

# AN ACT

To amend sections 313.14, 1901.26, 1907.24, 2101.24, 2105.19, 2107.01, 2107.05, 2107.07, 2107.08, 2107.09, 2107.10, 2107.11, 2107.12, 2107.16, 2107.18, 2107.20, 2107.22, 2107.33, 2107.52, 2107.71, 2109.41, 2129.05, 2137.01, 2323.30, 2323.31, 2323.33, 2701.09, 2721.03, 3105.011, 3109.06, 4705.09, 5163.21, 5802.03, 5806.04, 5808.19, and 5815.16, to enact sections 2111.182, 2111.52, 2113.032, 2151.233, 2151.234, 2151.235, 2151.236, 2323.311, 2746.10, 3109.061, 5802.05, 5817.01, 5817.02, 5817.03, 5817.04, 5817.05, 5817.06, 5817.07, 5817.08, 5817.09, 5817.10, 5817.11, 5817.12, 5817.13, and 5817.14, and to repeal sections 2107.081, 2107.082, 2107.083, 2107.084, and 2107.085 of the Revised Code to permit nonelderly, disabled applicants or recipients of Medicaid benefits or their spouses to establish their own special needs trust on or after December 13, 2016, to specify domestic relations and juvenile court jurisdiction in certain matters, and relative to procedures for the waiver of certain fees for indigent litigants in civil actions, procedures for a testator to file a declaratory judgment action to declare the validity of a will prior to death and the settlor of a trust to file such an action to declare its validity, exceptions to antilapse provisions in class gifts in wills and trusts, admission of authenticated copies of wills of persons not domiciled in Ohio, incorporation of a written trust into a will, testimony of witnesses in admission of will to probate, trusts for a minor, arbitration of trust disputes, the creation of county and multicounty guardianship services boards, the coroner's disposition of person dying of suspicious or unusual death, an application for the release of medical records and medical billing records, adding involuntary manslaughter not resulting from a felony vehicular homicide offense to the list of offenses excluding an individual from inheriting from a decedent, attorney-client privilege when the client is acting as a fiduciary, and the placement of fiduciary funds in interest on lawyer's trust accounts.

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

SECTION 1. That sections 313.14, 1901.26, 1907.24, 2101.24, 2105.19, 2107.01, 2107.05, 2107.07, 2107.08, 2107.09, 2107.10, 2107.11, 2107.12, 2107.16, 2107.18, 2107.20, 2107.22, 2107.33, 2107.52, 2107.71, 2109.41, 2129.05, 2137.01, 2323.30, 2323.31, 2323.33, 2701.09, 2721.03, 3105.011, 3109.06, 4705.09, 5163.21, 5802.03, 5806.04, 5808.19, and 5815.16 be amended

and sections 2111.182, 2111.52, 2113.032, 2151.233, 2151.234, 2151.235, 2151.236, 2323.311, 2746.10, 3109.061, 5802.05, 5817.01, 5817.02, 5817.03, 5817.04, 5817.05, 5817.06, 5817.07, 5817.08, 5817.09, 5817.10, 5817.11, 5817.12, 5817.13, and 5817.14 of the Revised Code be enacted to read as follows:

Sec. 313.14. (A)(1) The coroner shall make a reasonable effort to notify any known relatives of a deceased person who meets death in the manner described by section 313.12 of the Revised Code by letter or otherwise. ~~The next of kin, other relatives, or friends of the deceased person, in the order named, shall have prior right as to disposition of the body of such deceased person. If relatives of the deceased are unknown, the coroner shall make a diligent effort to ascertain the next of kin, other relatives, or friends of the deceased person~~ coroner shall also make a reasonable effort to determine the identity of the person who has been assigned the rights of disposition for the deceased person under sections 2108.70 to 2108.90 of the Revised Code and shall notify that person. After the coroner has completed the performance of the coroner's legal duties with respect to the body of the deceased person, the coroner shall return the body to that person.

(2) The coroner shall take charge and possession of all moneys, clothing, and other valuable personal effects of ~~such the~~ deceased person, found in connection with or pertaining to ~~such the~~ body, and shall store ~~such the~~ possessions in the county coroner's office or such other suitable place as is provided for ~~such that~~ storage by the board of county commissioners. If the coroner considers it advisable, the coroner may, after taking adequate precautions for the security of ~~such those~~ possessions, store the possessions where the coroner finds them until other storage space becomes available. The person who has been assigned the rights of disposition for the deceased person under sections 2108.70 to 2108.90 of the Revised Code may request the coroner to give those possessions to that person. After the person who has been assigned the rights of disposition for the deceased person under sections 2108.70 to 2108.90 of the Revised Code, upon the person's request under this division, receives the possessions of the deceased person from the coroner, that person shall deliver the possessions to the executor or administrator of the estate of the deceased person or to any other person who is legally entitled to any of those possessions.

(B) In cases in which the cost of the burial is paid by the county, after using such of the clothing as is necessary in the burial of the body, the coroner shall sell at public auction the valuable personal effects of ~~such the~~ deceased persons, found in connection with or pertaining to the unclaimed dead body, except firearms, which shall be disposed of as provided in division (C) of this section. The coroner shall make a verified inventory of ~~such the~~ effects and they shall be sold within eighteen months after burial, or after delivery of ~~such the~~ body in accordance with section 1713.34 of the Revised Code. All moneys derived from ~~such the~~ sale shall be deposited in the county treasury. A notice of ~~such the~~ sale shall be given in one newspaper of general circulation in the county, for five days in succession, and the sale shall be held immediately thereafter. The cost of such advertisement and notices shall be paid by the board upon the submission of a verified statement ~~therefor~~ for that cost, certified to the coroner.

(C) If a firearm is included in the personal effects of a deceased person who meets death in the manner described by section 313.12 of the Revised Code, the coroner shall deliver the firearm to the chief of police of the municipal corporation within which the body is found, or to the sheriff of the county if the body is not found within a municipal corporation. Upon delivery of the firearm to

the chief of police or the sheriff, the chief of police or sheriff shall give the coroner a receipt for the firearm that states the date of delivery and an accurate description of the firearm. The firearm shall be used for evidentiary purposes only.

The person who has been assigned the rights of disposition for the deceased person's next of kin or other relative person under sections 2108.70 to 2108.90 of the Revised Code may request that the firearm be given to the next of kin or other relative that person once the firearm is no longer needed for evidentiary purposes. The chief of police or the sheriff shall give the firearm to the next of kin or other relative that person who requested the firearm only if the next of kin or other relative person may lawfully possess the firearm under applicable law of this state or the United States. The chief of police or the sheriff shall keep a record identifying the next of kin or other relative person to whom the firearm is given, the date the firearm was given to the next of kin or other relative that person, and an accurate description of the firearm. The person to whom the firearm is given upon the person's request under this division shall deliver the firearm to the executor or administrator of the estate of the deceased person or to any other person who is legally entitled to the firearm.

If a next of kin or other relative the person who has been assigned the rights of disposition for the deceased person under sections 2108.70 to 2108.90 of the Revised Code does not request the firearm or is not entitled to possess the firearm, the firearm shall be used at the discretion of the chief of police or the sheriff.

(D) This section does not invalidate section 1713.34 of the Revised Code.

Sec. 1901.26. (A) Subject to division (E) of this section, costs in a municipal court shall be fixed and taxed as follows:

(1)(a) The municipal court shall require an advance deposit for the filing of any new civil action or proceeding when required by division (C) of this section, subject to its waiver pursuant to that division, and in all other cases, by rule, shall establish a schedule of fees and costs to be taxed in any civil or criminal action or proceeding.

(b)(i) The legislative authority of a municipal corporation may by ordinance establish a schedule of fees to be taxed as costs in any civil, criminal, or traffic action or proceeding in a municipal court for the performance by officers or other employees of the municipal corporation's police department or marshal's office of any of the services specified in sections 311.17 and 509.15 of the Revised Code. No fee in the schedule shall be higher than the fee specified in section 311.17 of the Revised Code for the performance of the same service by the sheriff. If a fee established in the schedule conflicts with a fee for the same service established in another section of the Revised Code or a rule of court, the fee established in the other section of the Revised Code or the rule of court shall apply.

(ii) When an officer or employee of a municipal police department or marshal's office performs in a civil, criminal, or traffic action or proceeding in a municipal court a service specified in section 311.17 or 509.15 of the Revised Code for which a taxable fee has been established under this or any other section of the Revised Code, the applicable legal fees and any other extraordinary expenses, including overtime, provided for the service shall be taxed as costs in the case. The clerk of the court shall pay those legal fees and other expenses, when collected, into the general fund of the municipal corporation that employs the officer or employee.

(iii) If a bailiff of a municipal court performs in a civil, criminal, or traffic action or

proceeding in that court a service specified in section 311.17 or 509.15 of the Revised Code for which a taxable fee has been established under this section or any other section of the Revised Code, the fee for the service is the same and is taxable to the same extent as if the service had been performed by an officer or employee of the police department or marshal's office of the municipal corporation in which the court is located. The clerk of that court shall pay the fee, when collected, into the general fund of the entity or entities that fund the bailiff's salary, in the same prorated amount as the salary is funded.

(iv) Division (A)(1)(b) of this section does not authorize or require any officer or employee of a police department or marshal's office of a municipal corporation or any bailiff of a municipal court to perform any service not otherwise authorized by law.

(2) The municipal court, by rule, may require an advance deposit for the filing of any civil action or proceeding and publication fees as provided in section 2701.09 of the Revised Code. The court ~~may shall~~ waive the requirement for advance deposit ~~upon affidavit or other evidence that a party is unable to make the required deposit for a party that the court determines qualifies as an indigent litigant as set forth in section 2323.311 of the Revised Code.~~

(3) When a jury trial is demanded in any civil action or proceeding, the party making the demand may be required to make an advance deposit as fixed by rule of court, unless, ~~upon affidavit or other evidence, the court concludes that the party is unable to make the required deposit determines that the party qualifies as an indigent litigant as set forth in section 2323.311 of the Revised Code.~~ If a jury is called, the fees of a jury shall be taxed as costs.

(4) In any civil or criminal action or proceeding, each witness shall receive twelve dollars for each full day's attendance and six dollars for each half day's attendance. Each witness in a municipal court that is not a county-operated municipal court also shall receive fifty and one-half cents for each mile necessarily traveled to and from the witness's place of residence to the action or proceeding.

(5) A reasonable charge for driving, towing, carting, storing, keeping, and preserving motor vehicles and other personal property recovered or seized in any proceeding may be taxed as part of the costs in a trial of the cause, in an amount that shall be fixed by rule of court.

(6) Chattel property seized under any writ or process issued by the court shall be preserved pending final disposition for the benefit of all persons interested and may be placed in storage when necessary or proper for that preservation. The custodian of any chattel property so stored shall not be required to part with the possession of the property until a reasonable charge, to be fixed by the court, is paid.

(7) The municipal court, as it determines, may refund all deposits and advance payments of fees and costs, including those for jurors and summoning jurors, when they have been paid by the losing party.

(8) Charges for the publication of legal notices required by statute or order of court may be taxed as part of the costs, as provided by section 7.13 of the Revised Code.

(B)(1)(a) The municipal court may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges,

acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession.

(b) If the municipal court offers a special program or service in cases of a specific type, the municipal court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service. The municipal court shall adjust the special assessment periodically, but not retroactively, so that the amount assessed in those cases does not exceed the actual cost of providing the service or program.

(c) Any fee or charge assessed under division (B)(1)(a) or (b) of this section on the filing of a civil action or proceeding shall be waived if the court determines that the person on whom the fee or charge is assessed qualifies as an indigent litigant as set forth in section 2323.311 of the Revised Code.

(d) All moneys collected under division (B) of this section shall be paid to the county treasurer if the court is a county-operated municipal court or to the city treasurer if the court is not a county-operated municipal court for deposit into either a general special projects fund or a fund established for a specific special project. Moneys from a fund of that nature shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project. If a specific fund is terminated because of the discontinuance of a program or service established under division (B) of this section, the municipal court may order that moneys remaining in the fund be transferred to an account established under this division for a similar purpose.

(2) As used in division (B) of this section:

(a) "Criminal cause" means a charge alleging the violation of a statute or ordinance, or subsection of a statute or ordinance, that requires a separate finding of fact or a separate plea before disposition and of which the defendant may be found guilty, whether filed as part of a multiple charge on a single summons, citation, or complaint or as a separate charge on a single summons, citation, or complaint. "Criminal cause" does not include separate violations of the same statute or ordinance, or subsection of the same statute or ordinance, unless each charge is filed on a separate summons, citation, or complaint.

