upon all persons.	2005 2006 2007
(N)(1) The right to disclaim and the procedures for disclaimer established by this section are in addition to, and do not exclude or abridge, any other rights or procedures that exist or formerly existed under any other section of the Revised Code or at common law to assign, convey, release, refuse to accept, renounce, waive, or disclaim property.	2008 2009 2010 2011 2012 2013
<u>(2) A disclaimer is not considered a transfer or conveyance by the disclaimant, and no creditor of a disclaimant may avoid a disclaimer.</u>	2014 2015 2016

(3) This section shall take precedence over any other section of the Revised Code that conflicts with this section. 2017
2018

(O)(1) No person is liable for distributing or disposing of property in a manner inconsistent with the terms of a valid disclaimer if the distribution or disposition is otherwise proper and the person has no actual knowledge of the disclaimer. 2019
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(2) No person is liable for distributing or disposing of property in reliance upon the terms of a disclaimer that is invalid because the right of disclaimer has been waived or barred if the distribution or disposition is otherwise proper and the person has no actual knowledge of the facts that constitute a waiver or bar to the right to disclaim. 2023
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(P)(1) A disclaimant may disclaim pursuant to this section any interest in property that is in existence on September 27, 1976, if either the interest in the property or the taker of the interest in the property is not finally ascertained on that date. 2029
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(2) No disclaimer executed pursuant to this section destroys or diminishes an interest in property that exists on September 27, 1976, in any person other than the disclaimant. 2033
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(Q) This section may be applied separately to different interests or powers created in the disclaimant by the same testamentary or nontestamentary instrument. 2036
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Sec. 5815.37. (A) If any interest in real property held by any trustee of an express trust that is wholly or partially governed by a law of this state or any interest in real property located in this state that is held by the trustee of a trust wholly governed by the law of one or more jurisdictions other than this state is temporarily conveyed to any beneficiary of that trust and reconveyed back to any trustee of that trust, the interest in the real property shall be subject to divisions (B) 2039
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and (C) of this section if all of the following apply: 2047

(1) That temporary conveyance is for the principal purpose of enabling some or all of that interest in the real property to be used as collateral in a loan transaction. 2048
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(2) The loan proceeds will be delivered to the trustee of the trust or will otherwise be principally used for the benefit of one or more beneficiaries of the trust. 2051
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(3) The interest in the real property is reconveyed back to one or more trustees of the trust within a reasonable time after the reconveying beneficiary acquired actual notice that the lender has perfected the lender's collateral rights in and to the interest in the real property. 2054
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(4) The lender in question is any of the following: 2059

(a) A bank, thrift, savings bank, savings and loan association, credit union, or any other similar financial institution if the activities of the other similar financial institution are subject to supervision by the Ohio superintendent of financial institutions, the federal deposit insurance corporation, the comptroller of the currency, the office of thrift supervision, any other comparable state or federal regulatory agency or entity, or a successor of any of them; 2060
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(b) An insurance company subject to supervision by the Ohio department of insurance or any comparable agency established by the law of any other jurisdiction; 2068
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(c) Any other corporation, limited liability company, partnership, or other similar or comparable entity the routine and regular business activities of which commonly include the making of commercial or residential loans that are wholly or partially secured by real property. 2071
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(B) If a temporary conveyance and reconveyance of an interest 2076

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

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

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

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

(b) The lender's rights under any mortgage, deed of trust, lien, encumbrance, or any other similar or comparable instrument or arrangement used to give the lender collateral rights in and to the interest being reconveyed, including, but not limited to, a lender's right to foreclose on that interest in real property;

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

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

<u>those documents:</u>	2108
<u>(a) The duty to repay the lender or any other person who is entitled to receive payments under the documents governing the loan transaction;</u>	2109 2110 2111
<u>(b) The duty to honor any agreements or covenants made by the debtor in the documents governing the loan transaction;</u>	2112 2113
<u>(c) The right to receive any advances, loans, notices, or other benefits called for by the documents governing the loan transaction.</u>	2114 2115 2116
<u>(D) The following apply for purposes of division (A)(1) of this section:</u>	2117 2118
<u>(1) A court shall liberally construe the temporary conveyance to a beneficiary of the trust in question in determining whether the principal purpose of the temporary conveyance is to enable some or all of the interest in the real property to be used as collateral in a loan transaction.</u>	2119 2120 2121 2122 2123
<u>(2) An interest in real property shall be considered to be used as collateral if, as part of a lending transaction, that interest is wholly or partially made subject to a mortgage, deed of trust, lien, encumbrance, or any other similar or comparable instrument or arrangement used to give the lender collateral rights in and to that interest.</u>	2124 2125 2126 2127 2128 2129
<u>(E) A court shall liberally construe division (A)(2) of this section in determining whether the loan proceeds referred to in that division will be principally used for the benefit of one or more beneficiaries of the trust in question.</u>	2130 2131 2132 2133
<u>(F) For purposes of division (A)(3) of this section, any reconveyance to a trustee shall be considered to have occurred within a reasonable time if it is made within one hundred twenty days of the date on which the reconveying beneficiary acquired</u>	2134 2135 2136 2137

actual notice that the lender has perfected the lender's 2138
collateral rights in and to the interest in the real property. In 2139
all other cases, a court shall consider all relevant facts and 2140
circumstances in determining whether a beneficiary has reconveyed 2141
the interest in the real property back to a trustee within a 2142
reasonable time after the reconveying beneficiary acquired that 2143
actual notice. 2144

