

AN ACT

To amend sections 1721.21, 2101.15, 2106.13, 2108.05, 2108.06, 2108.07, 2108.23, 2108.24, 2108.34, 2111.10, 2111.50, 2133.07, 2701.10, 2717.01, 5122.15, 5804.11, 5805.06, 5816.02, 5816.05, 5816.06, 5816.09, 5816.10, and 5816.14; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 2717.01 (2717.02); to enact new section 2717.01 and sections 2717.03, 2717.04, 2717.05, 2717.06, 2717.07, 2717.08, 2717.09, 2717.10, 2717.11, 2717.13, 2717.14, 2717.16, 2717.18, and 2717.19; and to repeal section 2133.16 of the Revised Code to make changes in the Probate Law, the Guardianship Law, the Ohio Trust Code, the Ohio Legacy Trust Act, the laws regarding cemetery endowment care trusts, referral of actions to a retired judge, involuntary mental health placements, and change of name procedures.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1721.21, 2101.15, 2106.13, 2108.05, 2108.06, 2108.07, 2108.23, 2108.24, 2108.34, 2111.10, 2111.50, 2133.07, 2701.10, 5122.15, 5804.11, 5805.06, 5816.02, 5816.05, 5816.06, 5816.09, 5816.10, and 5816.14 be amended; section 2717.01 (2717.02) be amended for the purpose of adopting a new section number as indicated in parentheses; and new section 2717.01 and sections 2717.03, 2717.04, 2717.05, 2717.06, 2717.07, 2717.08, 2717.09, 2717.10, 2717.11, 2717.13, 2717.14, 2717.16, 2717.18, and 2717.19 of the Revised Code be enacted to read as follows:

Sec. 1721.21. (A) As used in this section:

(1) "Person" means any corporation, company, partnership, individual, or other entity owning or operating a cemetery for the disposition of human remains.

(2) "Cemetery" means any one or a combination of more than one of the following:

(a) A burial ground for earth interments;

(b) A mausoleum for crypt entombments;

(c) A columbarium for the deposit of cremated remains;

(d) A scattering ground for the spreading of cremated remains.

(3) "Interment" means the disposition of human remains by earth burial, entombment, or inurnment.

(4) "Burial right" means the right of earth interment.

(5) "Entombment right" means the right of entombment in a mausoleum.

(6) "Columbarium right" means the right of inurnment in a columbarium for cremated remains.

(7) "Human remains" means any part of the body of a deceased human being, in any stage of

decomposition or state of preservation, or the remaining bone fragments from the body of a deceased human being that has been reduced by cremation or alternative disposition.

(B) No person shall operate or continue to operate any cemetery in this state unless an endowment care trust is established and maintained as required by this section.

(C) Any person desiring to operate any cemetery that is organized or developed after July 1, 1970, before offering to sell or selling any burial lot, burial right, entombment right, or columbarium right in that cemetery, shall first establish an endowment care trust, segregated from other assets, and place in that fund a minimum of fifty thousand dollars in cash or in bonds of the United States, this state, or any county or municipal corporation of this state.

Whenever any person described in this division has placed another fifty thousand dollars in the endowment care trust out of gross sales proceeds, in addition to the deposit required by this division, that person, after submitting proof of this fact to the trustees of the endowment care trust, may be paid a distribution in the sum of fifty thousand dollars from the endowment care trust.

(D) Any person desiring to operate or to continue to operate any cemetery after July 1, 1970, shall place into the endowment care trust as required by this section not less than ten per cent of the gross sales proceeds received from the sale of any burial lot, burial right, entombment right, or columbarium right. This percentage shall be placed in the endowment care trust no later than thirty days following the month in which the entire gross sales are received.

(E) The trustees of the endowment care trust shall consist of at least three individuals who have been residents of the county in which the cemetery is located for at least one year, or a trust company licensed under Chapter 1111. of the Revised Code or a national bank or federal savings association that has securities pledged in accordance with section 1111.04 of the Revised Code. If the trustees are not a financial institution or trust company, the trustees shall be bonded by a fidelity bond, or insured under an insurance policy less any deductible, in an aggregate amount of not less than one hundred per cent of the funds held by the trustees. The trustees or their agent shall, on a continuous basis, keep exact records as to the amount of funds under any joint account or trust instrument being held for the individual beneficiaries showing the amount paid, the amount deposited and invested, and accruals and income.

The funds of the endowment care trust shall be held and invested in the manner in which trust funds are permitted to be held and invested pursuant to sections 2109.37 and 2109.371 of the Revised Code or, if provided for in the instrument creating the trust, pursuant to the Ohio Uniform Prudent Investor Act.

(F) Any person offering to sell or selling any burial lot, burial right, entombment right, or columbarium right shall give to the purchaser of the lot or right, at the time of sale, a written agreement that identifies and unconditionally guarantees to the purchaser the specific location of the lot or the specific location to which the right applies.

(G) No person shall open or close any grave, crypt, or niche for the interment of human remains in a cemetery without the permission of the cemetery association or other entity having control and management of the cemetery.

(H) Except as provided in division (G) of this section, this section does not apply to a family cemetery as defined in section 4767.02 of the Revised Code, to any cemetery that is owned and operated entirely and exclusively by churches, religious societies, established fraternal organizations,

municipal corporations, or other political subdivisions of the state, or to a national cemetery.

(I) ~~The dividend and interest income distribution~~ from the endowment care trust shall be used only to pay for the ~~both of the following~~:

~~(1) The cost and expenses incurred to establish, manage, invest, and administer the records and the trust and for the;~~

~~(2) The maintenance, supervision, improvement, and preservation of the grounds, lots, buildings, equipment, statuary, and other real and personal property of the cemetery.~~

(J)(1) Annual reports of all the assets and investments of the endowment care trust shall be prepared and maintained, and shall be available for inspection at reasonable times by any owner of interment rights in the cemetery.

(2) Every cemetery required to establish and maintain an endowment care trust shall ensure each of the following:

(a) That the cemetery has deposited, at the time specified in division (D) of this section, the amounts required by that division in the cemetery's endowment care trust;

~~(b) That only dividend and interest income have been paid from the endowment care trust, and the cemetery used the amounts withdrawn only for the purposes specified in division (I) of this section;~~

~~(c) That Subject to division (K)(5) of this section, that all principal and capital gains, less any payment of taxes associated with such gains, have remained in the endowment care trust;~~

(d) That the endowment care trust has not been used to collateralize or guarantee loans and has not otherwise been subjected to any consensual lien;

(e) That the endowment care trust is invested in compliance with the investing standards set forth in sections 2109.37 and 2109.371 of the Revised Code, or, if provided for in the instrument creating the trust, the Ohio Uniform Prudent Investor Act.

(3) Every cemetery required to establish and maintain an endowment care trust shall ~~file do~~ both of the following:

~~(a) File an affidavit annually with the division of real estate of the department of commerce, in a form prescribed by the division, certifying under oath the cemetery satisfied division (J)(2) of this section;~~

~~(b) Notify the division of real estate of the department of commerce, in a form prescribed by the division, of the percentage of the unitrust distribution from the endowment care trust, as described in divisions (K)(2)(a)(ii) and (b) of this section.~~

(K)(1) Every cemetery shall choose the distribution of either of the following from the endowment care trust:

(a) All net ordinary income, which includes collected dividends, interest, and other income earned by the trust, reduced by any expenses, including, but not limited to, taxes on income, fees, commissions, and costs;

(b) A unitrust disbursement not exceeding five per cent of the fair market value of the endowment care fund. "Fair market value," for the purpose of division (K)(1)(b) of this section, means the average of the net fair market value of the assets of the endowment care trust as of the last trading day for each of the three preceding fiscal year ends.

(2)(a) A cemetery that selects the unitrust disbursement distribution method, as provided in

division (K)(1)(b) of this section, shall do both of the following:

(i) Deliver to the trustees of the endowment care trust written instructions, including the disbursement percentage selected, not later than sixty days prior to the beginning of a calendar year;

(ii) Deliver to the division of real estate of the department of commerce notification that the cemetery selected the unitrust disbursement method and the percentage selected, in compliance with division (J)(3)(b) of this section.

(b) The distribution method and, if a unitrust disbursement, the disbursement percentage selected shall remain in effect unless the cemetery notifies the trustees and the division of real estate of the department of commerce of its desire to effect a change. The trustees shall ensure that an investment policy is in place whose goals and objectives are supportive of the growth of the endowment care trust.

(3) Distributions from the endowment care trust shall be made on a monthly, quarterly, semiannual, or annual basis, as agreed upon by the cemetery and the trustees. If the trustees do not receive written instructions from the cemetery informing the trustees of the method of calculation and distribution chosen, the trustees shall calculate and distribute the net income, as earned, on a monthly basis.