(b) "Civil action or proceeding" means any civil litigation that must be determined by judgment entry.

(C) The municipal court shall collect in all its divisions except the small claims division the sum of twenty-six dollars as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state and to support the office of the state public defender. The municipal court shall collect in its small claims division the sum of eleven dollars as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state and to support the office of the state public defender. This division does not apply to any execution on a judgment, proceeding in aid of execution, or other post-judgment proceeding arising out of a civil action. The filing fees required to be collected under this division shall be in addition to any other court costs imposed in the action or proceeding and shall be collected at the time of the filing of the action or proceeding. The court shall not waive the payment of the additional filing fees in a new civil action or proceeding unless the court waives the advanced

payment of all filing fees in the action or proceeding for the party that the court determines is qualified as an indigent litigant as set forth in section 2323.311 of the Revised Code. All such moneys collected during a month except for an amount equal to up to one per cent of those moneys retained to cover administrative costs shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of state in a manner prescribed by the treasurer of state or by the Ohio legal assistance foundation. The treasurer of state shall deposit four per cent of the funds collected under this division to the credit of the civil case filing fee fund established under section 120.07 of the Revised Code and ninety-six per cent of the funds collected under this division to the credit of the legal aid fund established under section 120.52 of the Revised Code.

The court may retain up to one per cent of the moneys it collects under this division to cover administrative costs, including the hiring of any additional personnel necessary to implement this division. If the court fails to transmit to the treasurer of state the moneys the court collects under this division in a manner prescribed by the treasurer of state or by the Ohio legal assistance foundation, the court shall forfeit the moneys the court retains under this division to cover administrative costs, including the hiring of any additional personnel necessary to implement this division, and shall transmit to the treasurer of state all moneys collected under this division, including the forfeited amount retained for administrative costs, for deposit in the legal aid fund.

(D) In the Cleveland municipal court, reasonable charges for investigating titles of real estate to be sold or disposed of under any writ or process of the court may be taxed as part of the costs.

(E) Under the circumstances described in sections 2969.21 to 2969.27 of the Revised Code, the clerk of the municipal court shall charge the fees and perform the other duties specified in those sections.

(F) As used in this section:

(1) "Full day's attendance" means a day on which a witness is required or requested to be present at an action or proceeding before and after twelve noon, regardless of whether the witness actually testifies.

(2) "Half day's attendance" means a day on which a witness is required or requested to be present at an action or proceeding either before or after twelve noon, but not both, regardless of whether the witness actually testifies.

Sec. 1907.24. (A) Subject to division (C) of this section, a county court shall fix and tax fees and costs as follows:

(1) The county court shall require an advance deposit for the filing of any new civil action or proceeding when required by division (C) of this section, subject to its waiver pursuant to that division, and, in all other cases, shall establish a schedule of fees and costs to be taxed in any civil or criminal action or proceeding.

(2) The county court by rule may require an advance deposit for the filing of a civil action or proceeding and publication fees as provided in section 2701.09 of the Revised Code. The court ~~may~~ shall waive an advance deposit requirement ~~upon the presentation of an affidavit or other evidence that establishes that a party is unable to make the requisite deposit for a party that the court determines qualifies as an indigent litigant as set forth in section 2323.311 of the Revised Code~~.

(3) When a party demands a jury trial in a civil action or proceeding, the county court may

require the party to make an advance deposit as fixed by rule of court, unless the court ~~concludes, on the basis of an affidavit or other evidence presented by the party, that the party is unable to make the requisite deposit~~ determines that the party qualifies as an indigent litigant as set forth in section 2323.311 of the Revised Code. If a jury is called, the county court shall tax the fees of a jury as costs.

(4) In a civil or criminal action or proceeding, the county court shall fix the fees of witnesses in accordance with sections 2335.06 and 2335.08 of the Revised Code.

(5) A county court may tax as part of the costs in a trial of the cause, in an amount fixed by rule of court, a reasonable charge for driving, towing, carting, storing, keeping, and preserving motor vehicles and other personal property recovered or seized in a proceeding.

(6) The court shall preserve chattel property seized under a writ or process issued by the court pending final disposition for the benefit of all interested persons. The court may place the chattel property in storage when necessary or proper for its preservation. The custodian of chattel property so stored shall not be required to part with the possession of the property until a reasonable charge, to be fixed by the court, is paid.

(7) The county court, as it determines, may refund all deposits and advance payments of fees and costs, including those for jurors and summoning jurors, when they have been paid by the losing party.

(8) The court may tax as part of costs charges for the publication of legal notices required by statute or order of court, as provided by section 7.13 of the Revised Code.

(B)(1)(a) The county court may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession.

(b) If the county court offers a special program or service in cases of a specific type, the county court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service. The county court shall adjust the special assessment periodically, but not retroactively, so that the amount assessed in those cases does not exceed the actual cost of providing the service or program.

(c) Any fee or charge assessed under division (B)(1)(a) or (b) of this section on the filing of a civil action or proceeding shall be waived if the court determines that the person on whom the fee or charge is assessed qualifies as an indigent litigant as set forth in section 2323.311 of the Revised Code.

(d) All moneys collected under division (B) of this section shall be paid to the county treasurer for deposit into either a general special projects fund or a fund established for a specific special project. Moneys from a fund of that nature shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project. If a specific fund is terminated because of the discontinuance of a program or service established under division (B) of this section, the county court may order that moneys remaining in the fund be transferred to an account

established under this division for a similar purpose.

(2) As used in division (B) of this section:

(a) "Criminal cause" means a charge alleging the violation of a statute or ordinance, or subsection of a statute or ordinance, that requires a separate finding of fact or a separate plea before disposition and of which the defendant may be found guilty, whether filed as part of a multiple charge on a single summons, citation, or complaint or as a separate charge on a single summons, citation, or complaint. "Criminal cause" does not include separate violations of the same statute or ordinance, or subsection of the same statute or ordinance, unless each charge is filed on a separate summons, citation, or complaint.

(b) "Civil action or proceeding" means any civil litigation that must be determined by judgment entry.

(C) Subject to division (E) of this section, the county court shall collect in all its divisions except the small claims division the sum of twenty-six dollars as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state and to support the office of the state public defender. Subject to division (E) of this section, the county court shall collect in its small claims division the sum of eleven dollars as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state and to support the office of the state public defender. This division does not apply to any execution on a judgment, proceeding in aid of execution, or other post-judgment proceeding arising out of a civil action. The filing fees required to be collected under this division shall be in addition to any other court costs imposed in the action or proceeding and shall be collected at the time of the filing of the action or proceeding. The court shall not waive the payment of the additional filing fees in a new civil action or proceeding unless the court waives the advanced payment of all filing fees in the action or proceeding for the party that the court determines is qualified as an indigent litigant as set forth in section 2323.311 of the Revised Code. All such moneys collected during a month except for an amount equal to up to one per cent of those moneys retained to cover administrative costs shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of state in a manner prescribed by the treasurer of state or by the Ohio legal assistance foundation. The treasurer of state shall deposit four per cent of the funds collected under this division to the credit of the civil case filing fee fund established under section 120.07 of the Revised Code and ninety-six per cent of the funds collected under this division to the credit of the legal aid fund established under section 120.52 of the Revised Code.

The court may retain up to one per cent of the moneys it collects under this division to cover administrative costs, including the hiring of any additional personnel necessary to implement this division. If the court fails to transmit to the treasurer of state the moneys the court collects under this division in a manner prescribed by the treasurer of state or by the Ohio legal assistance foundation, the court shall forfeit the moneys the court retains under this division to cover administrative costs, including the hiring of any additional personnel necessary to implement this division, and shall transmit to the treasurer of state all moneys collected under this division, including the forfeited amount retained for administrative costs, for deposit in the legal aid fund.

(D) The county court shall establish by rule a schedule of fees for miscellaneous services



performed by the county court or any of its judges in accordance with law. If judges of the court of common pleas perform similar services, the fees prescribed in the schedule shall not exceed the fees for those services prescribed by the court of common pleas.

(E) Under the circumstances described in sections 2969.21 to 2969.27 of the Revised Code, the clerk of the county court shall charge the fees and perform the other duties specified in those sections.

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

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

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

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

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

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

(f) To grant marriage licenses;

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

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

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

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

(k) To construe wills;

(l) To render declaratory judgments, including, but not limited to, those rendered pursuant to ~~section 2107.084~~ Chapter 5817, of the Revised Code;

(m) To direct and control the conduct of fiduciaries and settle their accounts;

(n) To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee;

(o) To terminate a testamentary trust in any case in which a court of equity may do so;

(p) To hear and determine actions to contest the validity of wills;

(q) To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption;

(r) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised

Code;

(s) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;

(t) To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;

(u) To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337.16 of the Revised Code;

(v) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;

(w) To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with certain patients allegedly in a terminal condition or in a permanently unconscious state pursuant to division (E) of section 2133.08 of the Revised Code, in accordance with that division;

(x) To hear and determine applications that pertain to the withholding or withdrawal of nutrition and hydration from certain patients allegedly in a permanently unconscious state pursuant to section 2133.09 of the Revised Code, in accordance with that section;

(y) To hear and determine applications of attending physicians in accordance with division (B) of section 2133.15 of the Revised Code;

(z) To hear and determine actions relative to the use or continuation of comfort care in connection with certain principals under durable powers of attorney for health care, declarants under declarations, or patients in accordance with division (E) of either section 1337.16 or 2133.12 of the Revised Code;

(aa) To hear and determine applications for an order relieving an estate from administration under section 2113.03 of the Revised Code;

(bb) To hear and determine applications for an order granting a summary release from administration under section 2113.031 of the Revised Code;

(cc) To hear and determine actions relating to the exercise of the right of disposition, in accordance with section 2108.90 of the Revised Code;

(dd) To hear and determine actions relating to the disinterment and reinterment of human remains under section 517.23 of the Revised Code;

(ee) To hear and determine petitions for an order for treatment of a person suffering from alcohol and other drug abuse filed under section 5119.93 of the Revised Code and to order treatment of that nature in accordance with, and take other actions afforded to the court under, sections 5119.90 to 5119.98 of the Revised Code.

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

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

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

(B)(1) The probate court has concurrent jurisdiction with, and the same powers at law and in

equity as, the general division of the court of common pleas to issue writs and orders, and to hear and determine actions as follows:

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

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

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

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

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

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

(iv) An alleged gift;

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

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

(3) Notwithstanding that the probate court has exclusive jurisdiction to render declaratory judgments under Chapter 5817. of the Revised Code, the probate court may transfer the proceeding to the general division of the court of common pleas pursuant to division (A) of section 5817.04 of the Revised Code.

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

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

Sec. 2105.19. (A) Except as provided in division (C) of this section, no person who is convicted of, pleads guilty to, or is found not guilty by reason of insanity of a violation of or complicity in the violation of section 2903.01, 2903.02, or 2903.03 of the Revised Code or a violation of division (A) of section 2903.04 of the Revised Code that is not a proximate result of a felony violation of section 2903.06 of the Revised Code, or of an existing or former law of any other state, the United States, or a foreign nation, substantially equivalent to a violation of or complicity in the violation of any of these sections, no person who is indicted for a violation of or complicity in the violation of any of those sections or laws and subsequently is adjudicated incompetent to stand trial on that charge, and no juvenile who is found to be a delinquent child by reason of committing an act that, if committed by an adult, would be a violation of or complicity in the violation of any of those

sections or laws, shall in any way benefit by the death. All property of the decedent, and all money, insurance proceeds, or other property or benefits payable or distributable in respect of the decedent's death, shall pass or be paid or distributed as if the person who caused the death of the decedent had predeceased the decedent.

(B) A person prohibited by division (A) of this section from benefiting by the death of another is a constructive trustee for the benefit of those entitled to any property or benefit that the person has obtained, or over which the person has exerted control, because of the decedent's death. A person who purchases any such property or benefit from the constructive trustee, for value, in good faith, and without notice of the constructive trustee's disability under division (A) of this section, acquires good title, but the constructive trustee is accountable to the beneficiaries for the proceeds or value of the property or benefit.