(G)(1) A court shall liberally construe division (A)(4) of 2145
this section in determining whether a corporation, limited 2146
liability company, partnership, or other similar or comparable 2147
entity qualifies as a lender within the meaning of that division. 2148

(2) Subject to the rule of liberal interpretation set forth 2149
in division (G)(1) of this section, the Ohio superintendent of 2150
financial institutions may from time to time issue regulations 2151
setting forth a nonexhaustive list of entities that qualify as a 2152
lender within the meaning of division (A)(4) of this section and 2153
also may from time to time issue regulations setting forth 2154
specific entities or classes of entities that do not qualify as a 2155
lender within the meaning of that division. 2156

(H) An interest in real property may be subject to or 2157
involved in more than one loan transaction undertaken pursuant to 2158
this section. 2159

Sec. 5816.01. This chapter may be cited as the Ohio legacy 2160
trust act. 2161

Sec. 5816.02. As used in this chapter, unless the context 2162
otherwise requires: 2163

(A)(1) "Advisor" means a person to whom both of the following 2164
apply: 2165

(a) The person satisfies the eligibility criteria specified 2166
in division (A) of section 5816.11 of the Revised Code. 2167

(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. 2168
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(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. 2172
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(B) "Asset" means property of a transferor but does not include any of the following: 2175
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(1) Property to the extent it is encumbered by a valid lien; 2177

(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; 2178
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(3) Property held in the form of a tenancy by the entireties to the extent that, under the law governing the entireties estate at the time of a qualified disposition, it is not subject to process by a creditor holding a claim against only one tenant; 2182
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(4) Any property transferred from a nonlegacy trust to a legacy trust to the extent that the property would not be subject to attachment under the applicable nonbankruptcy law governing that nonlegacy trust. 2186
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(C) "Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. Chapter 11, as amended. 2190
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(D) "Beneficiary" has the same meaning as in section 5801.01 of the Revised Code. 2192
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(E) "Claim" means a right to payment, whether or not the right is reduced to judgment or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. 2194
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(F) "Creditor" means a person who has a claim against a transferor and any transferee or assignee of, or successor to, that claim. 2198
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(G) "Debt" means a liability on a claim. 2201

(H) "Disposition" means a transfer, conveyance, or assignment of property, including, but not limited to, a partial, contingent, undivided, or co-ownership interest in property. "Disposition" includes the exercise of a general power so as to cause a transfer of property to a trustee or trustees but does not include any of the following: 2202
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(1) The release or relinquishment of an interest in property that, until the release or relinquishment, was the subject of a qualified disposition; 2208
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(2) The exercise of a limited power so as to cause a transfer of property to a trustee or trustees; 2211
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(3) A disclaimer of an interest in a trust, bequest, devise, or inheritance. 2213
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(I) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended. 2215
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(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. 2217
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(K)(1) "Legacy trust" means a trust evidenced by a written trust instrument to which all of the following apply: 2221
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(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. 2223
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(b) The trust expressly incorporates the laws of this state to wholly or partially govern its validity, construction, and 2226
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<u>administration.</u>	2228
<u>(c) The trust expressly states that it is irrevocable.</u>	2229
<u>(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.</u>	2230 2231 2232
<u>(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.</u>	2233 2234 2235 2236
<u>(L) "Lien" has the same meaning as in section 1336.01 of the Revised Code.</u>	2237 2238
<u>(M) "Nonlegacy trust" means any trust other than a legacy trust.</u>	2239 2240
<u>(N) "Nonqualified trustee" means any trustee other than a qualified trustee.</u>	2241 2242
<u>(O) "Person" has the same meaning as in section 5801.01 of the Revised Code.</u>	2243 2244
<u>(P) "Property" has the same meaning as in section 5801.01 of the Revised Code.</u>	2245 2246
<u>(Q) "Qualified affidavit" means an affidavit that meets the requirements of section 5816.06 of the Revised Code.</u>	2247 2248
<u>(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.</u>	2249 2250 2251
<u>(S) "Qualified trustee" means a person who is not a transferor and to whom both of the following apply:</u>	2252 2253
<u>(1)(a) The person, if a natural person, is a resident of this state.</u>	2254 2255
<u>(b) The person, if not a natural person, is authorized by the</u>	2256

law of this state or by a court of competent jurisdiction of this 2257
state to act as a trustee and whose activities are subject to 2258
supervision by the Ohio superintendent of banks, the federal 2259
deposit insurance corporation, the comptroller of the currency, or 2260
the office of thrift supervision or a successor of any of them. 2261

(2) The person maintains or arranges for custody in this 2262
state of some or all of the property that is the subject of the 2263
qualified disposition, maintains records for the legacy trust on 2264
an exclusive or nonexclusive basis, prepares or arranges for the 2265
preparation of required income tax returns for the legacy trust, 2266
or otherwise materially participates in the administration of the 2267
legacy trust. 2268