(4) In order to withdraw a unitrust disbursement, the fair market value of the endowment care trust after the disbursement shall be greater than eighty per cent of the aggregate fair market value of the endowment care trust as of the end of the immediately preceding calendar year. Should this not be the case, disbursement shall be limited for that year to net ordinary income.

(5) The trustees shall pay reasonable operating expenses and taxes of the endowment care trust itself. If the operating expenses and taxes paid are greater than two and one-half per cent of the fair market value for the preceding calendar year end and the cemetery has selected a unitrust disbursement, the trustees shall reduce the unitrust disbursement by the amount exceeding two and one-half per cent.

Sec. 2101.15. In each case, examination, or proceeding, the probate judge shall file an itemized account of fees received or charged by the judge. ~~On the first~~ Not later than the fifteenth day of January, in each year, the judge shall file with the county auditor an account, certified by the judge, of all fees received by the judge during the preceding year. No judge shall fail to perform the duties imposed in this section. At the instance of any person, the prosecuting attorney shall institute and prosecute an action against the defaulting judge.

Sec. 2106.13. (A) If a person dies leaving a surviving spouse and no minor children, leaving a surviving spouse and minor children, or leaving minor children and no surviving spouse, the surviving spouse, minor children, or both shall be entitled to receive, subject to division (B) of this section, in money or property the sum of forty thousand dollars as an allowance for support. If the surviving spouse selected ~~one or more automobiles more than one automobile~~ under section 2106.18 of the Revised Code, the allowance for support prescribed by this section shall be reduced by the value of the automobile having the lowest value ~~if more than one automobile is of the automobiles~~ so selected. The money or property set off as an allowance for support shall be considered estate assets.

(B) The probate court shall order the distribution of the allowance for support described in division (A) of this section as follows:

(1) If the person died leaving a surviving spouse and no minor children, one hundred per cent

to the surviving spouse;

(2) If the person died leaving a surviving spouse and minor children, and if all of the minor children are the children of the surviving spouse, one hundred per cent to the surviving spouse;

(3) If the person died leaving a surviving spouse and minor children, and if not all of the minor children are children of the surviving spouse, in equitable shares, as fixed by the probate court in accordance with this division, to the surviving spouse and the minor children who are not the children of the surviving spouse. In determining equitable shares under this division, the probate court shall do all of the following:

(a) Consider the respective needs of the surviving spouse, the minor children who are children of the surviving spouse, and the minor children who are not children of the surviving spouse;

(b) Allocate to the surviving spouse, the share that is equitable in light of the needs of the surviving spouse and the minor children who are children of the surviving spouse;

(c) Allocate to the minor children who are not children of the surviving spouse, the share that is equitable in light of the needs of those minor children.

(4) If the person died leaving minor children and no surviving spouse, in equitable shares, as fixed by the probate court in accordance with this division, to the minor children. In determining equitable shares under this division, the probate court shall consider the respective needs of the minor children and allocate to each minor child the share that is equitable in light of the child's needs.

(C) If the surviving spouse selected ~~one or more automobiles~~ more than one automobile under section 2106.18 of the Revised Code, the probate court, in considering the respective needs of the surviving spouse and the minor children when allocating an allowance for support under division (B)(3) of this section, shall consider the benefit derived by the surviving spouse from the transfer of the automobile having the lowest value ~~if more than one automobile is of the automobiles~~ so selected.

(D) If, pursuant to this section, the probate court must allocate the allowance for support, the administrator or executor, within five months of the initial appointment of an administrator or executor, shall file with the probate court an application to allocate the allowance for support.

(E) The administrator or executor shall pay the allowance for support unless a competent adult or a guardian with the consent of the court having jurisdiction over the guardianship waives the allowance for support to which the adult or the ward represented by the guardian is entitled.

(F) For the purposes of this section, the value of an automobile that a surviving spouse selects pursuant to section 2106.18 of the Revised Code is the value that the surviving spouse specifies for the automobile in the affidavit executed pursuant to division (B) of section 4505.10 of the Revised Code.

Sec. 2108.05. (A) A donor may make an anatomical gift by doing any of the following:

(1) Authorizing a statement or symbol to be imprinted on the donor's driver's license or identification card indicating that the donor has certified a willingness to make an anatomical gift;

~~(2) Specifying in the donor's will an intent to make an anatomical gift;~~

~~(3) Specifying an intent to make an anatomical gift in the donor's declaration as described in section 2133.16 of the Revised Code;~~

~~(4) During a terminal illness or injury of the donor, communicating in any manner to a~~

minimum of two adults, at least one of whom is a disinterested witness, that the donor intends to make an anatomical gift;

~~(5)-(3)~~ Following the procedure in division (B) of this section.

(B) A donor or other person authorized to make an anatomical gift under section 2108.04 of the Revised Code may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has certified a willingness to make an anatomical gift be included in a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall do both of the following:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person;

(2) State that it has been signed and witnessed as provided in division (B)(1) of this section.

(C) Once a donor has authorized a statement or symbol to be imprinted on the donor's driver's license or identification card indicating that the donor has certified a willingness to make an anatomical gift, the donor does not need to recertify the donor's willingness to make an anatomical gift upon renewal of the driver's license or identification card. The authorization shall remain in effect until the donor withdraws that authorization.

(D) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

~~(E) An anatomical gift made by will takes effect on the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.~~

Sec. 2108.06. (A) Subject to section 2108.08 of the Revised Code, an anatomical gift made under section 2108.04 of the Revised Code may be amended by any of the following means:

(1) By a record signed by the donor or other person authorized to make an anatomical gift under section 2108.04 of the Revised Code;

(2) Subject to division (C) of this section, by a record signed by another individual acting at the direction of the donor or other person authorized to make an anatomical gift under section 2108.04 of the Revised Code if the donor or other person is physically unable to sign;

(3) By a later-executed document of gift that amends a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency;

(4) By any form of communication during a terminal illness or injury addressed to at least two adults;

(5) By a parent who is reasonably available, if the donor is an unemancipated minor who has died;

~~(6) If made in a will, by the manner provided for amendment of wills or by any of the applicable means described in divisions (B)(1) to (5) of this section.~~

(B) Subject to section 2108.08 of the Revised Code, an anatomical gift made under section 2108.04 of the Revised Code may be revoked by any of the following means:

(1) By a record signed by the donor or other person authorized to make an anatomical gift under section 2108.04 of the Revised Code;

(2) Subject to division (C) of this section, by a record signed by another individual acting at the direction of the donor or other person authorized to make an anatomical gift under section

2108.04 of the Revised Code if the donor or other person is physically unable to sign;

(3) By a later-executed document of gift that revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency;

(4) By any form of communication during a terminal illness or injury addressed to at least two adults;

(5) By a parent who is reasonably available, if the donor is an unemancipated minor who has died;

(6) By the destruction or cancellation of the document of gift, or the portion of the document of gift, used to make the gift, with the intent to revoke the gift;

~~(7) If made in a will, by the manner provided for revocation of wills or by any of the applicable means described in divisions (B)(1) to (6) of this section.~~

(C) A record signed pursuant to division (A)(2) or (B)(2) of this section shall do both of the following:

(1) Be witnessed by a minimum of two adults who have signed at the request of the donor or other person;

(2) State that it has been signed and witnessed as provided in division (C)(1) of this section.

Sec. 2108.07. (A) An individual may refuse to make an anatomical gift of the individual's body or part by doing any of the following:

(1) Indicating a refusal in a record signed by either of the following:

(a) The individual;

(b) Subject to division (B) of this section, another individual acting at the direction of the individual, if the individual is physically unable to sign.

~~(2) Indicating a refusal in the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death;~~

~~(3) Indicating a refusal by any form of communication made by the individual during the individual's terminal illness or injury addressed to a minimum of two adults.~~

(B) A record signed pursuant to division (A)(1)(b) of this section shall do both of the following:

(1) Be witnessed by at least two adults who have signed at the request of the individual;

(2) State that it has been signed and witnessed as provided in division (B)(1) of this section.

(C) An individual who has made a refusal may amend or revoke the refusal by doing any of the following:

(1) Amending or revoking the refusal in the manner provided in division (A) of this section for making a refusal;

(2) Subsequently making an anatomical gift pursuant to section 2108.05 of the Revised Code that is inconsistent with the refusal;

(3) Destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(D) Except as provided in division (E) of this section, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

(E) The parent of a deceased unemancipated minor who is reasonably available may revoke a refusal made by the minor.

Sec. 2108.23. (A)(1) The bureau of motor vehicles shall develop and maintain a donor registry that identifies each individual who has agreed to make an anatomical gift by a designation on a driver's license or identification card as provided in division (A)(1) of section 2108.05 of the Revised Code. The registry shall be fully operational not later than July 1, 2002.