(C) A person who is prohibited from benefiting from a death pursuant to division (A) of this section either because the person was adjudicated incompetent to stand trial or was found not guilty by reason of insanity, or the person's guardian appointed pursuant to Chapter 2111. of the Revised Code or other legal representative, may file a complaint to declare the person's right to benefit from the death in the probate court in which the decedent's estate is being administered or that released the estate from administration. The complaint shall be filed no later than sixty days after the person is adjudicated incompetent to stand trial or found not guilty by reason of insanity. The court shall notify each person who is a devisee or legatee under the decedent's will, or if there is no will, each person who is an heir of the decedent pursuant to section 2105.06 of the Revised Code that a complaint of that nature has been filed within ten days after the filing of the complaint. The person who files the complaint, and each person who is required to be notified of the filing of the complaint under this division, is entitled to a jury trial in the action. To assert the right, the person desiring a jury trial shall demand a jury in the manner prescribed in the Civil Rules.

A person who files a complaint pursuant to this division shall be restored to the person's right to benefit from the death unless the court determines, by a preponderance of the evidence, that the person would have been convicted of a violation of, or complicity in the violation of, section 2903.01, 2903.02, or 2903.03 of the Revised Code or a violation of division (A) of section 2903.04 of the Revised Code that is not a proximate result of a felony violation of section 2903.06 of the Revised Code, or of a law of another state, the United States, or a foreign nation that is substantially similar to any of those sections, if the person had been brought to trial in the case in which the person was adjudicated incompetent or if the person were not insane at the time of the commission of the offense.

Sec. 2107.01. As used in Chapters 2101. to 2131. of the Revised Code:

(A) "Will" includes codicils to wills admitted to probate, lost, spoliated, or destroyed wills, and instruments ~~admitted to probate~~ declared valid under division (A)(1) of section 2107.081-5817.10 of the Revised Code, but "will" does not include inter vivos trusts or other instruments that have not been admitted to probate.

(B) "Testator" means any person who makes a will.

Sec. 2107.05. (A) An existing document, book, record, or memorandum may be incorporated in a will by reference, if referred to as being in existence at the time the will is executed. That document, book, record, or memorandum shall be deposited in the probate court when the will is

probated or within thirty days after the will is probated, unless the court grants an extension of time for good cause shown. A copy may be substituted for the original document, book, record, or memorandum if the copy is certified to be correct by a person authorized to take acknowledgments.

(B) Notwithstanding division (A) of this section, if a will incorporates a trust instrument only in the event that a bequest or devise to the trust is ineffective, the trust instrument shall be deposited in the probate court not later than thirty days after the final determination that such bequest or devise is ineffective.

(C) If a testator intends to incorporate a trust instrument in a will, the testator's will shall manifest that intent through the use of the term "incorporate," "made a part of," or similar language. In the absence of such clear and express intent, a trust instrument shall not be incorporated into or made a part of the will. Any language in the testator's will that only identifies a trust shall not be sufficient to manifest an intent to incorporate that trust instrument by reference in the will.

(D) The amendment of this section by adding divisions (B) and (C) applies, and shall be construed as applying, to the wills of testators who die on or after the effective date of this amendment.

Sec. 2107.07. A will may be deposited by the testator, or by some person for the testator, in the office of the judge of the probate court in the county in which the testator lives, before or after the death of the testator, and if deposited after the death of the testator, with or without applying for its probate. Upon the payment of the fee of twenty-five dollars to the court, the judge shall receive, keep, and give a certificate of deposit for the will. That will shall be safely kept until delivered or disposed of as provided by section 2107.08 of the Revised Code. If the will is not delivered or disposed of as provided in that section within one hundred years after the date the will was deposited, the judge may dispose of the will in any manner the judge considers feasible. The judge shall retain an electronic copy of the will prior to its disposal after one hundred years under this section.

Every will that is so deposited shall be enclosed in a sealed envelope that shall be indorsed with the name of the testator. The judge shall indorse on the envelope the date of delivery and the person by whom the will was delivered. The envelope may be indorsed with the name of a person to whom it is to be delivered after the death of the testator. The will shall not be opened or read until delivered to a person entitled to receive it, until the testator files a complaint in the probate court for a declaratory judgment of the validity of the will pursuant to section ~~2107.08~~5817.02 of the Revised Code, or until otherwise disposed of as provided in section 2107.08 of the Revised Code. Subject to section 2107.08 of the Revised Code, the deposited will shall not be a public record until the time that an application is filed to probate it.

Sec. 2107.08. During the lifetime of a testator, the testator's will, deposited according to section 2107.07 of the Revised Code, shall be delivered only to the testator, to some person authorized by the testator by a written order, or to a probate court for a determination of its validity when the testator so requests. After the testator's death, the will shall be delivered to the person named in the indorsement on the envelope of the will, if there is a person named who demands it. If the testator has filed a complaint in the probate court for a judgment declaring the validity of the will pursuant to section ~~2107.08~~5817.02 of the Revised Code and ~~the court has rendered the a judgment is rendered pursuant to division (A)(1) of section 5817.10 of the Revised Code declaring the will valid, the probate judge with possession of the court who rendered the judgment shall deliver the will~~

to the proper probate court as determined under section 2107.11 of the Revised Code, upon the death of the testator, for probate.

If no person named in the indorsement demands the will and it is not one that has been declared valid pursuant to division (A)(1) of section 2107.084-5817.10 of the Revised Code, it shall be publicly opened in the probate court within one month after notice of the testator's death and retained in the office of the probate judge until offered for probate. If the jurisdiction belongs to any other probate court, the will shall be delivered to the person entitled to its custody, to be presented for probate in the other court. If the probate judge who opens the will has jurisdiction of it, the probate judge immediately shall give notice of its existence to the executor named in the will or, if any, to the persons holding a power to nominate an executor as described in section 2107.65 of the Revised Code, or, if it is the case, to the executor named in the will and to the persons holding a power to nominate a coexecutor as described in that section. If no executor is named and no persons hold a power to nominate an executor as described in that section, the probate judge shall give notice to other persons immediately interested.

Sec. 2107.09. (A) If real property is devised or personal property is bequeathed by a will, the executor or any interested person may cause the will to be brought before the probate court of the county in which the decedent was domiciled. By judicial order, the court may compel the person having the custody or control of the will to produce it before the court for the purpose of being proved.

If the person having the custody or control of the will intentionally conceals or withholds it or neglects or refuses to produce it for probate without reasonable cause, the person may be committed to the county jail and kept in custody until the will is produced. The person also shall be liable to any party aggrieved for the damages sustained by that neglect or refusal.

Any judicial order issued pursuant to this section may be issued into any county in the state and shall be served and returned by the officer to whom it is delivered.

The officer to whom the process is delivered shall be liable for neglect in its service or return in the same manner as sheriffs are liable for neglect in not serving or returning a capias issued upon an indictment.

(B) In the case of a will that has been declared valid pursuant to division (A)(1) of section 2107.084-5817.10 of the Revised Code, the probate judge of the probate court or of the general division of the court of common pleas to which the proceeding was transferred pursuant to division (A) of section 5817.04 of the Revised Code who made the declaration ~~or who has possession of the will~~ shall cause ~~the will and the judgment declaring validity~~ the will valid to be brought before the proper probate court as determined by section 2107.11 of the Revised Code at a time after the death of the testator. If the death of the testator is brought to the attention of the ~~probate applicable~~ judge by an interested party, the judge shall cause the judgment declaring the will valid to be brought before the proper probate court at that time.

Sec. 2107.10. (A) No property or right, testate or intestate, shall pass to a beneficiary named in a will who knows of the existence of the will for one year after the death of the testator and has the power to control it and, without reasonable cause, intentionally conceals or withholds it or neglects or refuses within that one year to cause it to be offered for or admitted to probate. The property devised or bequeathed to that beneficiary shall pass as if the beneficiary had predeceased the testator.

(B) No property or right, testate or intestate, passes to a beneficiary named in a will when the will was declared valid ~~and filed with a probate judge by a court pursuant to division (A)(1) of section 2107.084-5817.10~~ of the Revised Code, the declaration ~~and filing~~ took place in a county different from the county in which the will of the testator would be probated under section 2107.11 of the Revised Code, and the named beneficiary knew of the declaration ~~and filing~~ and of the death of the testator and did not notify the ~~probate judge with whom of the court in which~~ the will was ~~filed~~ declared valid. This division does not preclude a named beneficiary from acquiring property or rights from the estate of the testator for failing to notify a ~~probate judge of that court~~ if the named beneficiary reasonably believes that the judge has previously been notified of the testator's death.

Sec. 2107.11. (A) A will shall be admitted to probate:

(1) In the county in this state in which the testator was domiciled at the time of the testator's death;

(2) In any county of this state where any real property or personal property of the testator is located if, at the time of the testator's death, the testator was not domiciled in this state, and provided that the will has not previously been admitted to probate in this state or in the state of the testator's domicile;

(3) In the county of this state in which a ~~probate~~ court rendered a judgment declaring that the will was valid ~~and in which the will was filed with the probate court pursuant to division (A)(1) of section 5817.10 of the Revised Code~~.

(B) For the purpose of division (A)(2) of this section, intangible personal property is located in the place where the instrument evidencing a debt, obligation, stock, or chose in action is located or if there is no instrument of that nature where the debtor resides.

Sec. 2107.12. When a will is presented for probate or for a declaratory judgment of its validity pursuant to ~~section 2107.081-Chapter 5817~~ of the Revised Code, persons interested in its outcome may contest the jurisdiction of the court to entertain the application. Preceding a hearing of a contest as to jurisdiction, all parties named in such will as legatees, devisees, trustees, or executors shall have notice ~~thereof of the hearing~~ in such manner as may be ordered by the court.

When ~~such that~~ contest is made, the parties may call witnesses and shall be heard upon the question involved. The decision of the court as to its jurisdiction may be reviewed on error.

Sec. 2107.16. (A) When offered for probate, a will may be admitted to probate and allowed upon such proof as would be satisfactory, and in like manner as if an absent or incompetent witness were dead:

(1) If it appears to the probate court that a witness to such will has gone to parts unknown;

(2) If the witness was competent at the time of attesting its execution and afterward became incompetent;

(3) If testimony of a witness cannot be obtained within a reasonable time.

(B) When offered for probate, a will shall be admitted to probate and allowed when there has been a prior judgment by a ~~probate~~ court declaring that the will is valid pursuant to division (A)(1) of section 2107.084-5817.10 of the Revised Code, if the will ~~has not been removed from the possession of the probate judge and has not been modified or revoked under division (C) or (D) of section 2107.084 of the Revised Code~~.

Sec. 2107.18. The probate court shall admit a will to probate if it appears from the face of the

will, or if the probate court requires, in its discretion, the testimony of the witnesses to a will and it appears from that testimony, that the execution of the will complies with the law in force at the time of the execution of the will in the jurisdiction in which the testator was physically present when it was executed, with the law in force in this state at the time of the death of the testator, or with the law in force in the jurisdiction in which the testator was domiciled at the time of the testator's death.

The probate court shall admit a will to probate when there has been a prior judgment by a ~~probate court~~ declaring that the will is valid, rendered pursuant to division (A)(1) of section 2107.084 5817.10 of the Revised Code, if the will ~~has not been removed from the possession of the probate judge and has not been modified or revoked under division (C) or (D) of section 2107.084 of the Revised Code.~~

Sec. 2107.20. When admitted to probate every will shall be filed in the office of the probate judge and recorded, together with any testimony or prior judgment of a ~~probate court~~ declaring the will valid pursuant to division (A)(1) of section 5817.10 of the Revised Code, by the judge or the clerk of the probate court in a book to be kept for that purpose.

A copy of the recorded will, with a copy of the order of probate annexed to the copy of the recorded will, certified by the judge under seal of the judge's court, shall be as effectual in all cases as the original would be, if established by proof.

Sec. 2107.22. (A)(1)(a) When a will has been admitted to probate by a probate court and another will of later date is presented to the same court for probate, notice of the will of later date shall be given to those persons required to be notified under section 2107.19 of the Revised Code, and to the fiduciaries and beneficiaries under the will of earlier date. The probate court may admit the will of later date to probate the same as if no earlier will had been so admitted if it appears from the face of the will of later date, or if an interested person makes a demand as described in division (A) (1)(b) of this section and it appears from the testimony of the witnesses to the will given in accordance with that division, that the execution of the will complies with the law in force at the time of the execution of the will in the jurisdiction in which the testator was physically present when it was executed, with the law in force in this state at the time of the death of the testator, or with the law in force in the jurisdiction in which the testator was domiciled at the time of the testator's death.