(T) "Spendthrift provision" has the same meaning as in 2269
section 5801.01 of the Revised Code. 2270

(U) "Spouse" and "former spouse" means only the person to 2271
whom a transferor was married on or before a qualified disposition 2272
is made. 2273

(V) "Transferor" means a person who directly or indirectly 2274
makes a disposition. 2275

(W) "Valid lien" has the same meaning as in section 1336.01 2276
of the Revised Code. 2277

Sec. 5816.03. (A) In addition to any other method allowed by 2278
law, the spendthrift provision of a legacy trust may be stated as 2279
provided in division (B) of section 5805.01 of the Revised Code. 2280

(B) Except as otherwise provided in this section, the 2281
spendthrift provisions of a legacy trust shall restrain both 2282
voluntary and involuntary transfer of a transferor's interest in 2283
that trust. Any spendthrift provision in a legacy trust is 2284
enforceable under any applicable nonbankruptcy law within the 2285
meaning of section 541(c)(2) of the Bankruptcy Code regardless of 2286

whether or not the relevant legacy trust instrument makes any 2287
reference to that enforceability. In addition to the restraints 2288
required by this division, a legacy trust and its spendthrift 2289
provisions may provide for any other restraints on alienation that 2290
are permitted by any law of this state. 2291

(C) Notwithstanding division (B) of this section or the terms 2292
of any spendthrift provision, but subject to divisions (D), (E), 2293
and (F) of this section, a transferor's interest in property that 2294
is the subject of a qualified disposition may be attached or 2295
otherwise involuntarily alienated in connection with any debt that 2296
the transferor owes pursuant to an agreement or court order for 2297
either of the following: 2298

(1) The payment of child or spousal support or alimony to or 2299
for the transferor's spouse, former spouse, child, or children, or 2300
to any governmental agency that is designated by statute, rule, or 2301
regulation to be the payee of that child or spousal support or 2302
alimony; 2303

(2) The division or distribution of property in favor of the 2304
transferor's spouse or former spouse. 2305

(D) A transferor's interest in property that is transferred 2306
pursuant to a qualified disposition and the transferor's 2307
beneficial interest in a legacy trust shall not be subject to any 2308
claim for forced heirship or legitime. 2309

(E) A transferor's interest in property that is transferred 2310
pursuant to a qualified disposition and the transferor's 2311
beneficial interest in a legacy trust shall not be subject to a 2312
distributive award under section 3105.171 of the Revised Code or 2313
to any similar award under the law of another jurisdiction, to any 2314
person other than the transferor's spouse or former spouse. A 2315
court shall liberally construe and apply this provision in finding 2316
that such similarity exists. 2317

(F) Nothing in this section shall deprive any beneficiary of 2318
any exemption rights that the beneficiary may have under any 2319
applicable law after the trust property is received by that 2320
beneficiary. 2321

Sec. 5816.04. To the extent conferred by the governing legacy 2322
trust instrument, a transferor to a legacy trust may have any or 2323
all of the rights, powers, and interests described in section 2324
5816.05 of the Revised Code. A transferor shall have no rights, 2325
powers, or interests in, over, to, or regarding the corpus or 2326
income of a legacy trust unless those rights, powers, or interests 2327
are granted, permitted, or recognized by both section 5816.05 of 2328
the Revised Code and the governing legacy trust instrument. Any 2329
written, verbal, tacit, express, or implied agreement or 2330
understanding or any other agreement or understanding purporting 2331
to grant, permit, or recognize any greater rights, powers, or 2332
interests than are provided in this section or the governing 2333
legacy trust instrument is void. Any portion of a legacy trust 2334
instrument that is not voided under this section shall remain 2335
valid and effective. 2336

Sec. 5816.05. A legacy trust may allow or provide for any or 2337
all of the following rights, powers, interests, or provisions, 2338
none of which grants, or is considered to be, either alone or in 2339
any combination, a right or power to revoke a trust or to 2340
voluntarily or involuntarily transfer an interest in that trust: 2341

(A) A provision that, upon the happening of a defined event, 2342
results in the termination of a transferor's right to mandatory 2343
income or principal; 2344

(B) The power of a transferor to veto a distribution from the 2345
trust; 2346

(C) A power of appointment, other than a power to appoint to 2347

a transferor, a creditor of the transferor, the estate of the transferor, or a creditor of the transferor's estate, that is exercisable by will or by other written instrument of a transferor effective upon the death of the transferor or during the lifetime of the transferor; 2348
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(D) The right of a transferor to receive trust income as set forth in the trust instrument. 2353
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(E) Both of the following: 2355