(2) Any person who provides to the bureau the form set forth in division ~~(D)(2)~~ (C)(2) of section 2133.07 of the Revised Code requesting to be included in the donor registry shall be included.

(B) The bureau shall maintain the registry in a manner that provides to organ procurement organizations, tissue banks, and eye banks immediate access to the information in the registry twenty-four hours a day and seven days a week.

(C)(1) The registrar of motor vehicles, in consultation with the director of health and the second chance trust fund advisory committee created under section 2108.35 of the Revised Code, shall formulate proposed rules that specify all of the following:

(a) The information to be included in the registry;

(b) A process, in accordance with division (B) of section 2108.06 of the Revised Code, for an individual to revoke the individual's intent to make an anatomical gift and for updating information in the registry;

(c) How the registry will be made available to organ procurement organizations, tissue banks, and eye banks;

(d) Limitations on the use of and access to the registry;

(e) How information on organ, tissue, and eye donation will be developed and disseminated to the public by the bureau and the department of health;

(f) Anything else the registrar considers appropriate.

(2) In adopting the proposed rules under this division, the registrar may consult with any person or entity that expresses an interest in the matters to be dealt with in the rules.

(3) Following formulation of the proposed rules, but not later than January 1, 2002, the registrar shall adopt rules in accordance with Chapter 119. of the Revised Code.

(D) The costs of developing and initially implementing the registry shall be paid from the second chance trust fund created in section 2108.34 of the Revised Code.

Sec. 2108.24. (A) As used in this section:

(1) "Advance health-care directive" means a durable power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health-care decision.

(2) ~~"Declaration" means a written document executed in accordance with section 2133.02 of the Revised Code.~~

(3) ~~"Health care decision" means any decision regarding the health care of the prospective donor.~~

(B) If a prospective donor has ~~a declaration or an~~ advance health-care directive the terms of which are in conflict with the express or implied terms of a potential anatomical gift with regard to administration of measures necessary to ensure the medical suitability of a part for transplantation or

therapy and the prospective donor is capable of resolving the conflict, subject to division (G) of this section, the prospective donor's attending physician shall confer with the prospective donor to resolve the conflict.

(C) If a prospective donor has ~~a declaration or an~~ advance health-care directive the terms of which are in conflict with the express or implied terms of a potential anatomical gift with regard to administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy and the prospective donor is incapable of resolving the conflict, one of the following shall apply depending on the circumstances:

(1) If the prospective donor has an agent, the agent shall, subject to division (G) of this section, act for the prospective donor to resolve the conflict.

(2) If the prospective donor does not have an agent, the individual or class of individuals determined in the following descending order of priority and subject to divisions (D), (E), (F), and (G) of this section shall act for the prospective donor to resolve the conflict:

- (a) The prospective donor's surviving spouse;
- (b) The prospective donor's surviving adult children;
- (c) The prospective donor's surviving parent or parents;
- (d) The prospective donor's surviving adult siblings;
- (e) The prospective donor's surviving adult grandchildren;
- (f) The prospective donor's surviving grandparent or grandparents;
- (g) A surviving adult who exhibited special care and concern for the prospective donor;
- (h) The prospective donor's guardians of the person;
- (i) The persons, other than those in divisions (C)(2)(a) to (h) of this section, to whom the prospective donor has assigned the right of disposition for the prospective donor's body pursuant to section 2108.70 of the Revised Code or who have the right of disposition for the prospective donor's body at the time of death as described in section 2108.81 of the Revised Code.

(D) If an appropriate individual entitled to resolve a conflict between the terms of a prospective donor's ~~declaration or~~ advance health-care directive and the express or implied terms of a potential anatomical gift as described in division (C) of this section is not reasonably available to resolve the conflict, is incapacitated, or declines to resolve the conflict, the next priority individual or class of individuals specified in that division is authorized to resolve the conflict.

(E) If at least one individual in a class of individuals entitled to resolve a conflict between the terms of a prospective donor's ~~declaration or~~ advance health-care directive and the express or implied terms of a potential anatomical gift is not reasonably available, is incapacitated, or declines to resolve the conflict, the conflict shall be resolved by the individual or individuals in the class who are reasonably available, not incapacitated, and willing to resolve the conflict.

(F) If individuals in a class of individuals determined in accordance with division (C)(2) of this section disagree on how a conflict between the terms of a prospective donor's ~~declaration or~~ advance health-care directive and the express or implied terms of a potential anatomical gift should be resolved, the opinion of the majority of the individuals who are reasonably available, not incapacitated, and are willing to resolve the conflict shall prevail.

(G) A conflict between the terms of a prospective donor's ~~declaration or~~ advance health-care directive and the express or implied terms of a potential anatomical gift with regard to the

administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy shall be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 2108.09 of the Revised Code. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part shall not be withheld or withdrawn from the prospective donor unless withholding or withdrawing the measures is necessary for appropriate end-of-life care.

Sec. 2108.34. (A) There is hereby created in the state treasury the second chance trust fund. The fund shall consist of voluntary contributions deposited as provided in sections 4503.721, 4506.081, 4507.231, and 4507.501 of the Revised Code. All investment earnings of the fund shall be credited to the fund.

(B) The director of health shall use the money in the fund only for the following purposes:

(1) Development and implementation of a campaign that explains and promotes the second chance trust fund;

(2) Development and implementation of local and statewide public education programs about organ, tissue, and eye donation, including the informational material required to be provided under sections 4506.081, 4507.231, and 4507.501 of the Revised Code;

(3) Development and implementation of local and statewide donor awareness programs in schools;

(4) Development and implementation of local and statewide programs to recognize donor families;

(5) Development and distribution of materials promoting organ, tissue, and eye donation;

(6) Cooperation with the Ohio Supreme Court, Ohio State Bar Association, and law schools of this state to more effectively educate attorneys about the donation of anatomical gifts and to encourage them to assist their clients in donating anatomical gifts through anatomical gift declarations, durable powers of attorney for health care, ~~declarations as defined in section 2133.01 of the Revised Code,~~ wills, and any other appropriate means;

(7) Cooperation with the state medical board, state medical, osteopathic, and ophthalmological associations, and colleges of medicine and osteopathic medicine in this state to more effectively educate physicians about the donation of anatomical gifts and to encourage them to assist their patients in making declarations of anatomical gifts;

(8) Development of statewide hospital training programs to encourage and facilitate compliance with sections 2108.14 and 2108.15 of the Revised Code;

(9) Reimbursement of the bureau of motor vehicles for the administrative costs incurred in the performance of duties under sections 4506.081, 4507.231, and 4507.501 of the Revised Code;

(10) Reimbursement of the department of health for administrative costs incurred in the performance of duties under this section and section 2108.35 of the Revised Code;

(11) Reimbursement of members of the second chance fund advisory committee for actual and necessary expenses incurred in the performance of official duties.

(C) The director shall make the materials developed under division (B)(5) of this section available to other state agencies.

(D) The director shall consider recommendations made by the second chance trust fund

advisory committee pursuant to section 2108.35 of the Revised Code. The director shall determine the appropriateness of and approve or disapprove projects recommended by the advisory committee for funding and approve or disapprove the disbursement of money from the second chance trust fund.

Sec. 2111.10. (A) As used in this section, "developmental disability" has the same meaning as in section 5123.01 of the Revised Code.

(B) Any appointment of a corporation as guardian shall apply to the estate only and not to the person, except ~~that a~~ when either of the following applies:

(1) ~~A nonprofit corporation organized under the laws of this state and entitled to tax exempt status under section 501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. U.S.C. 501, as amended,~~ that has a contract with the department of developmental disabilities to provide protective services may be appointed as a guardian of a person with a developmental disability and may serve as guardian pursuant to sections 5123.55 to 5123.59 of the Revised Code.

(2) A nonprofit corporation domiciled in this state and organized under the laws of this state and entitled to tax exempt status under section 501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 501 may be appointed as a guardian of the person of an incompetent when certified by the probate court to receive such an appointment. The probate court shall certify that nonprofit corporation and any individual acting as a guardian on behalf of the nonprofit corporation upon meeting the requirements for serving as a guardian as prescribed by the supreme court in the Rules of Superintendence for the Courts of Ohio and the rules of court adopted by the probate court of the county exercising jurisdiction over the incompetent. A nonprofit corporation appointed as guardian of the person of an incompetent shall not be the residential caregiver, health care provider, or employer of the incompetent.

Sec. 2111.50. (A)(1) At all times, the probate court is the superior guardian of wards who are subject to its jurisdiction, and all guardians who are subject to the jurisdiction of the court shall obey all orders of the court that concern their wards or guardianships.