(b) Upon the demand of a person interested in having a will of later date admitted to probate, the probate court shall cause at least two of the witnesses to the will of later date, and any other witnesses that the interested person desires to have appear, to come before the probate court and provide testimony. If the interested person so requests, the probate court shall issue a subpoena to compel the presence of any such witness before the probate court to provide testimony.

Witnesses before the probate court pursuant to this division shall be examined, and may be cross-examined, in open court, and their testimony shall be reduced to writing and then filed in the records of the probate court pertaining to the testator's estate.

(2) When an authenticated copy of a will has been admitted to record by a probate court, and an authenticated copy of a will of later date that was executed and proved as required by law, is presented to the same court for record, it shall be admitted to record in the same manner as if no authenticated copy of the will of earlier date had been so admitted.

(3) If a probate court admits a will of later date to probate, or an authenticated copy of a will of later date to record, its order shall operate as a revocation of the order admitting the will of earlier



date to probate, or shall operate as a revocation of the order admitting the authenticated copy of the will of earlier date to record. The probate court shall enter on the record of the earlier will a marginal note "later will admitted to probate ..." (giving the date admitted).

(B) When a will that has been declared valid pursuant to ~~division (A)(1) of section 2107.084~~ 5817.10 of the Revised Code has been admitted to probate by a probate court, and an authenticated copy of another will of later date that was executed and proved as required by law is presented to the same court for record, the will of later date shall be admitted the same as if no other will had been admitted and the proceedings shall continue as provided in this section.

Sec. 2107.33. (A) A will shall be revoked in the following manners:

(1) By the testator by tearing, canceling, obliterating, or destroying it with the intention of revoking it;

(2) By some person, at the request of the testator and in the testator's presence, by tearing, canceling, obliterating, or destroying it with the intention of revoking it;

(3) By some person tearing, canceling, obliterating, or destroying it pursuant to the testator's express written direction;

(4) By some other written will or codicil, executed as prescribed by this chapter;

(5) By some other writing that is signed, attested, and subscribed in the manner provided by this chapter.

~~(B) A will that has been declared valid and is in the possession of a probate judge also may be revoked according to division (C) of section 2107.084 of the Revised Code.~~

~~(C) If a testator removes a will that has been declared valid and is in the possession of a probate judge pursuant to section 2107.084 of the Revised Code from the possession of the judge, the declaration of validity that was rendered no longer has any effect.~~

~~(D) If after executing a will, a testator is divorced, obtains a dissolution of marriage, has the testator's marriage annulled, or, upon actual separation from the testator's spouse, enters into a separation agreement pursuant to which the parties intend to fully and finally settle their prospective property rights in the property of the other, whether by expected inheritance or otherwise, any disposition or appointment of property made by the will to the former spouse or to a trust with powers created by or available to the former spouse, any provision in the will conferring a general or special power of appointment on the former spouse, and any nomination in the will of the former spouse as executor, trustee, or guardian shall be revoked unless the will expressly provides otherwise.~~

~~(E) (C) Property prevented from passing to a former spouse or to a trust with powers created by or available to the former spouse because of revocation by this section shall pass as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse shall be interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they shall be deemed to be revived by the testator's remarriage with the former spouse or upon the termination of a separation agreement executed by them.~~

~~(F) (D) A bond, agreement, or covenant made by a testator, for a valuable consideration, to convey property previously devised or bequeathed in a will does not revoke the devise or bequest. The property passes by the devise or bequest, subject to the remedies on the bond, agreement, or covenant, for a specific performance or otherwise, against the devisees or legatees, that might be had by law against the heirs of the testator, or the testator's next of kin, if the property had descended to~~

them.

~~(G)~~~~(E)~~ A testator's revocation of a will shall be valid only if the testator, at the time of the revocation, has the same capacity as the law requires for the execution of a will.

~~(H)~~~~(F)~~ As used in this section:

(1) "Trust with powers created by or available to the former spouse" means a trust that is revocable by the former spouse, with respect to which the former spouse has a power of withdrawal, or with respect to which the former spouse may take a distribution that is not subject to an ascertainable standard but does not mean a trust in which those powers of the former spouse are revoked by section 5815.31 of the Revised Code or similar provisions in the law of another state.

(2) "Ascertainable standard" means a standard that is related to a trust beneficiary's health, maintenance, support, or education.

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

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

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

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

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

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

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

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

(b) An individual or class member who was deceased at the time the testator executed the testator's will or an individual or class member who was then living but who failed to survive the testator;

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

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

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

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

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

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

(2) Unless a contrary intent appears in the will, if a devisee fails to survive the testator and is

a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, either of the following applies:

(a) If the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. The surviving descendants take, per stirpes, the property to which the devisee would have been entitled had the devisee survived the testator.

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

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

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

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

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

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

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

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

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

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

(E) This section applies only to outright devises and appointments. Devises and appointments

in trust, including to a testamentary trust, are subject to section 5808.19 of the Revised Code.

(F) This section applies to wills of decedents who die on or after ~~the effective date of this section~~ March 22, 2012.

Sec. 2107.71. (A) A person interested in a will or codicil admitted to probate in the probate court that has not been declared valid by judgment of a ~~probate court pursuant to~~ division (A)(1) of section 2107.084-5817.10 of the Revised Code ~~or that has been declared valid by judgment of a probate court pursuant to section 2107.084 of the Revised Code but has been removed from the possession of the probate judge,~~ may contest its validity by filing a complaint in the probate court in the county in which the will or codicil was admitted to probate.

(B) Except as otherwise provided in this division, no person may contest the validity of any will or codicil as to facts decided if it was submitted to a probate court by the testator during the testator's lifetime and declared valid by judgment of ~~the probate a court and filed with the judge of the probate court pursuant to~~ division (A)(1) of section 2107.084-5817.10 of the Revised Code ~~and if the will was not removed from the possession of the probate judge.~~ A person may contest the validity of that will, ~~modification,~~ or codicil as to those facts if the person is one who should have been named a party defendant in the action in which the will, ~~modification,~~ or codicil was declared valid, pursuant to division (A) of section 2107.081 or 2107.084-5817.05 of the Revised Code, and if the person was not named a defendant and properly served in that action. Upon the filing of a complaint contesting the validity of a will or codicil that is authorized by this division, the court shall proceed with the action ~~in the same manner as if the will, modification, or codicil had not been previously declared valid under sections 2107.081 to 2107.085 of the Revised Code.~~

(C) No person may introduce, as evidence in an action authorized by this section contesting the validity of a will, the fact that the testator of the will did not file a complaint for a judgment declaring its validity under ~~section 2107.081-Chapter 5817.~~ of the Revised Code.

Sec. 2109.41. (A) Immediately after appointment and throughout the ~~administration of a trust~~ term of the appointment, but subject to section 2109.372 of the Revised Code and except as provided in division (C) of this section, every fiduciary, pending payment of current obligations of the fiduciary's trust or estate, distribution, or investment pursuant to law, shall deposit all funds received by the fiduciary in the fiduciary's name as such fiduciary in one or more depositories. Each depository shall be a bank, savings bank, savings and loan association, or credit union located in this state. A corporate fiduciary, authorized to receive deposits of fiduciaries, may be the ~~depository~~ depository of funds held by it as fiduciary. All deposits made pursuant to division (A) of this section shall be in such class of account as will be most advantageous to the trust or estate, and each depository shall pay interest at the highest rate customarily paid to its patrons on deposits in accounts of the same class.

(B) The placing of funds in such depositories under the joint control of the fiduciary and a surety on the bond of the fiduciary shall not increase the liability of the fiduciary.

(C) A fiduciary of a trust or estate may transfer funds received by the fiduciary in the fiduciary's name as such fiduciary to the fiduciary's attorney for deposit in an interest on lawyer's trust account established under division (A)(1)(b) of section 4705.09 of the Revised Code that is maintained by the attorney if ~~both of the following conditions are satisfied:~~

~~(1) The~~ the attorney, in consultation with the fiduciary, has determined that the funds are

nominal in amount ~~and or~~ will be held in the interest on lawyer's trust account for a short period of time.

~~(2) The probate court, upon petition by the fiduciary, has approved the deposit.~~

~~(D) Notwithstanding any contrary provision in this chapter, a probate court examining a trust or estate may only access the account information of an interest on lawyer's trust account created under this section for purposes of obtaining information related to that particular trust or estate and shall not access records of the interest on lawyer's trust account that pertain to assets of any other estate or trust held in the interest on lawyer's trust account.~~

~~Sec. 2111.182. If a minor is entitled to money or property whether by settlement or judgment for personal injury or damage to tangible or intangible property, inheritance or otherwise, the probate court may order that all or a portion of the amount received by the minor be deposited into a trust for the benefit of that beneficiary until the beneficiary reaches twenty-five years of age, and order the distribution of the amount in accordance with the provisions of the trust. Prior to the appointment as a trustee of a trust created pursuant to this section, the person to be appointed shall be approved by a parent or guardian of the minor beneficiary of the trust, unless otherwise ordered by the probate court.~~

~~Sec. 2111.52. (A) A probate court may accept funds or other program assistance from, or charge fees for services described in division (C) of this section rendered to, individuals, corporations, agencies, or organizations, including, but not limited to, a county board of alcohol, drug addiction, and mental health services or a county board of developmental disabilities, unless a county board of alcohol, drug addiction, and mental health services or a county board of developmental disabilities does not agree to the payment of those fees. Any funds or fees received by the probate court under this division shall be paid into the county treasury and credited to a fund to be known as the county probate court guardianship services fund.~~

~~(B) The probate courts of two or more counties may accept funds or other program assistance from, or charge fees for services described in division (C) of this section rendered to, individuals, corporations, agencies, or organizations, including, but not limited to, a county board of alcohol, drug addiction, and mental health services or a county board of developmental disabilities, unless a county board of alcohol, drug addiction, and mental health services or a county board of developmental disabilities does not agree to the payment of those fees. Any funds or fees received by the probate courts of two or more counties under this division shall be paid into the county treasury of one or more of the counties and credited to a fund to be known as the multicounty probate court guardianship services fund.~~

~~(C) The moneys in a county or multicounty probate court guardianship services fund shall be used for services to help ensure the treatment of any person who is under the care of a county board of alcohol, drug addiction, and mental health services or a county board of developmental disabilities, or any other guardianships. These services include, but are not limited to, involuntary commitment proceedings and the establishment and management of adult guardianships, including all associated expenses, for wards who are under the care of a county board of alcohol, drug addiction, and mental health services, a county board of developmental disabilities, or any other guardianships.~~

~~(D) If a judge of a probate court determines that some of the moneys in the county or~~

multicounty probate court guardianship services fund are needed for the efficient operation of the county or multicounty guardianship service board created under division (F) of this section, the moneys may be used for the acquisition of equipment, the hiring and training of staff, community services programs, volunteer guardianship training services, the employment of magistrates, and any other services necessary for the fulfillment of the duties of the county or multicounty guardianship service board.

(E) The moneys in the county or multicounty probate court guardianship services fund that may be used in part for the establishment and management of adult guardianships under division (C) of this section may be utilized to establish a county or multicounty guardianship service.

(F)(1) A county or multicounty guardianship service under division (E) of this section is established by creating a county or multicounty guardianship service board. The judge of the probate court shall appoint one member. The board of directors of a participating county board of developmental disabilities shall appoint one member. The board of directors of a participating county board of alcohol, drug addiction, and mental health services shall appoint one member. Additional members of the guardianship service board may be added if the member or members of a guardianship service board unanimously agree. If neither the county board of developmental disabilities nor the county board of alcohol, drug addiction, and mental health services chooses to participate in the guardianship service board, the probate court may appoint additional members to the guardianship service board. The term of appointment of each member is four years.

(2) The county or multicounty guardianship services board may appoint a director of the board. The board shall determine the compensation of the director based on the availability of funds contained in the county or multicounty probate court guardianship services fund.

(3) The county or multicounty guardianship services board may receive appointments from one or more county probate courts to serve as guardians of both the person and estate of wards. The director or any designee of a county or multicounty guardianship services board may act on behalf of the board in relation to all guardianship matters.

(4) The director of a county or multicounty guardianship services board may hire employees subject to available funds in the county or multicounty probate court guardianship services fund.