(1) A transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in section 664 of the Internal Revenue Code; 2356
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(2) The transferor's right, at any time and from time to time by written instrument delivered to the trustee, to release the transferor's retained interest in that unitrust or annuity trust, in whole or in part, in favor of one or more charitable organizations that have a succeeding beneficial interest in that unitrust or annuity trust; 2360
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(F) The power of a transferor to consume, invade, or appropriate property of the trust, but only if limited in each calendar year to five per cent of the value of the trust principal at the time of the exercise of the power; 2366
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(G) A transferor's potential or actual receipt or use of principal or income of the trust if the potential or actual receipt or use is or would be the result of any of the following that applies with respect to one or more of the qualified trustees: 2370
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(1) A qualified trustee's acting in the trustee's discretion. For purposes of division (G)(1) of this section, a qualified trustee shall have discretion with respect to the distribution or use of principal or income unless the discretion is expressly 2375
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<u>denied to the trustee by the terms of the trust instrument.</u>	2379
<u>(2) A qualified trustee's acting pursuant to a standard in</u>	2380
<u>the trust instrument that governs the distribution or use of</u>	2381
<u>principal or income;</u>	2382
<u>(3) A qualified trustee's acting at the direction of an</u>	2383
<u>advisor who is acting in the advisor's discretion or pursuant to a</u>	2384
<u>standard in the trust instrument that governs the distribution or</u>	2385
<u>use of principal or income. If an advisor is authorized to direct</u>	2386
<u>that distribution or use, the advisor's authority shall be</u>	2387
<u>discretionary unless otherwise expressly stated in the trust</u>	2388
<u>instrument.</u>	2389
<u>(H) The right of a transferor to remove any advisor and</u>	2390
<u>appoint a new advisor who satisfies the eligibility criteria set</u>	2391
<u>forth in division (A) of section 5816.11 of the Revised Code;</u>	2392
<u>(I) The right of a transferor to remove any trustee and</u>	2393
<u>appoint a new trustee;</u>	2394
<u>(J) A transferor's potential or actual use of real property</u>	2395
<u>or tangible personal property, including, but not limited to,</u>	2396
<u>property held under a qualified personal residence trust as</u>	2397
<u>described in section 2702(c) of the Internal Revenue Code and</u>	2398
<u>regulations promulgated under that section, or a transferor's</u>	2399
<u>possession and enjoyment of a qualified interest as defined in</u>	2400
<u>section 2702(b) of the Internal Revenue Code;</u>	2401
<u>(K) Any provision requiring or permitting the potential or</u>	2402
<u>actual use of trust income or principal to pay, in whole or in</u>	2403
<u>part, income taxes due on the income of the trust, including, but</u>	2404
<u>not limited to, any provision permitting that use in the</u>	2405
<u>discretion of any one or more of the qualified trustees acting in</u>	2406
<u>the qualified trustee's discretion or at the direction of an</u>	2407
<u>advisor who is acting in the advisor's discretion;</u>	2408
<u>(L) The ability of a qualified trustee, whether pursuant to</u>	2409

the qualified trustee's discretion or the terms of the legacy trust instrument or at the direction of an advisor, to pay after the death of a transferor all or any part of the debts of the transferor outstanding on or before the transferor's death, the expenses of administering the transferor's estate, or any estate, gift, generation skipping transfer, or inheritance tax;

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

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

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

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

(1) The property being transferred to the trust was not derived from unlawful activities.

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

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

(4) The transferor does not intend to defraud any creditor by transferring the property to the legacy trust.

(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.

(6) The transferor is not involved in any administrative

proceeding, except for any proceeding identified by the affidavit 2439
or an attachment to the affidavit. 2440

(7) The transferor does not contemplate at the time of the 2441
transfer the filing for relief under the Bankruptcy Code. 2442

(C) A qualified affidavit is considered defective if it 2443
materially fails to meet the requirements set forth in division 2444
(B) of this section, but a qualified affidavit is not considered 2445
defective due to any one or more of the following: 2446

(1) Any nonsubstantive variances from the language set forth 2447
in division (B) of this section; 2448

(2) Any statements or representations in addition to those 2449
set forth in division (B) of this section if the statements or 2450
representations do not materially contradict the statements or 2451
representations required by that division; 2452

(3) Any technical errors in the form, substance, or method of 2453
administering an oath if those errors were not the fault of the 2454
affiant, and the affiant reasonably relied upon another person to 2455
prepare or administer the oath. 2456

(D)(1) A qualified affidavit is not required from a 2457
transferor who is not a beneficiary of the legacy trust that 2458
receives the disposition. 2459

(2) A subsequent qualified affidavit is not required in 2460
connection with any qualified disposition made after the execution 2461
of an earlier qualified affidavit if that disposition is a part 2462
of, is required by, or is the direct result of, a prior qualified 2463
disposition that was made in connection with that earlier 2464
qualified affidavit. 2465

(E) If a qualified affidavit is required by this section and 2466
a transferor fails to timely sign a qualified affidavit or signs a 2467
defective qualified affidavit, subject to the normal rules of 2468

evidence, that failure or defect may be considered as evidence in 2469
any proceeding commenced pursuant to section 5816.07 of the 2470
Revised Code, but the legacy trust or the validity of any 2471
attempted qualified disposition shall not be affected in any other 2472
way due to that failure or defect. 2473