(2)(a) Subject to divisions (A)(2)(b) and (c) of this section, the control of a guardian over the person, the estate, or both of the guardian's ward is limited to the authority that is granted to the guardian by the Revised Code, relevant decisions of the courts of this state, and orders or rules of the probate court.

(b) Except for the powers specified in division (E) of this section and unless otherwise provided in or inconsistent with another section of the Revised Code, the probate court may confer upon a guardian any power that this section grants to the probate court in connection with wards. Nothing in this section is intended to create or imply a duty upon a guardian to apply for authority to exercise any power authorized in this section. No inference of impropriety or liability of the guardian or others associated with the guardian shall arise as a result of a guardian not applying for authority to exercise a power authorized in this section.

(c) For good cause shown, the probate court may limit or deny, by order or rule, any power that is granted to a guardian by a section of the Revised Code or relevant decisions of the courts of this state.

(B) In connection with any person whom the probate court has found to be an incompetent or a minor subject to guardianship and for whom the court has appointed a guardian, the court has, subject to divisions (C) to (E) of this section, all the powers that relate to the person and estate of the

ward and that the ward could exercise if present and not a minor or under a disability, except the power to make or revoke a will. These powers include, but are not limited to, the power to do any of the following:

(1) ~~Convey or, release, or disclaim~~ the present, contingent, or expectant interests in real or personal property of the ward, including, but not limited to, dower and any right of survivorship incident to a transfer on death designation, payable on death designation, survivorship tenancy, joint tenancy, or tenancy by the entireties;

(2) Exercise ~~or, release, or disclaim~~ powers as a trustee, personal representative, custodian for a minor, guardian, or donee of a power of appointment;

(3) ~~Enter Subject to division (B)(4) of this section, enter~~ into contracts, ~~or create revocable trusts of property of the estate of the ward,~~ that may not extend beyond the minority, disability, or life of the ward;

(4) Create, amend, or revoke revocable trusts of property of the estate of the ward that may extend beyond the minority, disability, or life of the ward;

(5) Exercise options to purchase securities or other property;

(5)-(6) Exercise rights to elect options under annuities and insurance policies, including changing beneficiaries of insurance policies, retirement plans, individual retirement accounts, and annuities, and to surrender an annuity or insurance policy for its cash value;

(6)-(7) Exercise the right to an elective share in the estate of the deceased spouse of the ward pursuant to ~~section 2106.08 Chapter 2106.~~ of the Revised Code;

(7)-(8) Make gifts, in trust or otherwise, to relatives of the ward and, consistent with any prior pattern of the ward of giving to charities or of providing support for friends, to charities and friends of the ward.

(C) Except for the powers specified in division (D) of this section, all powers of the probate court that are specified in this chapter and that relate either to any person whom it has found to be an incompetent or a minor subject to guardianship and for whom it has appointed a guardian and all powers of a guardian that relate to the guardian's ward or guardianship as described in division (A)(2) of this section, shall be exercised in the best interest, as determined in the court's or guardian's judgment, of the following:

(1) The ward whom the probate court has found to be an incompetent or a minor subject to guardianship;

(2) The dependents of the ward;

(3) The members of the household of the ward.

(D) If the court is to exercise or direct the exercise, pursuant to division (B) of this section, of the power to make gifts in trust or otherwise, the following conditions shall apply:

(1) The exercise of the particular power shall not impair the financial ability of the estate of the ward whom the probate court has found to be an incompetent or a minor subject to guardianship and for whom the court has appointed a guardian, to provide for the ward's foreseeable needs for maintenance and care;

(2) If applicable, the court shall consider any of the following:

(a) The estate, income, and other tax advantages of the exercise of a particular power to the estate of a ward whom the probate court has found to be an incompetent or a minor subject to

guardianship and for whom the court has appointed a guardian;

(b) Any pattern of giving of, or any pattern of support provided by, the ward prior to the ward's incompetence;

(c) The disposition of property made by the ward's will or revocable trust;

(d) If there is no knowledge of a will or revocable trust of the ward, the ward's prospective heirs;

(e) Any relevant and trustworthy statements of the ward, whether established by hearsay or other evidence.

(E)(1) The probate court shall cause notice as described in division (E)(2) of this section to be given and a hearing to be conducted prior to its exercise or direction of the exercise of any of the following powers pursuant to division (B) of this section:

(a) The exercise ~~or~~ release, or disclaimer of powers as a donee of a power of appointment;

(b) Unless the amount of the gift is no more than one thousand dollars, the making of a gift, in trust or otherwise;

(c) The power to create, amend, or revoke a revocable trust as described in division (B)(4) of this section;

(d) The power to exercise rights to elect options under annuities and insurance policies, including changing beneficiaries of insurance policies, retirement plans, individual retirement accounts, and annuities, and to surrender an annuity or insurance policy for its cash value, as described in division (B)(6) of this section.

(2) The notice required by division (E)(1) of this section shall be given to the following persons:

(a) Unless a guardian of a ward has applied for the exercise of a power specified in division (E)(1) of this section, to the guardian;

(b) To the ward whom the probate court has found to be an incompetent or a minor subject to guardianship;

(c) If known, to a guardian who applied for the exercise of a power specified in division (E)(1) of this section, to the prospective heirs of the ward whom the probate court has found to be an incompetent or a minor subject to guardianship under section 2105.06 of the Revised Code, to the beneficiaries under the last known will of the ward or under an existing revocable trust of the ward, and to any person who has a legal interest in property that may be divested or limited as the result of the exercise of a power specified in division (E)(1) of this section;

(d) To all of the following as applicable:

(i) The heirs at law and next of kin of the ward;

(ii) The beneficiaries under an existing will or revocable trust of the ward;

(iii) The beneficiaries of any insurance policies, retirement plans, individual retirement accounts, and annuities owned by the ward;

(iv) The beneficiaries under any proposed revocable trust and the proposed beneficiaries under any changes in the designation of beneficiaries of any insurance policies, retirement plans, individual retirement accounts, or annuities as described in division (E)(2)(d)(iii) of this section.

(e) To any other persons the court orders.

(F) When considering any question related to, and issuing orders for, medical or surgical care

or treatment of incompetents or minors subject to guardianship, the probate court has full parens patriae powers unless otherwise provided by a section of the Revised Code.

Sec. 2133.07. (A) As used in this section:

~~(1) "Anatomical gift" has the same meaning as in section 2108.01 of the Revised Code.~~

~~(2) "DNR identification" has the same meaning as in section 2133.21 of the Revised Code.~~

(B) A printed form of a declaration may be sold or otherwise distributed in this state for use by adults who are not advised by an attorney. By use of a printed form of that nature, a declarant may authorize the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the declarant be in a terminal condition, a permanently unconscious state, or either a terminal condition or a permanently unconscious state, may authorize the withholding or withdrawal of nutrition or hydration should the declarant be in a permanently unconscious state as described in division (A)(3)(a) of section 2133.02 of the Revised Code, and may designate one or more persons who are to be notified by the declarant's attending physician at any time that life-sustaining treatment would be withheld or withdrawn pursuant to the declaration. The printed form shall not be used as an instrument for granting any other type of authority or for making any other type of designation, except that the printed form may be used as a DNR identification if the declarant specifies on the form that the declarant wishes to use it as a DNR identification ~~and except as provided in division (C) of this section.~~

~~(C) A printed form of a declaration under division (B) of this section shall include, before the signature of the declarant or another individual at the direction of the declarant, statements that conform substantially to the following form:~~

~~"ANATOMICAL GIFT (optional)~~

~~Upon my death, the following are my directions regarding donation of all or part of my body:~~

~~In the hope that I may help others upon my death, I hereby give the following body parts:~~

~~for any purpose authorized by law: transplantation, therapy, research, or education.~~

~~If I do not indicate a desire to donate all or part of my body by filling in the lines above, no presumption is created about my desire to make or refuse to make an anatomical gift."~~

~~(D)(1) A printed form of a declaration under division (B) of this section shall include, as a separate page or as a portion of a page that can be detached from the declaration, a donor registry enrollment form that permits the donor to be included in the donor registry created under section 2108.23 of the Revised Code.~~

~~(2) The donor registry enrollment form may be in any form that complies with the requirements of division (B) of section 2108.05 of the Revised Code. On completion, the form shall be forwarded to the bureau of motor vehicles.~~

Sec. 2701.10. (A) Any voluntarily retired judge, or any judge who is retired under Section 6 of Article IV, Ohio Constitution, may register with the clerk of any court of common pleas, municipal court, or county court for the purpose of receiving referrals for adjudication of civil actions or proceedings, and submissions for determination of specific issues or questions of fact or law in any

civil action or proceeding, pending in the court. There is no limitation upon the number, type, or location of courts with which a retired judge may register under this division. Upon registration with the clerk of any court under this division, the retired judge is eligible to receive referrals and submissions from that court, in accordance with this section. Each court of common pleas, municipal court, and county court shall maintain an index of all retired judges who have registered with the clerk of that court pursuant to this division and shall make the index available to any person, upon request.