(5) The county or multicounty guardianship services board may charge a reasonable fee for services provided to wards. A probate judge shall approve any fees charged by the board under division (F)(5) of this section.

(6) The county or multicounty guardianship services board that is created under division (F) (1) of this section shall promulgate all rules and regulations necessary for the efficient operation of the board and the county or multicounty guardianship services.

Sec. 2113.032. Any person who is eligible to be appointed as a personal representative of an estate under the law of this state or named as executor in a will may file an application with the probate court in the county in which the decedent resided seeking the release of the decedent's medical records and medical billing records for use in evaluating a potential wrongful death, personal injury, or survivorship action on behalf of the decedent. The application shall include a decedent's estate form listing the decedent's known surviving spouse, children, next of kin, legatees, and devisees, if any. The application may be filed prior to the filing of any application for authority to administer the decedent's estate. Nothing in this section requires that an application to administer the

decedent's estate be filed if no estate is needed to be administered, unless otherwise required by law. The probate court shall send a copy of the application to those persons listed on the decedent's estate form described in this section unless otherwise directed by the court. Upon the filing of the application and the payment of a filing fee as determined by the court, and not earlier than ten days following the probate court's transmission of a copy of the application to those persons listed on the decedent's estate form, the probate court may order that the medical records and medical billing records be released without a hearing or with a hearing if needed. The court's order shall direct all medical providers that provided medical care or treatment to the decedent to release those medical records and medical billing records to the applicant for the limited purpose of deciding whether or not to file a wrongful death, personal injury, or survivorship action. The medical records and medical billing records are confidential and shall not be made available for public viewing unless otherwise provided for by law or subsequent court order. Upon obtaining the requested applicable records, and before the expiration of the applicable statute of limitations, the applicant shall file a report with the court certifying that all requested medical records and medical billing records have been received and shall indicate whether an administration of the decedent's estate will be filed.

Sec. 2129.05. Authenticated copies of wills of persons not domiciled in this state, executed and proved according to the laws of any state or territory of the United States, relative to property in this state, may be admitted to record in the probate court of a county where a part of that property is situated. The authenticated copies, so recorded, shall be as valid as wills made in this state.

When such a will, or authenticated copy, is admitted to record, a copy of the will or of the authenticated copy, with the copy of the order to record it annexed to that copy, certified by the probate judge under the seal of the probate court, may be filed and recorded in the office of the probate judge of any other county where a part of the property is situated, and it shall be as effectual as the authenticated copy of the will would be if approved and admitted to record by the court.

Sec. 2137.01. As used in this chapter:

(A) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

(B) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated as agent, attorney in fact, or otherwise.

(C) "Carries" means engages in the transmission of an electronic communication.

(D) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(E) "Content of an electronic communication" means information concerning the substance or meaning of the communication that meets all of the following conditions:

(1) It has been sent or received by a user.

(2) It is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public.

(3) It is not readily accessible to the public.

(F) "Court" means the probate court for all matters in which the court has exclusive

jurisdiction under section 2101.24 of the Revised Code. "Court" also includes the probate court or the general division of the court of common pleas for matters in which such courts have concurrent jurisdiction under section 2101.24 of the Revised Code.

(G) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(H) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

(I) "Digital asset" means an electronic record in which an individual has a right or interest. "Digital asset" does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

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

(K) "Electronic communication" has the same meaning as in 18 U.S.C. 2510(12), as amended.

(L) "Electronic-communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

(M) "Fiduciary" means an original, additional, or successor agent, guardian, personal representative, or trustee.

(N)(1) "Guardian" means any person, association, or corporation appointed by the probate court to have the care and management of the person, the estate, or the person and the estate of an incompetent or minor. When applicable, "guardian" includes, but is not limited to, a limited guardian, an interim guardian, a standby guardian, and an emergency guardian appointed pursuant to division (B) of section 2111.02 of the Revised Code. "Guardian" also includes both of the following:

(a) An agency under contract with the department of developmental disabilities for the provision of protective service under sections 5123.55 to 5123.59 of the Revised Code when appointed by the probate court to have the care and management of the person of an incompetent;

(b) A conservator appointed by the probate court in an order of conservatorship issued pursuant to section 2111.021 of the Revised Code.

(2) "Guardian" does not include a guardian under sections 5905.01 to 5905.19 of the Revised Code.

(O) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(P) "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(Q) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental agency or instrumentality, public corporation, or any other legal or commercial entity.

(R) "Personal representative" means an executor, administrator, special administrator, or other person acting under the authority of the probate court to perform substantially the same function under the law of this state. "Personal representative" also includes a commissioner in a release of assets from administration under section 2113.03 of the Revised Code and an applicant for



summary release from administration under section 2113.031 of the Revised Code.

(S) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal.

(T) "Principal" means an individual who grants authority to an agent in a power of attorney.

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

(V) "Remote-computing service" means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. 2510(14), as amended.

(W) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

(X) "Trustee" means a fiduciary with legal title to property pursuant to an agreement or declaration that creates a beneficial interest in another. "Trustee" includes an original, additional, and successor trustee and a cotrustee.

(Y) "User" means a person that has an account with a custodian.

(Z) "Ward" means any person for whom a guardian is acting or for whom the probate court is acting pursuant to section 2111.50 of the Revised Code. "Ward" includes a person for whom a conservator has been appointed by the probate court in an order of conservatorship issued pursuant to section 2111.021 of the Revised Code.

(AA) "Will" includes codicils to wills admitted to probate, lost, spoliated, or destroyed wills, and instruments admitted to probate under ~~section 2107.081~~ Chapter 5817. of the Revised Code. "Will" does not include inter vivos trusts or other instruments that have not been admitted to probate.

Sec. 2151.233. The juvenile court shall not exercise jurisdiction under division (A)(2), (A)(11), or (B)(4) of section 2151.23 of the Revised Code or section 2151.231 of the Revised Code to determine custody or support regarding a child if any of the following apply:

(A) The child's parents are married.

(B) The child's parents are not married and there is an existing order for custody or support regarding the child or the child's sibling over which the juvenile court does not have jurisdiction.

(C) The determination is ancillary to the parents' pending action for divorce, dissolution of marriage, annulment, or legal separation.

Sec. 2151.234. Section 2151.233 of the Revised Code shall not affect the authority of the juvenile court to issue a custody order under division (A)(1) of section 2151.23 of the Revised Code granting custody of the child to a relative or placing a child under a kinship care agreement.

Sec. 2151.235. (A) A juvenile court may transfer jurisdiction over an action or an order it has issued for child support or custody as follows:

(1) To the appropriate common pleas court with domestic relations jurisdiction, if the parents of the child subject to the action or order are married and not parties to a proceeding described in division (A)(3) of this section;

(2) To the appropriate common pleas court with domestic relations jurisdiction, if the parents of the child are not married and there is an existing order for custody or support regarding the child or the child's sibling over which the juvenile court does not have jurisdiction;

(3) To the common pleas court exercising jurisdiction over a pending divorce, dissolution of

marriage, legal separation, or annulment proceeding to which the parents of the child subject to the action or order are parties;

(4) To the common pleas court exercising jurisdiction over a protection order issued under section 3113.31 of the Revised Code if the child or parents of the child are subject to both a child support order and the protection order.

(B) Jurisdiction of the action or order described in division (A) of this section shall be transferred and the receiving court shall have exclusive jurisdiction over the action or order if the following requirements are met:

(1) The common pleas court with domestic relations jurisdiction, juvenile court, or an interested party makes a motion to transfer jurisdiction;

(2) The court receiving jurisdiction consents to the transfer;

(3) The juvenile court certifies all or part of the record in the action or related to the order to the court receiving jurisdiction.

(C) This section applies to all orders in effect, and all actions or proceedings pending or initiated, on or after the effective date of H.B. 595 of the 132nd general assembly.

Sec. 2151.236. If a child is subject to a support order issued by a common pleas court with domestic relations jurisdiction and if a juvenile court adjudicates the child to be delinquent, unruly, abused, neglected, or dependent and grants custody of the child to an individual or entity other than as set forth in the order issued by the common pleas court with domestic relations jurisdiction, the juvenile court shall notify the common pleas court with domestic relations jurisdiction and the child support enforcement agency serving the county of that court. The child support enforcement agency shall review the child support order pursuant to sections 3119.60 and 3119.63 to 3119.76 of the Revised Code.

Sec. 2323.30. In all actions in which the plaintiff is a nonresident of the county in which the action is brought, a partnership suing by its company name, an insolvent corporation, or any party required to furnish security under section 2323.31 of the Revised Code, the plaintiff shall deposit cash or furnish security for costs. The surety must be a resident of the county and approved by the clerk. The obligation of the surety shall be complete by indorsing the summons or signing ~~his~~ the surety's name on the petition as surety for costs. The surety shall be bound for the payment of the costs which are adjudged against the plaintiff in the court in which the action is brought, or in any other court to which it is carried, and for all the costs taxed against the plaintiff in such action, whether ~~he~~ the plaintiff obtains a judgment or not. When a plaintiff makes ~~affidavit of inability either to give security or a cash deposit to secure costs~~ an application to be qualified as an indigent litigant as set forth in section 2323.311 of the Revised Code, the clerk shall receive and file the ~~petition~~ civil action or proceeding. ~~Such affidavit shall be filed with it and treated as are similar papers~~ If the court approves the application, the clerk shall waive the cash deposit or the security under this section, and the court shall proceed on the action or proceeding. If the court denies the application, the clerk shall retain the filing of the civil action or proceeding, and the court shall issue an order granting the applicant whose application is denied thirty days to make the required cash deposit or security prior to any dismissal or other action on the filing.

Sec. 2323.31. The court of common pleas by rule may require an advance deposit for the filing of any civil action or proceeding or of any responsive action by the defendant. On the motion

~~of the defendant any party, and if satisfied that such deposit is insufficient, the court may require it to be increased from time to time, so as to secure all costs that may accrue in the cause, or may require personal security to be given; but. However, if a plaintiff party makes an affidavit of inability either to prepay or give security for costs application to be qualified as an indigent litigant as set forth in section 2323.311 of the Revised Code, the clerk of the court shall receive and file the petition civil action or proceeding or the responsive action by the defendant. Such affidavit shall be filed with the petition, and treated as are similar papers in such cases. If the court approves the application, the clerk shall waive the advance deposit or personal security under this section and the court shall proceed with the action or proceeding or the defendant's responsive action. If the court denies the application, the clerk shall retain the filing of the civil action or proceeding or the defendant's responsive action, and the court shall issue an order granting the applicant whose application is denied thirty days to make the required deposit or personal security prior to any dismissal or other action on the filing of the civil action or proceeding or the defendant's responsive action.~~

Sec. 2323.311. (A) For purposes of this section, "indigent litigant" means a litigant who is unable to make an advance deposit or security for fees or costs as set forth in a civil action or proceeding.

(B)(1) In order to qualify as an indigent litigant, the applicant shall file with the court in which a civil action or proceeding is filed an affidavit of indigency in a form approved by the supreme court, or, until that court approves such a form, a form that requests substantially the same financial information as the financial disclosure and affidavit of indigency form used by the public defender for the appointment of counsel in a criminal case.

(2) The applicant's attorney, or if the litigant is proceeding pro se, the applicant shall file the affidavit of indigency with the court in which the civil action or proceeding is filed.

(3) Upon the filing of a civil action or proceeding and the affidavit of indigency under division (B)(1) of this section, the clerk of the court shall accept the action or proceeding for filing.

(4) A judge or magistrate of the court shall review the affidavit of indigency as filed pursuant to division (B)(2) of this section and shall approve or deny the applicant's application to qualify as an indigent litigant. The judge or magistrate shall approve the application if the applicant's gross income does not exceed one hundred eighty-seven and five-tenths per cent of the federal poverty guidelines as determined by the United States department of health and human services for the state of Ohio and the applicant's monthly expenses are equal to or in excess of the applicant's liquid assets as specified in division (C)(2) of section 120-1-03 of the Administrative Code, as amended, or a substantially similar provision. If the application is approved, the clerk shall waive the advance deposit or security and the court shall proceed with the civil action or proceeding. If the application is denied, the clerk shall retain the filing of the action or proceeding, and the court shall issue an order granting the applicant whose application is denied thirty days to make the required advance deposit or security, prior to any dismissal or other action on the filing of the civil action or proceeding.