Sec. 5816.07. (A) Notwithstanding any provision of law to the 2474
contrary but subject to division (G) of section 5816.10 of the 2475
Revised Code, no creditor may bring an action of any kind, 2476
including, but not limited to, an action to enforce a judgment 2477
entered by a court or other body having adjudicative authority, an 2478
action at law or in equity, or an action for an attachment or 2479
other final or provisional remedy, against any person who made or 2480
received a qualified disposition, against or involving any 2481
property that is the subject of a qualified disposition or is 2482
otherwise held by or for any trustee as part of a legacy trust, or 2483
against any trustee of a legacy trust, except that a creditor, 2484
subject to this section and section 5816.08 of the Revised Code, 2485
may bring an action to avoid any qualified disposition of an asset 2486
on the ground that a transferor made the qualified disposition 2487
with the specific intent to defraud the specific creditor bringing 2488
the action. 2489

(B) A creditor's cause of action or claim for relief under 2490
division (A) of this section to avoid any qualified disposition of 2491
an asset is extinguished unless that action is brought by a 2492
creditor of a transferor who meets one of the following 2493
requirements: 2494

(1) The creditor is a creditor of the transferor before the 2495
relevant qualified disposition, and the action is brought within 2496
the later of the following periods: 2497

(a) Eighteen months after the qualified disposition; 2498

(b) Six months after the qualified disposition is or 2499

reasonably could have been discovered by the creditor if the 2500
creditor files a suit against the transferor, other than an action 2501
under division (A) of this section to avoid the qualified 2502
disposition, or makes a written demand for payment on the 2503
transferor that in either case asserts a claim based on an act or 2504
omission of the transferor that occurred before the qualified 2505
disposition, and that suit is filed, or the written demand is 2506
delivered to the transferor, within three years after the 2507
qualified disposition. 2508

(2) The creditor becomes a creditor after the qualified 2509
disposition, and the action under division (A) of this section to 2510
avoid the qualified disposition is brought within eighteen months 2511
after the qualified disposition. 2512

(C) In any action to avoid the qualified disposition under 2513
this section, the burden is upon the creditor to prove the matter 2514
by clear and convincing evidence. This division is construed as 2515
providing a substantive rather than a procedural rule or right 2516
under the law of this state. 2517

(D) Notwithstanding any provision of law to the contrary but 2518
subject to division (G) of section 5816.10 of the Revised Code, a 2519
creditor or any other person shall have only the rights and 2520
remedies with respect to a qualified disposition that are provided 2521
in this section and section 5816.08 of the Revised Code, and the 2522
creditor or other person shall have no claim or cause of action 2523
against any trustee or advisor of a legacy trust or against any 2524
person involved in the counseling in connection with, or the 2525
drafting, preparation, execution, administration, or funding of, a 2526
legacy trust. 2527

(E) Notwithstanding any provision of law to the contrary but 2528
subject to division (G) of section 5816.10 of the Revised Code, 2529
and in addition to any other limitations, restrictions, or bars 2530
imposed by this section, no action of any kind, including, but not 2531

limited to, an action to enforce a judgment entered by a court or 2532
other body having adjudicative authority, shall be brought at law 2533
or in equity against a trustee or an advisor of a legacy trust or 2534
against any person involved in the counseling in connection with, 2535
or the drafting, preparation, execution, administration, or 2536
funding of, a legacy trust if and to the extent that, in 2537
connection with the qualified disposition that forms the basis of 2538
that action, the time in which a creditor could sue to avoid that 2539
qualified disposition would have expired under this section. 2540

(F) If more than one qualified disposition is made in 2541
connection with the same legacy trust, all of the following apply: 2542

(1) Each qualified disposition will be separately evaluated, 2543
without regard to any subsequent qualified disposition, to 2544
determine whether a creditor's claim regarding that particular 2545
qualified disposition is extinguished as provided in division (B) 2546
of this section. 2547

(2) The following apply when determining the order in which 2548
property is paid, applied, or distributed from a legacy trust: 2549

(a) Any payment, application, or distribution of money is 2550
considered to have been made from or with the money most recently 2551
received or acquired by any trustee of a legacy trust except to 2552
the extent that it is proven otherwise beyond a reasonable doubt. 2553
As used in division (F)(2)(a) of this section: 2554

(i) "Money" means cash or cash equivalents. 2555

(ii) "Cash" means the coins or currency of the United States 2556
or any other nation. 2557

(iii) "Cash equivalent" includes certified or uncertified 2558
checks; money orders; bank drafts; any electronic transfer of 2559
funds; negotiable instruments; instruments indorsed in blank or in 2560
bearer form; securities issued or guaranteed by the United States, 2561
any state of the United States, or any state or federal agency; 2562

funds on deposit in any savings or checking account or any similar 2563
account; funds on deposit in any money market account or similar 2564
account; any demand deposit account, time deposit account, or 2565
savings deposit account at any bank, savings and loan association, 2566
brokerage house, or similar institution; or any other monetary 2567
instrument or device that is commonly or routinely accepted as a 2568
cash equivalent. Division (F)(2)(a)(iii) of this section shall be 2569
liberally construed and applied. 2570

(b) Any payment, application, or distribution of fungible 2571
assets other than money is considered to have been made from or 2572
with the fungible assets most recently received or acquired by any 2573
trustee of a legacy trust except to the extent that it is proven 2574
otherwise by clear and convincing evidence. For purposes of 2575
division (F)(2)(b) of this section: 2576

(i) Any asset that can be classified as either money or a 2577
fungible asset shall be classified as money. 2578