(B)(1) The parties to any civil action or proceeding pending in any court of common pleas, municipal court, or county court unanimously may choose to have the action or proceeding in its entirety referred for adjudication, or to have any specific issue or question of fact or law in the action or proceeding submitted for determination, to a judge of their choosing who has registered with the clerk of that court in accordance with division (A) of this section.

If the parties unanimously do choose to have a referral or submission made to a retired judge pursuant to this section, all of the parties to the action or proceeding shall enter into a written agreement with the retired judge that does all of the following:

- (a) Designates the retired judge to whom the referral or submission is to be made;
- (b) If a submission is to be made, describes in detail the specific issue or question to be submitted;
- (c) Indicates either of the following:
 - (i) That the action or proceeding in its entirety is to be referred to, and is to be tried, determined, and adjudicated by that retired judge;
 - (ii) Indicates that the issue or question is to be submitted, and is to be tried and determined by that retired judge.
- (d) Indicates that the parties will assume the responsibility for providing facilities, equipment, and personnel reasonably needed by the retired judge during ~~his~~ the retired judge's consideration of the action or proceeding and will pay all costs arising out of the provision of the facilities, equipment, and personnel;
- (e) Identifies an amount of compensation to be paid by the parties to the retired judge for ~~his~~ the retired judge's services and the manner of payment of the compensation;
- (f) Indicates a procedure for terminating the agreement with the retired judge.

(2) In any case described in division (B)(1) of this section, the agreement shall be filed with the clerk of the court or the judge before whom the action or proceeding is pending. ~~Upon the filing of the agreement, the~~ The judge before whom the action or proceeding is pending shall address the agreement within fourteen days after its filing. That judge, by journal entry, shall may, at the judge's discretion, order the referral or submission in accordance with the agreement. No referral or submission shall be made to a retired judge under this section, unless the parties to the action or proceeding unanimously choose to have the referral or submission made, enter into an agreement of the type described in division (B)(1) of this section with the retired judge, and file the agreement in accordance with this division.

(C) Upon the entry of an order of referral or submission in accordance with division (B)(2) of this section, the retired judge to whom the referral or submission is made, relative to the action or proceeding referred or the issue or question submitted, shall have all of the powers, duties, and

authority of an active judge of the court in which the action or proceeding is pending. The court in which the action or proceeding is pending is not required to provide the retired judge with court or other facilities, equipment, or personnel during ~~his~~ the retired judge's consideration of the action, proceeding, issue, or question. The retired judge shall not receive any compensation, other than that agreed to by the parties and the retired judge, for ~~his~~ the retired judge's services during ~~his~~ consideration of the action, proceeding, issue, or question.

(D)(1) A retired judge to whom a referral is made under this section shall try all of the issues in the action or proceeding, shall prepare relevant findings of fact and conclusions of law, and shall enter a judgment in the action or proceeding in the same manner as if ~~he~~ the retired judge were an active judge of the court. A retired judge to whom a submission is made under this section shall try the specific issue or question submitted, shall prepare relevant findings of fact or conclusions of law, shall make a determination on the issue or question submitted, and shall file the findings, conclusions, and determination with the clerk of the court in which the action or proceeding is pending. Any judgment entered, and any finding of fact, conclusion of law, or determination of an issue or question made, by a retired judge in accordance with this section shall have the same force and effect as if it had been entered or made by an active judge of the court, and any appeal from the judgment, finding, conclusion, or determination shall be made as if the judgment had been entered, or the finding, conclusion, or determination had been made, by an active judge of the court.

(2) Upon conclusion of the referred action or proceeding or determination of the submitted issue or question, jurisdiction is returned to the referring judge.

(E) Any judge who registers with any court in accordance with division (A) of this section may have ~~his~~ the judge's name removed from the index of registered retired judges maintained by that court at any time after the registration. On and after the date of removal of the name of a retired judge from the index of a court, the retired judge is not eligible under this section to receive referrals or submissions from that court.

(F) This section does not affect, and shall not be construed as affecting, the provisions of section 141.16 of the Revised Code. This section does not apply to any action or proceeding pending in a small claims division of a municipal court or county court.

Sec. 2717.01. As used in this chapter:

(A) "Application" means, as context requires, an application under section 2717.02, 2717.04, or 2717.13 of the Revised Code.

(B) "Applicant" means, as context requires, a person who makes the filing under section 2717.02 or 2717.04 of the Revised Code, or the minor on whose behalf a filing is made under section 2717.13 of the Revised Code.

(C) "Conform" means to make a person's legal name consistent in all official identity documents by correcting a misspelling, inconsistency, or other error in an official identity document.

(D) "Official identity document" means a birth record, marriage record, divorce decree, driver's license, state issued identification card, social security card with the social security number redacted, passport, or any other official government-issued document required or commonly used to verify a person's identity.

(E) "Sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code.

~~Sec. 2717.01-2717.02. (A)(1) A person desiring a to change of the person's name may file an application in the probate court of the county in which the person resides. The application shall set forth that the applicant has been a bona fide resident of that county for at least one year prior to the filing of the application, the cause for which the change of name is sought, and the requested new name. The application shall require the applicant to state whether the applicant has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for identity fraud or has a duty to comply with section 2950.04 or 2950.041 of the Revised Code because the applicant was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense.~~

~~(2) Except as provided in division (A)(4) of this section, notice of the application shall be given once by publication in a newspaper of general circulation in the county at least thirty days before the hearing on the application. The notice shall set forth the court in which the application was filed, the case number, and the date and time of the hearing.~~

~~(3) Except as provided by division (C) of this section, upon proof that proper notice was given or that notice was waived under division (A)(4) of this section and proof that the facts set forth in the application show reasonable and proper cause for changing the name of the applicant, the court may order the change of name.~~

~~(4) If an applicant for a change of name submits to the court, along with the application described in division (A)(1) of this section, satisfactory proof that the publication of the notice under division (A)(2) of this section would jeopardize the applicant's personal safety, both of the following apply:~~

~~(a) The court shall waive the notice requirement.~~

~~(b) If the court orders the change of name under division (A)(3) of this section, the court shall order the records of the change of name proceeding to be sealed and to be opened only by order of the court for good cause shown or at the request of the applicant for any reason.~~

~~(B) An application for change of name may be made on behalf of a minor by either of the minor's parents, a legal guardian, or a guardian ad litem. When application is made on behalf of a minor, in addition to the notice and proof required pursuant to division (A) of this section, the consent of both living, legal parents of the minor shall be filed, or notice of the hearing shall be given to the parent or parents not consenting by certified mail, return receipt requested. If there is no known father of the minor, the notice shall be given to the person who the mother of the minor alleges to be the father. If no father is so alleged, or if either parent or the address of either parent is unknown, notice pursuant to division (A) of this section shall be sufficient as to the father or parent.~~

~~Any additional notice required by this division may be waived in writing by any person entitled to the notice.~~

~~(C)(1) The court shall not order a change of name under division (A) of this section if the person applying for a change of name or for whom the application for a change of name is made has a duty to comply with section 2950.04 or 2950.041 of the Revised Code because the applicant or the person on whose behalf the application for a change of name is made was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense.~~

~~(2) The court shall not order a change of name under division (A) of this section if the person~~

~~applying for a change of name or for whom the application for a change of name is made has pleaded guilty to, been convicted of, or been adjudicated a delinquent child for committing a violation of section 2913.49 of the Revised Code unless the guilty plea, conviction, or adjudication has been reversed on appeal.~~

~~(3) As used in this division, "sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code.~~

Sec. 2717.03. Subject to sections 2717.07 and 2717.19 of the Revised Code, an application for a change of name shall set forth all of the following:

(A) That the applicant has been a bona fide resident of the county for at least sixty days prior to the filing of the application.

(B) The reason for which the change of name is sought.

(C) The requested new name.

Sec. 2717.04. A person desiring to conform the person's legal name on an official identity document may file an application in the probate court of the county in which the person resides.

Sec. 2717.05. Subject to sections 2717.07 and 2717.19 of the Revised Code, an application to conform a legal name shall set forth all of the following:

(A) That the applicant has been a bona fide resident of the county where the applicant is filing for at least sixty days prior to the filing of the application.

(B) An explanation of the misspelling, inconsistency, or other error in the name.

(C) A description of the correction sought to conform the name on all official identity documents.

Sec. 2717.06. (A) An application shall be supported by an affidavit verifying all of the following:

(1) The applicant's residency in the county for a period of at least sixty days;

(2) That the application is not made for the purpose of evading any creditors or other obligations;

(3) That the applicant is not a debtor in any currently pending bankruptcy proceeding;

(4) That all of the documentary evidence submitted under section 2717.07 of the Revised Code with the application is true, accurate, and complete;

(5) Any other information the court may require.