(5) Following the filing of the civil action or proceeding with the clerk, the judge or magistrate, at any time while the action or proceeding is pending and on the motion of an applicant, on the motion of the opposing party, or on the court's own motion, may conduct a hearing to inquire into the applicant's status as an indigent litigant. The judge or magistrate shall affirm the applicant's status as an indigent litigant if the applicant's gross income does not exceed one hundred eighty-

seven and five-tenths per cent of the federal poverty guidelines as determined by the United States department of health and human services for the state of Ohio and the applicant's monthly expenses are equal to or in excess of the applicant's liquid assets as specified in division (C)(2) of section 120-1-03 of the Administrative Code, as amended, or a substantially similar provision. If the court finds that the applicant qualifies as an indigent litigant, the court shall proceed with the action or proceeding. If the court finds that the applicant does not qualify as an indigent litigant or no longer qualifies as an indigent litigant if previously so qualified as provided in division (B)(4) of this section, the clerk shall retain the filing of the action or proceeding, and the court shall issue an order granting the applicant whose motion is denied thirty days to make a required deposit or security, prior to any dismissal or other action on the filing or pendency of the civil action or proceeding.

(6) Nothing in this section shall prevent a court from approving or affirming an application to qualify as an indigent litigant for an applicant whose gross income exceeds one hundred eighty-seven and five-tenths per cent of the federal poverty guidelines as determined by the United States department of health and human services for the state of Ohio, or whose liquid assets equal or exceed the applicant's monthly expenses as specified in division (C)(2) of section 120-1-03 of the Administrative Code, as amended, or a substantially similar provision.

(7) Any indigency finding by the court under this section shall excuse the indigent litigant from the obligation to prepay any subsequent fee or cost arising in the civil case or proceeding unless the court addresses the payment or nonpayment of that fee or cost specifically in a court order.

(C) If the indigent litigant as the prevailing party proceeds with an execution on the court's judgment as set forth in Chapter 2327., 2329., 2331., or 2333. of the Revised Code, in order to provide for the recovery of applicable costs, any payment on any execution of the judgment in favor of the indigent litigant shall be made through the clerk of the court. The clerk shall apply that payment to any outstanding costs prior to any disbursement of funds to the indigent litigant. The requirement described in this division may be waived upon entry of the court by the judge or magistrate. The remedy set forth in this division shall not be the exclusive remedy of the clerk of court for the payment of costs. The clerk shall have all remedies available under the law.

Sec. 2323.33. (A) If security for costs is not given in a case mentioned in sections 2323.30 to 2323.32, inclusive, of the Revised Code, at any time before the commencement of the trial, on motion of the defendant, and notice to the plaintiff, the court shall dismiss the action, unless in a reasonable time, which it may allow, security is given.

(B) This section does not apply if a party makes an application under section 2323.30 or 2323.31 of the Revised Code to qualify as an indigent litigant as set forth in section 2323.311 of the Revised Code.

Sec. 2701.09. In any county in which a daily law journal is printed, the judges of the courts of record, other than the court of appeals, shall jointly designate such daily law journal as the journal in which shall be published all calendars of the courts of record in such county, which calendars shall contain the numbers and titles of causes, and names of attorneys appearing ~~therein~~ in the causes, together with the motion dockets and such particulars and notices respecting causes, as may be specified by the judges, and each notice required to be published by any of ~~such~~ those judges.

In all cases, proceedings, administrations of estates, assignments, and matters pending in any of the courts of record of ~~such~~ the counties in which legal notices or advertisements are required to be

published, ~~such the~~ law journal shall, once a week and on the same day of the week, publish an abstract of each such legal advertisement, but the jurisdiction over, or irregularity of, a proceeding, trial, or judgment shall not be affected by anything ~~therein in the abstract of legal advertising.~~

For the publication of such calendars, motion dockets, and notices, the fees for which are not fixed by law, the publisher of the paper shall receive a sum to be fixed by the judges for each case brought, to be paid in advance by the party filing the petition, transcripts for appeal, or lien, unless the party is determined by the court to qualify as an indigent litigant as set forth in section 2323.311 of the Revised Code, to be taxed in the costs and collected as other costs. For the publication of abstracts of legal advertising ~~such the~~ publisher shall receive a sum to be fixed by the judges for each case, proceeding, or matter, in which such advertising is had, to be taxed and collected as a part of the costs ~~thereof of the case, proceeding, or matter.~~

Sec. 2721.03. Subject to division (B) of section 2721.02 of the Revised Code, any person interested under a deed, will, written contract, or other writing constituting a contract or any person whose rights, status, or other legal relations are affected by a constitutional provision, statute, rule as defined in section 119.01 of the Revised Code, municipal ordinance, township resolution, contract, or franchise may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

The testator of a will may have the validity of the will determined at any time during the testator's lifetime pursuant to ~~sections 2107.081 to 2107.085 Chapter 5817.~~ of the Revised Code. The settlor of a trust may have the validity of the trust determined at any time during the settlor's lifetime pursuant to Chapter 5817. of the Revised Code.

Sec. 2746.10. If with respect to the filing of any civil action or proceeding or of a responsive action by a defendant in any court of record, a party qualifies as an indigent litigant as set forth in section 2323.311 of the Revised Code, the clerk of the court shall receive and file the civil action or proceeding or the defendant's responsive action and the court shall waive any advance deposit or security for filing of the civil action or proceeding or the defendant's responsive action, any payment in advance for any taxable costs, including fees for publication or service of process by other means, and any payment in advance of any fee required in connection with prosecuting or advancing the civil action or proceeding or the defendant's responsive action.

Sec. 3105.011. (A) The court of common pleas including divisions of courts of domestic relations, has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters. This section is not a determination by the general assembly that such equitable powers and jurisdiction do not exist with respect to any such matter.

(B) For purposes of this section, "domestic relations matters" means both of the following:

(1) Any matter committed to the jurisdiction of the division of domestic relations of common pleas courts under section 2301.03 of the Revised Code;

(2) Actions and proceedings under Chapters 3105., 3109., 3111., 3113., 3115., 3119., 3121., 3123., 3125., and 3127. of the Revised Code.

Sec. 3109.06. Except as provided in division (K) of section 2301.03 of the Revised Code, any court, other than a juvenile court, that has jurisdiction in any case respecting the allocation of parental rights and responsibilities for the care of a child under eighteen years of age and the designation of

the child's place of residence and legal custodian or in any case respecting the support of a child under eighteen years of age, may, on its own motion or on motion of any interested party, ~~with the consent of the juvenile court,~~ certify the record in the case or so much of the record and such further information, in narrative form or otherwise, as the court deems necessary or the juvenile court requests, to the juvenile court for further proceedings; upon the certification, the juvenile court shall have exclusive jurisdiction.

In cases in which the court of common pleas finds the parents unsuitable to have the parental rights and responsibilities for the care of the child or children and unsuitable to provide the place of residence and to be the legal custodian of the child or children, consent of the juvenile court shall not be required to such certification. This section applies to actions pending on August 28, 1951.

In any case in which a court of common pleas, or other court having jurisdiction, has issued an order that allocates parental rights and responsibilities for the care of minor children and designates their place of residence and legal custodian of minor children, has made an order for support of minor children, or has done both, the jurisdiction of the court shall not abate upon the death of the person awarded custody but shall continue for all purposes during the minority of the children. The court, upon its own motion or the motion of either parent or of any interested person acting on behalf of the children, may proceed to make further disposition of the case in the best interests of the children and subject to sections 3109.42 to 3109.48 of the Revised Code. If the children are under eighteen years of age, it may certify them, pursuant to this section, to the juvenile court of any county for further proceedings. After certification to a juvenile court, the jurisdiction of the court of common pleas, or other court, shall cease, except as to any payments of spousal support due for the spouse and support payments due and unpaid for the children at the time of the certification.

Any disposition made pursuant to this section, whether by a juvenile court after a case is certified to it, or by any court upon the death of a person awarded custody of a child, shall be made in accordance with sections 3109.04 and 3109.42 to 3109.48 of the Revised Code. If an appeal is taken from a decision made pursuant to this section that allocates parental rights and responsibilities for the care of a minor child and designates the child's place of residence and legal custodian, the court of appeals shall give the case calendar priority and handle it expeditiously.

Sec. 3109.061. Nothing in sections 2151.233 to 2151.236 and 2301.03 of the Revised Code shall be construed to prevent a domestic relations court from certifying a case to a juvenile court under division (D)(2) of section 3109.04 of the Revised Code or section 3109.06 of the Revised Code. Consent of the juvenile court shall not be required for the certification.

Sec. 4705.09. (A)(1)(~~a~~) Any person admitted to the practice of law in this state by order of the supreme court in accordance with its prescribed and published rules, or any law firm or legal professional association, may establish and maintain an interest-bearing trust account, for purposes of depositing client funds held by the attorney, firm, or association that are nominal in amount or are to be held by the attorney, firm, or association for a short period of time, with any bank, savings bank, or savings and loan association that is authorized to do business in this state and is insured by the federal deposit insurance corporation or the successor to that corporation, or any credit union insured by the national credit union administration operating under the "Federal Credit Union Act," 84 Stat. 994 (1970), 12 ~~U.S.C.A.~~ U.S.C. 1751, or insured by a credit union share guaranty corporation

established under Chapter 1761. of the Revised Code. Each account established under this division shall be in the name of the attorney, firm, or association that established and is maintaining it and shall be identified as an IOLTA or an interest on lawyer's trust account. The name of the account may contain additional identifying features to distinguish it from other trust accounts established and maintained by the attorney, firm, or association.

~~(b) Any person admitted to the practice of law in this state by order of the supreme court in accordance with its prescribed and published rules, or any law firm or legal professional association, may establish and maintain an interest-bearing trust account, for purposes of depositing funds received by a client, in the client's name as fiduciary of a trust or estate, with any bank, savings bank, or savings and loan association that is authorized to do business in this state and is insured by the federal deposit insurance corporation or the successor to that corporation, or any credit union insured by the national credit union administration operating under the "Federal Credit Union Act," 84 Stat. 994 (1970), 12 U.S.C.A. 1751, or insured by a credit union share guaranty corporation established under Chapter 1761. of the Revised Code. Each account established under this division shall be in the name of the attorney, firm, or association that established and is maintaining it and shall be identified as an IOLTA or an interest on lawyer's trust account. The name of the account shall contain additional identifying features to distinguish it from other trust accounts established and maintained by the attorney, firm, or association and to distinguish it from an IOLTA established and maintained under division (A)(1)(a) of this section.~~

~~No funds received by a client, in the client's name as fiduciary of a trust or estate, shall be deposited into an IOLTA established under division (A)(1)(b) of this section unless the deposit has been approved by the probate court under section 2109.41 of the Revised Code.~~

~~Notwithstanding any contrary provision in Chapter 2109. of the Revised Code, a probate court examining a trust or estate may only access the account information of an IOLTA created under this section for purposes of obtaining information related to that particular trust or estate and shall not access records of the IOLTA that pertain to assets of any other estate or trust held in the IOLTA.~~

(2) Each attorney who receives funds belonging to a client shall do one of the following:

(a) Establish and maintain one or more interest-bearing trust accounts in accordance with division (A)(1) of this section or maintain one or more interest-bearing trust accounts previously established in accordance with that division, and deposit all client funds held that are nominal in amount or are to be held by the attorney for a short period of time in the account or accounts;

(b) If the attorney is affiliated with a law firm or legal professional association, comply with division (A)(2)(a) of this section or deposit all client funds held that are nominal in amount or are to be held by the attorney for a short period of time in one or more interest-bearing trust accounts established and maintained by the firm or association in accordance with division (A)(1) of this section.

(3) No funds belonging to any attorney, firm, or legal professional association shall be deposited in any interest-bearing trust account established under division (A)(1) or (2) of this section, except that funds sufficient to pay or enable a waiver of depository institution service charges on the account shall be deposited in the account and other funds belonging to the attorney, firm, or association may be deposited as authorized by the Code of Professional Responsibility adopted by the supreme court. The determinations of whether funds held are nominal or more than nominal in

amount and of whether funds are to be held for a short period or longer than a short period of time rests in the sound judgment of the particular attorney. No imputation of professional misconduct shall arise from the attorney's exercise of judgment in these matters.