(ii) "Fungible assets" means any assets, other than money, 2579
that are interchangeable for commercial purposes and the 2580
properties of which are essentially identical. Division 2581
(F)(2)(b)(ii) of this section shall be liberally construed and 2582
applied. 2583

(c) Division (F)(2) of this section is construed as providing 2584
a substantive rather than a procedural rule or right under the law 2585
of this state. 2586

(G) For purposes of this section, the counseling in 2587
connection with, or the drafting, preparation, execution, 2588
administration, or funding of, a legacy trust includes the 2589
counseling in connection with, or the drafting, preparation, 2590
execution, administration, or funding of, any limited partnership, 2591
limited liability company, corporation, or similar or comparable 2592
entity if the limited partnership interests, limited liability 2593

company interests, stock, or other similar or comparable ownership 2594
interests in the relevant entity are subsequently transferred to 2595
any trustee of any trust that is, was, or becomes a legacy trust. 2596

Sec. 5816.08. All of the following apply in connection with 2597
any action brought pursuant to this section or division (A) of 2598
section 5816.07 of the Revised Code: 2599

(A) If a qualified disposition is wholly or partially 2600
avoided, all of the following apply: 2601

(1) That specific qualified disposition shall be avoided only 2602
to the extent necessary to satisfy a transferor's debt to the 2603
creditor who brought the action pursuant to division (A) of 2604
section 5816.07 of the Revised Code, and any part of the qualified 2605
disposition that is not used to satisfy that debt shall remain 2606
subject to the legacy trust in question. 2607

(2) All other qualified dispositions to any trustee of the 2608
legacy trust in question, including, but not limited to, any 2609
qualified disposition of a partial, co-ownership, or undivided 2610
interest in property by a transferor other than the transferor 2611
whose qualified disposition is avoided, together with the legacy 2612
trust itself, shall remain valid and effective. 2613

(3) If the court is satisfied that a trustee has not acted in 2614
bad faith in accepting or administering the property that is the 2615
subject of the avoided qualified disposition, all of the following 2616
apply: 2617

(a) The trustee shall have a first and paramount lien against 2618
the property that is the subject of the qualified disposition in 2619
an amount equal to the entire cost, including attorney's fees, 2620
properly incurred by the trustee in the defense of the action or 2621
proceedings to avoid the qualified disposition. 2622

(b) The qualified disposition shall be avoided subject to the 2623

proper fees, costs, and pre-existing rights, claims, and interests 2624
of the trustee and of any predecessor trustee that has not acted 2625
in bad faith. 2626

(c) For purposes of division (A)(3) of this section, no 2627
trustee shall be considered to have acted in bad faith merely 2628
because the trustee accepted the property that is the subject of 2629
the qualified disposition. 2630

(4) If the court is satisfied that a beneficiary of a legacy 2631
trust has not acted in bad faith in receiving a distribution from 2632
that trust, the avoidance of the qualified disposition shall be 2633
subject to the right of the beneficiary to retain that 2634
distribution if the distribution was made upon the exercise of a 2635
trust power or discretion vested in a trustee or advisor and that 2636
power or discretion was exercised prior to the creditor's 2637
commencement of the action to avoid the qualified disposition. For 2638
purposes of division (A)(4) of this section, no beneficiary, 2639
including a beneficiary who is also a transferor of the trust, 2640
shall be considered to have acted in bad faith merely because the 2641
beneficiary accepted a distribution made in accordance with the 2642
terms of the trust instrument. 2643

(5) A creditor has the burden of proving by clear and 2644
convincing evidence that a trustee or a beneficiary acted in bad 2645
faith under division (A)(3) or (4) of this section. Division 2646
(A)(5) of this section is construed as providing a substantive 2647
rather than a procedural rule or right under the law of this 2648
state. 2649

(B) The court shall award reasonable attorney's fees and 2650
costs to any prevailing party in any final judgment rendered in 2651
any action wholly or partially brought under this section or 2652
division (A) of section 5816.07 of the Revised Code. 2653

Sec. 5816.09. Any successor or replacement trustees of a 2654

legacy trust shall be determined or selected in the following 2655
manners: 2656

(A)(1) Division (A)(2) of this section applies if in any 2657
action involving a legacy trust or any trustee of the legacy trust 2658
a court takes an action in which the court declines to apply the 2659
law of this state in determining any of the following matters: 2660

(a) The validity, construction, or administration of the 2661
trust; 2662

(b) The effect of any term or condition of the trust, 2663
including, but not limited to, a spendthrift provision; 2664

(c) The rights and remedies of any creditor or other suitor 2665
in connection with a qualified disposition. 2666

(2) Immediately upon the court's action under division (A)(1) 2667
of this section and without the need for any order of any court, 2668
any qualified trustee who is a party to that action shall cease in 2669
all respects to be a trustee of the legacy trust, and the position 2670
of trustee shall be occupied in accordance with the terms of the 2671
trust instrument that governed the legacy trust immediately before 2672
that cessation, or, if the terms of the trust instrument do not 2673
provide for another trustee and the trust would otherwise be 2674
without a trustee, any court of this state, upon the application 2675
of any beneficiary of the legacy trust, shall appoint a successor 2676
qualified trustee upon the terms and conditions that it determines 2677
to be consistent with the purposes of the trust and this chapter. 2678
Upon a qualified trustee ceasing to be a trustee pursuant to 2679
division (A)(2) of this section, that qualified trustee shall have 2680
no power or authority other than to convey trust property to any 2681
other trustee that is appointed, installed, or serving in 2682
accordance with that division. 2683