(B) The affidavit supporting a legal name change application shall also verify that the applicant has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for identity fraud or does not have a duty to comply with section 2950.04 or 2950.041 of the Revised Code because the applicant was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense.

Sec. 2717.07. A probate court by local rule or order may require an applicant to submit a copy of any or all of the applicant's official identity documents or other documentary evidence relating to the applicant's identity that the court deems relevant to the application.

Sec. 2717.08. The probate court may hold a hearing on an application. Except as provided in sections 2717.11 and 2717.14 of the Revised Code, if the court requires a hearing, it shall set the manner, scope, and content of the hearing notice the applicant must serve.

Sec. 2717.09. Except as provided under section 2717.16 of the Revised Code, upon proof that

the facts set forth in the application show reasonable and proper cause for changing the name of the applicant and, if applicable, upon proof that proper notice was served, the court may order the change of name.

Sec. 2717.10. Upon proof that the facts set forth in the application show that a misspelling, inconsistency, or other error of the applicant's legal name on an official identity document exists, and that reasonable and proper cause exists for issuing an order that resolves the discrepancy and conforms the applicant's legal name, the court may issue an order to conform the name of the person.

Sec. 2717.11. If an applicant submits to the court, along with the application, satisfactory proof that open records of the name change or conformity, or publication of the hearing notice under section 2717.08 of the Revised Code, would jeopardize the applicant's personal safety, both of the following apply:

(A) The court shall waive the hearing notice requirement.

(B) If the court orders the change of name under section 2717.09 of the Revised Code or the name conformity under section 2717.10 of the Revised Code, the court shall order the records of the proceeding to be sealed and to be opened only by order of the court for good cause shown or at the request of the applicant for any reason.

Sec. 2717.13. An application for change of name under section 2717.02 of the Revised Code or to conform a name under section 2717.04 of the Revised Code may be made on behalf of a minor by either of the minor's parents, a legal guardian, a legal custodian, or a guardian ad litem.

Sec. 2717.14. (A) When an application is made on behalf of a minor, in addition to the proof required under sections 2717.03 or 2717.05 of the Revised Code and, if applicable, proof of the notice given under section 2717.08 of the Revised Code, the consent of both living, legal parents of the minor shall be filed, or notice of the hearing shall be given to the parent or parents not consenting by certified mail, return receipt requested.

(B) If there is no known father of the minor, the notice shall be given to the person who the mother of the minor alleges to be the father.

(C) If no father is so alleged, or if either parent or the address of either parent is unknown, notice by publication in a newspaper of general circulation in the county at least thirty days before the hearing shall be sufficient as to the father or parent.

(D) Any additional notice required by this section may be waived in writing by any person entitled to the notice.

Sec. 2717.16. (A) The court shall not order a change of name under section 2717.09 of the Revised Code if the person applying for a change of name has a duty to comply with section 2950.04 or 2950.041 of the Revised Code because the applicant was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense.

(B) The court shall not order a change of name under section 2717.09 of the Revised Code if the person applying for a change of name has pleaded guilty to, been convicted of, or been adjudicated a delinquent child for committing a violation of section 2913.49 of the Revised Code unless the guilty plea, conviction, or adjudication has been reversed on appeal.

Sec. 2717.18. An action to conform the legal name of a person under section 2717.04 of the Revised Code shall not be permitted in lieu of either of the following:

(A) Correction of a birth record under section 3705.15 of the Revised Code;

(B) Changing a legal name to a name that is not used in any existing official identity documents.

Sec. 2717.19. (A) On receipt of an application, the probate court may order a criminal records check.

(B) Any fee required for the criminal records check shall be paid by the applicant.

Sec. 5122.15. (A) Full hearings shall be conducted in a manner consistent with this chapter and with due process of law. The hearings shall be conducted by a judge of the probate court or a referee designated by a judge of the probate court and may be conducted in or out of the county in which the respondent is held. Any referee designated under this division shall be an attorney.

(1) With the consent of the respondent, the following shall be made available to counsel for the respondent:

(a) All relevant documents, information, and evidence in the custody or control of the state or prosecutor;

(b) All relevant documents, information, and evidence in the custody or control of the hospital in which the respondent currently is held, or in which the respondent has been held pursuant to this chapter;

(c) All relevant documents, information, and evidence in the custody or control of any hospital, facility, or person not included in division (A)(1)(a) or (b) of this section.

(2) The respondent has the right to attend the hearing and to be represented by counsel of the respondent's choice. The right to attend the hearing may be waived only by the respondent or counsel for the respondent after consultation with the respondent.

(3) If the respondent is not represented by counsel, is absent from the hearing, and has not validly waived the right to counsel, the court shall appoint counsel immediately to represent the respondent at the hearing, reserving the right to tax costs of appointed counsel to the respondent, unless it is shown that the respondent is indigent. If the court appoints counsel, or if the court determines that the evidence relevant to the respondent's absence does not justify the absence, the court shall continue the case.

(4) The respondent shall be informed that the respondent may retain counsel and have independent expert evaluation. If the respondent is unable to obtain an attorney, the respondent shall be represented by court-appointed counsel. If the respondent is indigent, court-appointed counsel and independent expert evaluation shall be provided as an expense under section 5122.43 of the Revised Code.

(5) The hearing shall be closed to the public, unless counsel for the respondent, with the permission of the respondent, requests that the hearing be open to the public.

(6) If the hearing is closed to the public, the court, for good cause shown, may admit persons who have a legitimate interest in the proceedings. If the respondent, the respondent's counsel, or the designee of the director or of the chief clinical officer objects to the admission of any person, the court shall hear the objection and any opposing argument and shall rule upon the admission of the person to the hearing.

(7) The affiant under section 5122.11 of the Revised Code shall be subject to subpoena by either party.

(8) The court shall examine the sufficiency of all documents filed and shall inform the respondent, if present, and the respondent's counsel of the nature and content of the documents and the reason for which the respondent is being detained, or for which the respondent's placement is being sought.

(9) The court shall receive only reliable, competent, and material evidence.

(10) Unless proceedings are initiated pursuant to section 5120.17 or 5139.08 of the Revised Code, an attorney that the board designates shall present the case demonstrating that the respondent is a mentally ill person subject to court order. The attorney shall offer evidence of the diagnosis, prognosis, record of treatment, if any, and less restrictive treatment plans, if any. In proceedings pursuant to section 5120.17 or 5139.08 of the Revised Code, the attorney general shall designate an attorney who shall present the case demonstrating that the respondent is a mentally ill person subject to court order. The attorney shall offer evidence of the diagnosis, prognosis, record of treatment, if any, and less restrictive treatment plans, if any.

(11) The respondent or the respondent's counsel has the right to subpoena witnesses and documents and to examine and cross-examine witnesses.

(12) The respondent has the right, but shall not be compelled, to testify, and shall be so advised by the court.

(13) On motion of the respondent or the respondent's counsel for good cause shown, or on the court's own motion, the court may order a continuance of the hearing.

(14) If the respondent is represented by counsel and the respondent's counsel requests a transcript and record, or if the respondent is not represented by counsel, the court shall make and maintain a full transcript and record of the proceeding. If the respondent is indigent and the transcript and record is made, a copy shall be provided to the respondent upon request and be treated as an expense under section 5122.43 of the Revised Code.

(15) To the extent not inconsistent with this chapter, the Rules of Civil Procedure are applicable.

(B) Unless, upon completion of the hearing the court finds by clear and convincing evidence that the respondent is a mentally ill person subject to court order, it shall order the respondent's discharge immediately.

(C) If, upon completion of the hearing, the court finds by clear and convincing evidence that the respondent is a mentally ill person subject to court order, the court shall order the respondent for a period not to exceed ninety days to any of the following:

(1) A hospital operated by the department of mental health and addiction services if the respondent is committed pursuant to section 5139.08 of the Revised Code;

(2) A nonpublic hospital;

(3) The veterans' administration or other agency of the United States government;

(4) A board of alcohol, drug addiction, and mental health services or services provider the board designates;

(5) Receive private psychiatric or psychological care and treatment;

(6) Any other suitable facility or person consistent with the diagnosis, prognosis, and treatment needs of the respondent. A jail or other local correctional facility is not a suitable facility.

(D) Any order made pursuant to division (C)(2), (3), (5), or (6) of this section shall be

conditioned upon the receipt by the court of consent by the hospital, facility, agency, or person to accept the respondent and may include a requirement that a person or entity described in division (C) (2), (3), (5), or (6) of this section inform the board of alcohol, drug addiction, and mental health services or community mental health services provider the board designates about the progress of the respondent with the treatment plan.