(B) All interest earned on funds deposited in an interest-bearing trust account established under division (A)(1) or (2) of this section shall be transmitted to the treasurer of state for deposit in the legal aid fund established under section 120.52 of the Revised Code. No part of the interest earned on funds deposited in an interest-bearing trust account established under division (A)(1) or (2) of this section shall be paid to, or inure to the benefit of, the attorney, the attorney's law firm or legal professional association, the client or other person who owns or has a beneficial ownership of the funds deposited, or any other person other than in accordance with this section, section 4705.10, and sections 120.51 to 120.55 of the Revised Code.

(C) No liability arising out of any act or omission by any attorney, law firm, or legal professional association with respect to any interest-bearing trust account established under division (A)(1) or (2) of this section shall be imputed to the depository institution.

(D) The supreme court may adopt and enforce rules of professional conduct that pertain to the use, by attorneys, law firms, or legal professional associations, of interest-bearing trust accounts established under division (A)(1) or (2) of this section, and that pertain to the enforcement of division (A)(2) of this section. Any rules adopted by the supreme court under this authority shall conform to the provisions of this section, section 4705.10, and sections 120.51 to 120.55 of the Revised Code.

Sec. 5163.21. (A)(1) This section applies only to either of the following:

(a) Initial eligibility determinations for the medicaid program;

(b) An appeal from an initial eligibility determination pursuant to section 5160.31 of the Revised Code.

(2)(a) Except as provided in division (A)(2)(b) of this section, this section shall not be used by a court to determine the effect of a trust on an individual's initial eligibility for the medicaid program.

(b) The prohibition in division (A)(2)(a) of this section does not apply to an appeal described in division (A)(1)(b) of this section.

(B) As used in this section:

(1) "Trust" means any arrangement in which a grantor transfers real or personal property to a trust with the intention that it be held, managed, or administered by at least one trustee for the benefit of the grantor or beneficiaries. "Trust" includes any legal instrument or device similar to a trust.

(2) "Legal instrument or device similar to a trust" includes, but is not limited to, escrow accounts, investment accounts, partnerships, contracts, and other similar arrangements that are not called trusts under state law but are similar to a trust and to which all of the following apply:

(a) The property in the trust is held, managed, retained, or administered by a trustee.

(b) The trustee has an equitable, legal, or fiduciary duty to hold, manage, retain, or administer the property for the benefit of the beneficiary.

(c) The trustee holds identifiable property for the beneficiary.

(3) "Grantor" is a person who creates a trust, including all of the following:

(a) An individual;

(b) An individual's spouse;



(c) A person, including a court or administrative body, with legal authority to act in place of or on behalf of an individual or an individual's spouse;

(d) A person, including a court or administrative body, that acts at the direction or on request of an individual or the individual's spouse.

(4) "Beneficiary" is a person or persons, including a grantor, who benefits in some way from a trust.

(5) "Trustee" is a person who manages a trust's principal and income for the benefit of the beneficiaries.

(6) "Person" has the same meaning as in section 1.59 of the Revised Code and includes an individual, corporation, business trust, estate, trust, partnership, and association.

(7) "Applicant" is an individual who applies for medicaid or the individual's spouse.

(8) "Recipient" is an individual who receives medicaid or the individual's spouse.

(9) "Revocable trust" is a trust that can be revoked by the grantor or the beneficiary, including all of the following, even if the terms of the trust state that it is irrevocable:

(a) A trust that provides that the trust can be terminated only by a court;

(b) A trust that terminates on the happening of an event, but only if the event occurs at the direction or control of the grantor, beneficiary, or trustee.

(10) "Irrevocable trust" is a trust that cannot be revoked by the grantor or terminated by a court and that terminates only on the occurrence of an event outside of the control or direction of the beneficiary or grantor.

(11) "Payment" is any disbursement from the principal or income of the trust, including actual cash, noncash or property disbursements, or the right to use and occupy real property.

(12) "Payments to or for the benefit of the applicant or recipient" is a payment to any person resulting in a direct or indirect benefit to the applicant or recipient.

(13) "Testamentary trust" is a trust that is established by a will and does not take effect until after the death of the person who created the trust.

(C)(1) If an applicant or recipient is a beneficiary of a trust, the applicant or recipient shall submit a complete copy of the trust instrument to the county department of job and family services and the department of medicaid. A copy shall be considered complete if it contains all pages of the trust instrument and all schedules, attachments, and accounting statements referenced in or associated with the trust. The copy is confidential and is not subject to disclosure under section 149.43 of the Revised Code.

(2) On receipt of a copy of a trust instrument or otherwise determining that an applicant or recipient is a beneficiary of a trust, the county department of job and family services shall determine what type of trust it is and shall treat the trust in accordance with the appropriate provisions of this section and rules adopted under section 5163.02 of the Revised Code governing trusts. The county department of job and family services may determine that any of the following is the case regarding the trust or portion of the trust:

(a) It is a resource available to the applicant or recipient;

(b) It contains income available to the applicant or recipient;

(c) Divisions (C)(2)(a) and (b) of this section are both applicable;

(d) Neither division (C)(2)(a) nor (b) of this section is applicable.

(3) Except as provided in division (F) of this section, a trust or portion of a trust that is a resource available to the applicant or recipient or contains income available to the applicant or recipient shall be counted for purposes of determining medicaid eligibility.

(D)(1) A trust or legal instrument or device similar to a trust shall be considered a medicaid qualifying trust if all of the following apply:

(a) The trust was established on or prior to August 10, 1993.

(b) The trust was not established by a will.

(c) The trust was established by an applicant or recipient.

(d) The applicant or recipient is or may become the beneficiary of all or part of the trust.

(e) Payment from the trust is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the applicant or recipient.

(2) If a trust meets the requirement of division (D)(1) of this section, the amount of the trust that is considered by the county department of job and family services to be a resource available to the applicant or recipient shall be the maximum amount of payments permitted under the terms of the trust to be distributed to the applicant or recipient, assuming the full exercise of discretion by the trustee or trustees. The maximum amount shall include only amounts that are permitted to be distributed but are not distributed from either the income or principal of the trust.

(3) Amounts that are actually distributed from a medicaid qualifying trust to a beneficiary for any purpose shall be treated in accordance with rules adopted under section 5163.02 of the Revised Code governing income.

(4) Availability of a medicaid qualifying trust shall be considered without regard to any of the following:

(a) Whether or not the trust is irrevocable or was established for purposes other than to enable a grantor to qualify for medicaid;

(b) Whether or not the trustee actually exercises discretion.

(5) If any real or personal property is transferred to a medicaid qualifying trust that is not distributable to the applicant or recipient, the transfer shall be considered an improper disposition of assets and shall be subject to section 5163.30 of the Revised Code and rules to implement that section adopted under section 5163.02 of the Revised Code.

(6) The baseline date for the look-back period for disposition of assets involving a medicaid qualifying trust shall be the date on which the applicant or recipient is both institutionalized and first applies for medicaid.

(E)(1) A trust or legal instrument or device similar to a trust shall be considered a self-settled trust if all of the following apply:

(a) The trust was established on or after August 11, 1993.

(b) The trust was not established by a will.

(c) The trust was established by an applicant or recipient, spouse of an applicant or recipient, or a person, including a court or administrative body, with legal authority to act in place of or on behalf of an applicant, recipient, or spouse, or acting at the direction or on request of an applicant, recipient, or spouse.

(2) A trust that meets the requirements of division (E)(1) of this section and is a revocable trust shall be treated by the county department of job and family services as follows:

(a) The corpus of the trust shall be considered a resource available to the applicant or recipient.

(b) Payments from the trust to or for the benefit of the applicant or recipient shall be considered unearned income of the applicant or recipient.

(c) Any other payments from the trust shall be considered an improper disposition of assets and shall be subject to section 5163.30 of the Revised Code and rules to implement that section adopted under section 5163.02 of the Revised Code.

(3) A trust that meets the requirements of division (E)(1) of this section and is an irrevocable trust shall be treated by the county department of job and family services as follows:

(a) If there are any circumstances under which payment from the trust could be made to or for the benefit of the applicant or recipient, including a payment that can be made only in the future, the portion from which payments could be made shall be considered a resource available to the applicant or recipient. The county department of job and family services shall not take into account when payments can be made.

(b) Any payment that is actually made to or for the benefit of the applicant or recipient from either the corpus or income shall be considered unearned income.

(c) If a payment is made to someone other than to the applicant or recipient and the payment is not for the benefit of the applicant or recipient, the payment shall be considered an improper disposition of assets and shall be subject to section 5163.30 of the Revised Code and rules to implement that section adopted under section 5163.02 of the Revised Code.

(d) The date of the disposition shall be the later of the date of establishment of the trust or the date of the occurrence of the event.

(e) When determining the value of the disposed asset under this provision, the value of the trust shall be its value on the date payment to the applicant or recipient was foreclosed.

(f) Any income earned or other resources added subsequent to the foreclosure date shall be added to the total value of the trust.

(g) Any payments to or for the benefit of the applicant or recipient after the foreclosure date but prior to the application date shall be subtracted from the total value. Any other payments shall not be subtracted from the value.

(h) Any addition of assets after the foreclosure date shall be considered a separate disposition.

(4) If a trust is funded with assets of another person or persons in addition to assets of the applicant or recipient, the applicable provisions of this section and rules adopted under section 5163.02 of the Revised Code governing trusts shall apply only to the portion of the trust attributable to the applicant or recipient.

(5) The availability of a self-settled trust shall be considered without regard to any of the following:

(a) The purpose for which the trust is established;

(b) Whether the trustees have exercised or may exercise discretion under the trust;

(c) Any restrictions on when or whether distributions may be made from the trust;

(d) Any restrictions on the use of distributions from the trust.

(6) The baseline date for the look-back period for dispositions of assets involving a self-settled trust shall be the date on which the applicant or recipient is both institutionalized and first

applies for medicaid.

(F) The principal or income from any of the following shall not be a resource available to the applicant or recipient:

(1)(a) A special needs trust that meets all of the following requirements:

(i) The trust contains assets of an applicant or recipient under sixty-five years of age and may contain the assets of other individuals.

(ii) The applicant or recipient is disabled as defined in rules adopted under section 5163.02 of the Revised Code.

(iii) The trust is established for the benefit of the applicant or recipient by any of the following: the applicant or recipient, if established on or after December 13, 2016; a parent, grandparent, or legal guardian; of the applicant or recipient; or a court.

(iv) The trust requires that on the death of the applicant or recipient the state will receive all amounts remaining in the trust up to an amount equal to the total amount of medicaid payments made on behalf of the applicant or recipient.

(b) If a special needs trust meets the requirements of division (F)(1)(a) of this section and has been established for a disabled applicant or recipient under sixty-five years of age, the exemption for the trust granted pursuant to division (F) of this section shall continue after the disabled applicant or recipient becomes sixty-five years of age if the applicant or recipient continues to be disabled as defined in rules adopted under section 5163.02 of the Revised Code. Except for income earned by the trust, the grantor shall not add to or otherwise augment the trust after the applicant or recipient attains sixty-five years of age. An addition or augmentation of the trust by the applicant or recipient with the applicant's own assets after the applicant or recipient attains sixty-five years of age shall be treated as an improper disposition of assets.

(c) Cash distributions to the applicant or recipient shall be counted as unearned income. All other distributions from the trust shall be treated as provided in rules adopted under section 5163.02 of the Revised Code governing in-kind income.

(d) Transfers of assets to a special needs trust shall not be treated as an improper transfer of resources. An asset held prior to the transfer to the trust shall be considered as a resource available to the applicant or recipient, income available to the applicant or recipient, or both a resource and income available to the individual.

(2)(a) A qualifying income trust that meets all of the following requirements:

(i) The trust is composed only of pension, social security, and other income to the applicant or recipient, including accumulated interest in the trust.

(ii) The income is received by the individual and the right to receive the income is not assigned or transferred to the trust.

(iii) The trust requires that on the death of the applicant or recipient the state will receive all amounts remaining in the trust up to an amount equal to the total amount of medicaid payments made on behalf of the applicant or recipient.

(b) No resources shall be used to establish or augment the trust.

(c) If an applicant or recipient has irrevocably transferred or assigned the applicant's or recipient's right to receive income to the trust, the trust shall not be considered a qualifying income trust by the county department of job and family services.

(d) Income placed in a qualifying income trust shall not be counted in determining an applicant's or recipient's eligibility for medicaid. The recipient of the funds may place any income directly into a qualifying income trust without those funds adversely affecting the applicant's or recipient's eligibility for medicaid. Income generated by the trust that remains in the trust shall not be considered as income to the applicant or recipient.