(3) For purposes of division (A) of this section, "court" 2684

includes a judicial tribunal, an administrative tribunal, or other 2685
adjudicative body or panel. 2686

(B) In all cases other than the situation described in 2687
division (A) of this section, both of the following apply: 2688

(1) If a legacy trust ceases to have at least one qualified 2689
trustee, the vacancy in the qualified trusteeship shall be filled 2690
pursuant to section 5807.04 of the Revised Code except to the 2691
extent that the legacy trust expressly provides otherwise. 2692

(2) If a legacy trust ceases to have at least one trustee, 2693
the vacancy in the trusteeship shall be filled pursuant to section 2694
5807.04 of the Revised Code, and the successor trustee shall be a 2695
qualified trustee unless the legacy trust instrument expressly 2696
provides otherwise. 2697

Sec. 5816.10. (A) In the event of any conflict between any 2698
provision of this chapter and any provision of Chapter 1336. of 2699
the Revised Code or any other provision of law similar to any 2700
provision of Chapter 1336. of the Revised Code, the provision of 2701
this chapter shall control and prevail. 2702

(B) A statement in a trust instrument stating that it "shall 2703
be governed by the laws of Ohio" or other statement to similar 2704
effect or of similar import is considered to expressly incorporate 2705
the laws of this state to govern the validity, construction, and 2706
administration of that trust instrument and to satisfy division 2707
(K)(1)(b) of section 5816.02 of the Revised Code. 2708

(C) A disposition by a nonqualified trustee to a qualified 2709
trustee shall not be treated as other than a qualified disposition 2710
solely because the nonqualified trustee is a trustee of a 2711
nonlegacy trust. 2712

(D) A disposition to any nonqualified trustee of a legacy 2713
trust shall be treated as a qualified disposition if at the time 2714

<u>of the disposition any of the following applies:</u>	2715
<u>(1) There is at least one qualified trustee serving pursuant to the terms of that legacy trust.</u>	2716 2717
<u>(2) There is no qualified trustee serving but the circumstances require the appointment or installation of a qualified trustee pursuant to division (A)(2) of section 5816.09 of the Revised Code.</u>	2718 2719 2720 2721
<u>(3) There is no qualified trustee serving but within one hundred eighty days after the date of disposition a qualified trustee fills the vacancy in the qualified trusteeship or an application to appoint a qualified trustee is filed pursuant to division (B) of section 5816.09 of the Revised Code.</u>	2722 2723 2724 2725 2726
<u>(E) If a disposition is made by a trustee of a nonlegacy trust to a trustee of a legacy trust, both of the following apply:</u>	2727 2728
<u>(1) Except to the extent expressly stated otherwise by the terms of that disposition, the disposition shall be considered a qualified disposition for the benefit of all of the persons who are the beneficiaries of both the nonlegacy trust and the legacy trust.</u>	2729 2730 2731 2732 2733
<u>(2) The date of the disposition to the legacy trust shall be considered to be the date on which the property that was part of the nonlegacy trust was first continuously subject to any law of a jurisdiction other than this state that is similar to this chapter. A court shall liberally construe and apply division (E)(2) of this section in finding that such continuity and similarity exist.</u>	2734 2735 2736 2737 2738 2739 2740
<u>(F) A legacy trust may contain any terms or conditions that provide for changes in or to the place of administration, situs, governing law, trustees or advisors, or the terms or conditions of the legacy trust or for other changes permitted by law.</u>	2741 2742 2743 2744

(G) Any valid lien attaching to property before a disposition 2745
of that property to a trustee of a legacy trust shall survive the 2746
disposition, and the trustee shall take title to the property 2747
subject to the valid lien and subject to any agreements that 2748
created or perfected the valid lien. Nothing in this chapter shall 2749
be construed to authorize any disposition that is prohibited by 2750
the terms of any agreements, notes, guaranties, mortgages, 2751
indentures, instruments, undertakings, or other documents. In the 2752
event of any conflict between this division and any other 2753
provision of this chapter, this division shall control. 2754

(H) To the maximum extent permitted by the Ohio Constitution 2755
and the United States Constitution, the courts of this state shall 2756
exercise jurisdiction over any legacy trust or any qualified 2757
disposition and shall adjudicate any case or controversy brought 2758
before them regarding, arising out of, or related to, any legacy 2759
trust or any qualified disposition if that case or controversy is 2760
otherwise within the subject matter jurisdiction of the court. 2761
Subject to the Ohio Constitution and the United States 2762
Constitution, no court of this state shall dismiss or otherwise 2763
decline to adjudicate any case or controversy described in this 2764
division on the ground that a court of another jurisdiction has 2765
acquired or may acquire proper jurisdiction over, or may provide 2766
proper venue for, that case or controversy or the parties to the 2767
case or controversy. Nothing in this division shall be construed 2768
to do either of the following: 2769