(E) In determining the entity or person to which the respondent is to be committed under division (C) of this section, the court shall consider ~~the all of the following:~~

(1) The respondent's diagnosis, and prognosis, made by a psychiatrist, licensed clinical psychologist, clinical nurse specialist who is certified as a psychiatric-mental health clinical nurse specialist by the American nurses credentialing center, or certified nurse practitioner who is certified as a psychiatric-mental health nurse practitioner by the American nurses credentialing center;

(2) The respondent's preferences of the respondent and the;

(3) The respondent's projected treatment plan for the respondent and;

The court shall order the implementation of the least restrictive alternative available and consistent with treatment goals. If the court determines that the least restrictive alternative available that is consistent with treatment goals is inpatient hospitalization, the court's order shall so state.

(F) During the ninety-day period the entity or person shall examine and treat the respondent. If the respondent is receiving treatment in an outpatient setting, or receives treatment in an outpatient setting during a subsequent period of continued commitment under division (H) of this section, the entity or person to whom the respondent is committed shall determine the appropriate outpatient treatment for the respondent. If, at any time prior to the expiration of the ninety-day period, it is determined by the entity or person that the respondent's treatment needs could be equally well met in an available and appropriate less restrictive setting, both of the following apply:

(1) The respondent shall be released from the care of the entity or person immediately and shall be referred to the court together with a report of the findings and recommendations of the entity or person;

(2) The entity or person shall notify the respondent's counsel or the attorney designated by a board of alcohol, drug addiction, and mental health services or, if the respondent was committed to a board or a services provider designated by the board, it shall place the respondent in the least restrictive setting available consistent with treatment goals and notify the court and the respondent's counsel of the placement.

The court shall dismiss the case or order placement in the least restrictive setting.

(G)(1) Except as provided in division (G)(2) of this section, any person for whom proceedings for treatment have been commenced pursuant to section 5122.11 of the Revised Code, may apply at any time for voluntary admission or treatment to the entity or person to which the person was committed. Upon admission as a voluntary patient the chief clinical officer of the entity or the person immediately shall notify the court, the patient's counsel, and the attorney designated by the board, if the attorney has entered the proceedings, in writing of that fact, and, upon receipt of the notice, the court shall dismiss the case.

(2) A person who is found incompetent to stand trial or not guilty by reason of insanity and who is committed pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code shall not voluntarily commit the person pursuant to this section until after the final termination of the

commitment, as described in division (J) of section 2945.401 of the Revised Code.

(H) If, at the end of the first ninety-day period or any subsequent period of continued commitment, there has been no disposition of the case, either by discharge or voluntary admission or treatment, the entity or person shall discharge the patient immediately, unless at least ten days before the expiration of the period the attorney the board designates or the prosecutor files with the court an application for continued commitment. The application of the attorney or the prosecutor shall include a written report containing the diagnosis, prognosis, past treatment, a list of alternative treatment settings and plans, and identification of the treatment setting that is the least restrictive consistent with treatment needs. The attorney the board designates or the prosecutor shall file the written report at least three days prior to the full hearing. A copy of the application and written report shall be provided to the respondent's counsel immediately.

The court shall hold a full hearing on applications for continued commitment at the expiration of the first ninety-day period and at least every two years after the expiration of the first ninety-day period.

Hearings following any application for continued commitment are mandatory and may not be waived.

For a respondent who is ordered to receive treatment in an outpatient setting, if at any time after the first ninety-day period the entity or person to whom the respondent was ordered determines that the respondent has demonstrated voluntary consent for treatment, that entity or person shall immediately notify the respondent, the respondent's counsel, the attorney designated by the board, and the court. The entity or person shall submit to the court a report of the findings and recommendations. The court may dismiss the case upon review of the facts.

Upon request of a person who is involuntarily committed under this section, or the person's counsel, that is made more than one hundred eighty days after the person's last full hearing, mandatory or requested, the court shall hold a full hearing on the person's continued commitment. Upon the application of a person involuntarily committed under this section, supported by an affidavit of a psychiatrist or licensed clinical psychologist, alleging that the person no longer is a mentally ill person subject to court order, the court for good cause shown may hold a full hearing on the person's continued commitment prior to the expiration of one hundred eighty days after the person's last full hearing. Section 5122.12 of the Revised Code applies to all hearings on continued commitment.

If the court, after a hearing for continued commitment finds by clear and convincing evidence that the respondent is a mentally ill person subject to court order, the court may order continued commitment at places or to persons specified in division (C) of this section.

(I) Unless the admission is pursuant to section 5120.17 or 5139.08 of the Revised Code, the chief clinical officer of the entity admitting a respondent pursuant to a judicial proceeding, within ten working days of the admission, shall make a report of the admission to the board of alcohol, drug addiction, and mental health services serving the respondent's county of residence.

(J) A referee appointed by the court may make all orders that a judge may make under this section and sections 5122.11 and 5122.141 of the Revised Code, except an order of contempt of court. The orders of a referee take effect immediately. Within fourteen days of the making of an order by a referee, a party may file written objections to the order with the court. The filed objections shall

be considered a motion, shall be specific, and shall state their grounds with particularity. Within ten days of the filing of the objections, a judge of the court shall hold a hearing on the objections and may hear and consider any testimony or other evidence relating to the respondent's mental condition. At the conclusion of the hearing, the judge may ratify, rescind, or modify the referee's order.

(K) An order of the court under division (C), (H), or (J) of this section is a final order.

(L) Before a board, or a services provider the board designates, may place an unconsenting respondent in an inpatient setting from a less restrictive placement, the board or services provider shall do all of the following:

(1) Determine that the respondent is in immediate need of treatment in an inpatient setting because the respondent represents a substantial risk of physical harm to the respondent or others if allowed to remain in a less restrictive setting;

(2) On the day of placement in the inpatient setting or on the next court day, file with the court a motion for transfer to an inpatient setting or communicate to the court by telephone that the required motion has been mailed;

(3) Ensure that every reasonable and appropriate effort is made to take the respondent to the inpatient setting in the least conspicuous manner possible;

(4) Immediately notify the board's designated attorney and the respondent's attorney.

At the respondent's request, the court shall hold a hearing on the motion and make a determination pursuant to division (E) of this section within five days of the placement.

(M) Before a board, or a services provider the board designates, may move a respondent from one residential placement to another, the board or services provider shall consult with the respondent about the placement. If the respondent objects to the placement, the proposed placement and the need for it shall be reviewed by a qualified mental health professional who otherwise is not involved in the treatment of the respondent.

(N) The entity or person to whom the respondent was ordered for treatment in an outpatient setting may submit a report to the court indicating that the respondent has either failed to comply with the treatment plan or begun to demonstrate signs of decompensation that may be grounds for hospitalization. On receipt of the report, the court shall promptly schedule a hearing to review the case. The court shall conduct the hearing in a manner consistent with this chapter and due process of law. The board shall receive notice of the hearing and the board and entity or person treating the respondent shall submit a report to the court with a plan for appropriate alternative treatment, if any, or recommend that the court discontinue the court-ordered treatment. The court shall consider available and appropriate alternative placements but shall not impose criminal sanctions that result in confinement in a jail or other local correctional facility based on the respondent's failure to comply with the treatment plan. The court may not order the respondent to a more restrictive placement unless the criteria specified in division (L) of this section are met and may not order the respondent to an inpatient setting unless the court determines by clear and convincing evidence presented by the board that the respondent meets the criteria specified in divisions (A) and (B)(1), (2), (3), or (4) of section 5122.01 of the Revised Code.

Sec. 5804.11. (A) If upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, that all consents, including any given by representatives under Chapter 5803. of the Revised Code, are valid, and that all parties

giving consent are competent to do so, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. An agent under a power of attorney may exercise a settlor's power to consent to a trust's modification or termination only to the extent expressly authorized by both the power of attorney and the terms of the trust. The settlor's guardian of the estate may exercise a settlor's power to consent to a trust's modification or termination with the approval of the court supervising the guardianship if an agent is not so authorized. The guardian of the settlor's person may exercise a settlor's power to consent to a trust's modification or termination with the approval of the court supervising the guardianship if an agent is not so authorized and a guardian of the estate has not been appointed. This division does not apply to a noncharitable irrevocable trust described in 42 U.S.C. 1396p(d)(4).

(B) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified, but not to remove or replace the currently serving trustee, upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust. A spendthrift provision in the terms of the trust may, but is not presumed to, constitute a material purpose of the trust. In determining what constitutes a material purpose of a trust, a court may but is not required to consider extrinsic evidence indicating a settlor's intent at the time the instrument was executed.

(C) Upon termination of a trust under division (A) or (B) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(D) If not all of the beneficiaries consent to a proposed modification or termination of the trust under division (A) or (B) of this section, the court may approve the modification or termination if the court is satisfied of both of the following:

(1) That if all of the beneficiaries had consented, the trust could have been modified or terminated under this section;

(2) That the interests of a beneficiary who does not consent will be adequately protected.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.

(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.

(B) "Asset" means property of a transferor but does not include any of the following:

(1) Property to the extent it is encumbered by a valid lien;

(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;

(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;

(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.

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

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

(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.

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

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

(H) "Disposition" means a direct or indirect 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:

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

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

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

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

(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.

(K)(1) "Legacy trust" means a trust evidenced by a written trust instrument to which all of the following apply:

(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.

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

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

(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.

(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.

(L) "Lien" has the same meaning as in section 1336.01 of the Revised Code.

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

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

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

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

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

(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.

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

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

(b) The person, if not a natural person, is authorized by the law of this state or by a court of competent jurisdiction of this state to act as a trustee and ~~whose either of the following applies:~~

(i) The activities of that person are subject to supervision by the Ohio superintendent of banks, financial institutions, the federal deposit insurance corporation, the comptroller of the currency, or the office of thrift supervision or a successor of any of them.

(ii) That person is a "family trust company," as defined in section 1112.01 of the Revised Code, and that family trust company may be licensed or unlicensed for purposes of Chapter 1112. of the Revised Code, provided that all of the following also apply regardless of the family trust company's licensing status:

(I) The family trust company shall maintain an office in this state, on either an exclusive basis or on a shared basis with one or more other persons.

(II) The family trust company shall open and maintain at least one bank or brokerage account in this state.

(III) The family trust company shall maintain in this state, on an exclusive or nonexclusive basis, electronic or physical records for the legacy trust.

(IV) The family trust company shall satisfy all of the requirements imposed by divisions (B), (C), (D), and (E)(1) of section 1112.14 of the Revised Code.

(V) No beneficiary of a legacy trust, when acting for or on behalf of a family trust company, or when acting as an officer, manager, director, employee, or other agent or representative of a family trust company, may have any vote or authority regarding any decision to make or withhold any distribution from such legacy trust to or for the benefit of that beneficiary.

Nothing in division (S)(1)(b)(ii) of this section shall prohibit a beneficiary from exercising any rights, powers, privileges, or authority granted to that beneficiary by or in any trust instrument governing a legacy trust.

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

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

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

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

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

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

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

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

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

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

(E) Both of the following:

(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;

(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;

(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;

(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:

(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 denied to the trustee by the terms of the trust instrument.

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

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

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

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

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

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

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

(L) The ability of a qualified trustee, whether pursuant to 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) A power held by a transferor allowing the transferor, while acting in a nonfiduciary capacity, to substitute property of equivalent value for any property that is part of the principal of the legacy trust;

(O) 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 or an attachment to the affidavit.

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

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

- (1) Any nonsubstantive variances from the language set forth in division (B) of this section;
- (2) Any statements or representations in addition to those set forth in division (B) of this section if the statements or representations do not materially contradict the statements or

representations required by that division;

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

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

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

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

Sec. 5816.09. Any successor or replacement trustees of a legacy trust shall be determined or selected in the following manners:

(A)(1) Division (A)(2) of this section applies if in any action involving a legacy trust or any trustee of the legacy trust a court ~~takes an action~~ enters or issues any order in which or by which the court declines to apply the law of this state in determining any of the following matters:

- (a) The validity, construction, or administration of the trust;
- (b) The effect of any term or condition of the trust, including, but not limited to, a spendthrift provision;
- (c) The rights and remedies of any creditor or other suitor in connection with a qualified disposition.

(2) Immediately upon the court's ~~action under entry or issuance of an order referred to in~~ division (A)(1) of this section, and without the need for any other order of any court, any qualified trustee who is a party to that action shall cease in all respects to be a trustee of the legacy trust, and the position of trustee shall be occupied in accordance with the terms of the trust instrument that governed the legacy trust immediately before that cessation, or, if the terms of the trust instrument do not provide for another trustee and the trust would otherwise be without a trustee, any court of this state, upon the application of any beneficiary of the legacy trust, shall appoint a successor qualified trustee upon the terms and conditions that it determines to be consistent with the purposes of the trust and this chapter. Upon a qualified trustee ceasing to be a trustee pursuant to division (A)(2) of this section, that qualified trustee shall have no power or authority other than to convey trust property to any other trustee that is appointed, installed, or serving in accordance with that division.

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

(a) "Court" includes a judicial tribunal, an administrative tribunal, or other adjudicative body or panel.

(b) "Order" includes any order, writ, judgment, entry, edict, mandate, directive, instruction, or decree issued or entered by any court.

(B) In all cases other than the situation described in division (A) of this section, both of the

following apply:

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

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

Sec. 5816.10. (A) In the event of any conflict between any provision of this chapter and any provision of Chapter 1336. of the Revised Code or any other provision of law similar to any provision of Chapter 1336. of the Revised Code, including, but not limited to, any similar provision of law adopted, promulgated, or enacted by a jurisdiction other than this state, the provision of this chapter shall control and prevail to the maximum extent permitted by the Ohio Constitution and the United States Constitution. When determining whether a provision of law is similar to any provision of Chapter 1336. of the Revised Code, a court shall be liberal in finding that such similarity exists.

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

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

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

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

(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.

(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.

(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:

(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.

(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.~~ When applying division (E)(2) of this section, a court shall be liberal in finding that such continuity and similarity exist.

(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.

(G) Any valid lien attaching to property before a disposition of that property to a trustee of a

legacy trust shall survive the disposition, and the trustee shall take title to the property subject to the valid lien and subject to any agreements that created or perfected the valid lien. Nothing in this chapter shall be construed to authorize any disposition that is prohibited by the terms of any agreements, notes, guaranties, mortgages, indentures, instruments, undertakings, or other documents. In the event of any conflict between this division and any other provision of this chapter, this division shall control.

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

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

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

(I)(1) If any disposition is made by a trustee of a legacy trust, referred to in division (I) of this section as the "first legacy trust," to a trustee of a second legacy trust, referred to in division (I) of this section as the "second legacy trust," whether pursuant to section 5808.18 of the Revised Code or any other applicable law, then all of the following apply to any property involved in such disposition:

(a) 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 persons who are the beneficiaries of both the first legacy trust and the second legacy trust.

(b) An item of property shall be treated as having been transferred to a trustee of the second legacy trust on the earlier of any of the following:

(i) The date of the original qualified disposition of the item to a trustee of the first legacy trust;

(ii) If, before being held by the trustee of the first legacy trust, the item previously was held by a trustee of a predecessor legacy trust, or by one or more trustees of a consecutive and uninterrupted series of predecessor legacy trusts, then the date of the original qualified disposition to the first trustee to hold that item as part of any such predecessor legacy trust;

(iii) If, before being held by the trustee of the first legacy trust, that item was held by a trustee of a nonlegacy trust referred to in division (E)(2) of this section, then the date determined pursuant to that division;

(iv) The earliest date determined by any combination of divisions (I)(1)(b)(i) to (iii) of this section.

(2) For purposes of division (I)(1)(b) of this section, any reference to an item of property shall include any proceeds of or substitutes for that item.

(3) Notwithstanding division (S) of section 5816.02 of the Revised Code, a qualified trustee

of the first legacy trust may serve as a qualified trustee of the second legacy trust.

(4) The dispositions covered by division (I) of this section include, but are not limited to, any disposition that is made by a trustee of the first legacy trust acting pursuant to a direction issued by a person having the power to direct a distribution of trust property pursuant to the trust instrument governing the first legacy trust, including, but not limited to, a power to direct as provided in division (G) of section 5808.18 of the Revised Code.

(J) Any reference in this chapter to an "action" or a "proceeding" shall be broadly construed to encompass any suit or proceeding in any jurisdiction or before any judicial tribunal, administrative tribunal, or other adjudicative body or panel.

(K) This chapter and its provisions reflect and embody the strong public policy of this state.

Sec. 5816.14. This chapter applies to qualified dispositions made on or after the effective date of this section March 27, 2013, except that division (S)(1)(b)(ii) of section 5816.02 of the Revised Code applies to any legacy trust settled or administered on or after the effective date of this amendment.

SECTION 2. That existing sections 1721.21, 2101.15, 2106.13, 2108.05, 2108.06, 2108.07, 2108.23, 2108.24, 2108.34, 2111.10, 2111.50, 2133.07, 2701.10, 2717.01, 5122.15, 5804.11, 5805.06, 5816.02, 5816.05, 5816.06, 5816.09, 5816.10, and 5816.14 of the Revised Code are hereby repealed.

SECTION 3. That section 2133.16 of the Revised Code is hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____