(1) Prohibit a transfer or other reassignment of any case or 2770
controversy from one court of this state to another court of this 2771
state; 2772

(2) Expand or limit the subject matter jurisdiction of any 2773
court of this state. 2774

Sec. 5816.11. (A) Any person may serve as an advisor of a 2775

legacy trust except that a transferor may act as an advisor only 2776
in connection with investment decisions. 2777

(B) An advisor shall be considered a fiduciary unless the 2778
terms of a legacy trust instrument expressly provide otherwise. 2779

Sec. 5816.12. Except to the extent expressly provided 2780
otherwise by the terms of a legacy trust instrument, each trustee 2781
and each advisor of a legacy trust shall have the greatest 2782
discretion permitted by law in connection with all matters of 2783
trust administration, all trust distributions, and all other 2784
trustee or advisor decisions. 2785

Sec. 5816.13. No beneficiary or other person shall be 2786
considered to have a property interest in any property of a legacy 2787
trust to the extent that the distribution of that property is 2788
subject to the discretion of one or more qualified trustees or 2789
advisors, either acting alone or in conjunction with any other 2790
person, including any person authorized to veto any distributions 2791
from the legacy trust. 2792

Sec. 5816.14. This chapter applies to qualified dispositions 2793
made on or after the effective date of this section. 2794

Section 2. That existing sections 317.08, 317.32, 317.321, 2795
1336.04, 1701.73, 1702.38, 1703.22, 2101.24, 2131.08, 2131.09, 2796
2329.66, 2329.661, 5805.06, 5808.08, 5808.18, 5815.24, 5815.25, 2797
and 5815.36 of the Revised Code are hereby repealed. 2798

Section 3. The amendments made by this act to section 1336.04 2799
of the Revised Code shall apply to transfers made on or after the 2800
effective date of this act. The amendments made by this act to 2801
sections 2329.66 and 2329.661 of the Revised Code shall apply to 2802

claims accruing on or after the effective date of this act. The 2803
amendments made by this act to section 5815.36 of the Revised Code 2804
shall apply to disclaimers made on or after the effective date of 2805
this act. Section 5815.37 of the Revised Code as enacted by this 2806
act shall apply to conveyances made on or after the effective date 2807
of this act. The application of the amendments made by this act to 2808
section 2131.08 of the Revised Code is provided in division (F) of 2809
section 2131.08 of the Revised Code as amended by this act. The 2810
application of the amendments made by this act to section 2131.09 2811
of the Revised Code is provided for in divisions (C) and (E) of 2812
section 2131.09 of the Revised Code as amended by this act. The 2813
application of the sections of Chapter 5816. of the Revised Code 2814
as enacted by this act is provided for in section 5816.14 of the 2815
Revised Code as enacted by this act. Sections 1319.07 to 1319.09 2816
of the Revised Code, as enacted by this act, apply to the 2817
enforcement and interpretation of all nonrecourse loan documents 2818
in existence on, or entered into on or after, the effective date 2819
of this act. This act is not intended to impair any secured or 2820
unsecured creditors' claims that accrue prior to the effective 2821
date of this act. 2822

Section 4. The amendments made by this act to sections 2823
5805.06, 5808.08, 5815.24, and 5815.25 of the Revised Code, other 2824
than the references to Chapter 5815. of the Revised Code in 2825
division (A)(2) of section 5805.06 of the Revised Code as amended 2826
by this act, are intended to be a statement of the common law of 2827
this state. 2828

Section 5. The General Assembly recognizes that it is 2829
inherent in a nonrecourse loan that the lender takes the risk of a 2830
borrower's insolvency, inability to pay, or lack of adequate 2831
capital after the loan is made and that the parties do not intend 2832

that the borrower is personally liable for payment of a 2833
nonrecourse loan if the borrower is insolvent, unable to pay, or 2834
lacks adequate capital after the loan is made. The General 2835
Assembly also recognizes that the use of a postclosing solvency 2836
covenant as a nonrecourse carveout, or an interpretation of any 2837
provision in a loan document that results in a determination that 2838
a postclosing solvency covenant is a nonrecourse carveout, is 2839
inconsistent with this act and the nature of a nonrecourse loan, 2840
is an unfair and deceptive business practice and against public 2841
policy, and should not be enforced. It is the intent of the 2842
General Assembly that this act applies to any claim made or action 2843
taken to enforce a postclosing solvency covenant on or after the 2844
effective date of this act and to any action to enforce a 2845
postclosing solvency covenant that is pending on the effective 2846
date of this act, unless a judgment or final order has been 2847
entered in that action. 2848

Section 6. Section 2101.24 of the Revised Code is presented 2849
in this act as a composite of the section as amended by both Sub. 2850
S.B. 117 and Am. Sub. S.B. 124 of the 129th General Assembly. The 2851
General Assembly, applying the principle stated in division (B) of 2852
section 1.52 of the Revised Code that amendments are to be 2853
harmonized if reasonably capable of simultaneous operation, finds 2854
that the composite is the resulting version of the section in 2855
effect prior to the effective date of the section as presented in 2856
this act. 2857