(e) All income placed in a qualifying income trust shall be combined with any income available to the individual that is not placed in the trust to arrive at a base income figure to be used for spend down calculations.

(f) The base income figure shall be used for post-eligibility deductions, including personal needs allowance, monthly income allowance, family allowance, and medical expenses not subject to third party payment. Any income remaining shall be used toward payment of patient liability. Payments made from a qualifying income trust shall not be combined with the base income figure for post-eligibility calculations.

(g) The base income figure shall be used when determining the spend down budget for the applicant or recipient. Any income remaining after allowable deductions are permitted as provided under rules adopted under section 5163.02 of the Revised Code shall be considered the applicant's or recipient's spend down liability.

(3)(a) A pooled trust that meets all of the following requirements:

(i) The trust contains the assets of the applicant or recipient of any age who is disabled as defined in rules adopted under section 5163.02 of the Revised Code.

(ii) The trust is established and managed by a nonprofit organization.

(iii) A separate account is maintained for each beneficiary of the trust but, for purposes of investment and management of funds, the trust pools the funds in these accounts.

(iv) Accounts in the trust are established by the applicant or recipient, the applicant's or recipient's parent, grandparent, or legal guardian, or a court solely for the benefit of individuals who are disabled.

(v) The trust requires that, to the extent that any amounts remaining in the beneficiary's account on the death of the beneficiary are not retained by the trust, the trust pay to the state the amounts remaining in the trust up to an amount equal to the total amount of medicaid payments made on behalf of the beneficiary.

(b) Cash distributions to the applicant or recipient shall be counted as unearned income. All other distributions from the trust shall be treated as provided in rules adopted under section 5163.02 of the Revised Code governing in-kind income.

(c) Transfers of assets to a pooled trust shall not be treated as an improper disposition of assets. An asset held prior to the transfer to the trust shall be considered as a resource available to the applicant or recipient, income available to the applicant or recipient, or both a resource and income available to the applicant or recipient.

(4) A supplemental services trust that meets the requirements of section 5815.28 of the Revised Code and to which all of the following apply:

(a) A person may establish a supplemental services trust pursuant to section 5815.28 of the Revised Code only for another person who is eligible to receive services through one of the following agencies:

- (i) The department of developmental disabilities;
- (ii) A county board of developmental disabilities;
- (iii) The department of mental health and addiction services;
- (iv) A board of alcohol, drug addiction, and mental health services.

(b) A county department of job and family services shall not determine eligibility for another agency's program. An applicant or recipient shall do one of the following:

(i) Provide documentation from one of the agencies listed in division (F)(4)(a) of this section that establishes that the applicant or recipient was determined to be eligible for services from the agency at the time of the creation of the trust;

(ii) Provide an order from a court of competent jurisdiction that states that the applicant or recipient was eligible for services from one of the agencies listed in division (F)(4)(a) of this section at the time of the creation of the trust.

(c) At the time the trust is created, the trust principal does not exceed the maximum amount permitted. The maximum amount permitted in calendar year 2006 is two hundred twenty-two thousand dollars. Each year thereafter, the maximum amount permitted is the prior year's amount plus two thousand dollars.

(d) A county department of job and family services shall review the trust to determine whether it complies with the provisions of section 5815.28 of the Revised Code.

(e) Payments from supplemental services trusts shall be exempt as long as the payments are for supplemental services as defined in rules adopted under section 5163.02 of the Revised Code. All supplemental services shall be purchased by the trustee and shall not be purchased through direct cash payments to the beneficiary.

(f) If a trust is represented as a supplemental services trust and a county department of job and family services determines that the trust does not meet the requirements provided in division (F)(4) of this section and section 5815.28 of the Revised Code, the county department of job and family services shall not consider it an exempt trust.

(G)(1) A trust or legal instrument or device similar to a trust shall be considered a trust established by an individual for the benefit of the applicant or recipient if all of the following apply:

- (a) The trust is created by a person other than the applicant or recipient.
- (b) The trust names the applicant or recipient as a beneficiary.

(c) The trust is funded with assets or property in which the applicant or recipient has never held an ownership interest prior to the establishment of the trust.

(2) Any portion of a trust that meets the requirements of division (G)(1) of this section shall be a resource available to the applicant or recipient only if the trust permits the trustee to expend principal, corpus, or assets of the trust for the applicant's or recipient's medical care, care, comfort, maintenance, health, welfare, general well being, or any combination of these purposes.

(3) A trust that meets the requirements of division (G)(1) of this section shall be considered a resource available to the applicant or recipient even if the trust contains any of the following types of provisions:

(a) A provision that prohibits the trustee from making payments that would supplant or replace medicaid or other public assistance;

(b) A provision that prohibits the trustee from making payments that would impact or have an

effect on the applicant's or recipient's right, ability, or opportunity to receive medicaid or other public assistance;

(c) A provision that attempts to prevent the trust or its corpus or principal from being a resource available to the applicant or recipient.

(4) A trust that meets the requirements of division (G)(1) of this section shall not be counted as a resource available to the applicant or recipient if at least one of the following circumstances applies:

(a) If a trust contains a clear statement requiring the trustee to preserve a portion of the trust for another beneficiary or remainderman, that portion of the trust shall not be counted as a resource available to the applicant or recipient. Terms of a trust that grant discretion to preserve a portion of the trust shall not qualify as a clear statement requiring the trustee to preserve a portion of the trust.

(b) If a trust contains a clear statement requiring the trustee to use a portion of the trust for a purpose other than medical care, care, comfort, maintenance, welfare, or general well being of the applicant or recipient, that portion of the trust shall not be counted as a resource available to the applicant or recipient. Terms of a trust that grant discretion to limit the use of a portion of the trust shall not qualify as a clear statement requiring the trustee to use a portion of the trust for a particular purpose.

(c) If a trust contains a clear statement limiting the trustee to making fixed periodic payments, the trust shall not be counted as a resource available to the applicant or recipient and payments shall be treated in accordance with rules adopted under section 5163.02 of the Revised Code governing income. Terms of a trust that grant discretion to limit payments shall not qualify as a clear statement requiring the trustee to make fixed periodic payments.

(d) If a trust contains a clear statement that requires the trustee to terminate the trust if it is counted as a resource available to the applicant or recipient, the trust shall not be counted as such. Terms of a trust that grant discretion to terminate the trust do not qualify as a clear statement requiring the trustee to terminate the trust.

(e) If a person obtains a judgment from a court of competent jurisdiction that expressly prevents the trustee from using part or all of the trust for the medical care, care, comfort, maintenance, welfare, or general well being of the applicant or recipient, the trust or that portion of the trust subject to the court order shall not be counted as a resource available to the applicant or recipient.

(f) If a trust is specifically exempt from being counted as a resource available to the applicant or recipient by a provision of the Revised Code, rules, or federal law, the trust shall not be counted as such.

(g) If an applicant or recipient presents a final judgment from a court demonstrating that the applicant or recipient was unsuccessful in a civil action against the trustee to compel payments from the trust, the trust shall not be counted as a resource available to the applicant or recipient.

(h) If an applicant or recipient presents a final judgment from a court demonstrating that in a civil action against the trustee the applicant or recipient was only able to compel limited or periodic payments, the trust shall not be counted as a resource available to the applicant or recipient and payments shall be treated in accordance with rules adopted under section 5163.02 of the Revised Code governing income.

(i) If an applicant or recipient provides written documentation showing that the cost of a civil action brought to compel payments from the trust would be cost prohibitive, the trust shall not be counted as a resource available to the applicant or recipient.

(5) Any actual payments to the applicant or recipient from a trust that meet the requirements of division (G)(1) of this section, including trusts that are not counted as a resource available to the applicant or recipient, shall be treated as provided in rules adopted under section 5163.02 of the Revised Code governing income. Payments to any person other than the applicant or recipient shall not be considered income to the applicant or recipient. Payments from the trust to a person other than the applicant or recipient shall not be considered an improper disposition of assets.

Sec. 5802.03. ~~The (A) Except as otherwise provided in division (B) of this section, the probate division of the court of common pleas has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the court of common pleas to issue writs and orders and to hear and determine any action that involves an inter vivos trust.~~

(B) The probate division of the court of common pleas has exclusive jurisdiction to render declaratory judgments under Chapter 5817. of the Revised Code. However, the probate division of the court of common pleas may transfer a declaratory judgment proceeding under that chapter to the general division of the court of common pleas pursuant to division (A) of section 5817.04 of the Revised Code.

Sec. 5802.05. (A) A provision in the terms of a trust, excluding a testamentary trust, that requires the arbitration of disputes, other than disputes of the validity of all or a part of a trust instrument, between or among the beneficiaries and a fiduciary under the trust, or a combination of those persons or entities, is enforceable.

(B) Unless otherwise specified in the terms of the trust, a trust provision requiring arbitration as described in division (A) of this section shall be presumed to require binding arbitration under Chapter 2711. of the Revised Code.

Sec. 5806.04. (A) ~~Any~~ Subject to division (E) of this section, any of the following actions pertaining to a revocable trust that is made irrevocable by the death of the settlor of the trust shall be commenced by the earlier of the date that is two years after the date of the death of the settlor of the trust or that is six months from the date on which the trustee sends the person bringing the action a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed under this division for commencing an action:

- (1) An action to contest the validity of the trust;
- (2) An action to contest the validity of any amendment to the trust that was made during the lifetime of the settlor of the trust;
- (3) An action to contest the revocation of the trust during the lifetime of the settlor of the trust;
- (4) An action to contest the validity of any transfer made to the trust during the lifetime of the settlor of the trust.

(B) Upon the death of the settlor of a revocable trust that was made irrevocable by the death of the settlor, the trustee, without liability, may proceed to distribute the trust property in accordance with the terms of the trust unless either of the following applies:

- (1) The trustee has actual knowledge of a pending action to contest the validity of the trust,



any amendment to the trust, the revocation of the trust, or any transfer made to the trust during the lifetime of the settlor of the trust.

(2) The trustee receives written notification from a potential contestant of a potential action to contest the validity of the trust, any amendment to the trust, the revocation of the trust, or any transfer made to the trust during the lifetime of the settlor of the trust, and the action is actually filed within ninety days after the written notification was given to the trustee.

(C) If a distribution of trust property is made pursuant to division (B) of this section, a beneficiary of the trust shall return any distribution to the extent that it exceeds the distribution to which the beneficiary is entitled if the trust, an amendment to the trust, or a transfer made to the trust later is determined to be invalid.

(D) This section applies only to revocable trusts that are made irrevocable by the death of the settlor of the trust if the grantor dies on or after July 23, 2002.

(E) Except as otherwise provided in this division, no person may contest the validity of any trust as to facts decided if the trust was submitted to a probate court by the settlor during the settlor's lifetime and declared valid by the judgment of a court pursuant to division (B)(1) of section 5817.10 of the Revised Code. A person may contest the validity of that trust as to those facts if the person is one who should have been named a party defendant in the action in which the trust was declared valid, pursuant to division (A) of section 5817.06 of the Revised Code, and if the person was not named a defendant and properly served in that action.

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

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

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

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

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

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

(6) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or a transfer to an existing trust, or by an exercise of a power of appointment to an existing trust, that directs the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust.

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

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

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

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

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

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

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

(B)(1)(a) As used in "surviving descendants" in divisions (B)(2)(b)(i) and (ii) of this section, "descendants" means the descendants of a deceased beneficiary or class member who would take under a class gift created in the trust.

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

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

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

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

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

(ii) If the future interest is in the form of a class gift, other than a future interest to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import that includes more than one generation, a substitute gift is created in the surviving descendants of the deceased beneficiary or beneficiaries. The property to which the beneficiaries would have been entitled had all of them survived the distribution date by at least one hundred twenty hours passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date by at least one hundred twenty hours. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take, per stirpes, the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date by at least one hundred twenty hours. For purposes of division (B)(2)(b)(ii) of this section, "deceased beneficiary" means a class

member who failed to survive the distribution date by at least one hundred twenty hours and left one or more surviving descendants.

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

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

(2) Subject to division (C)(1) of this section, attaching words of survivorship to a future interest under the terms of a trust, such as "for my spouse for life, then to my children who survive my spouse" or "for my spouse for life, then to my then-living children" is, in the absence of other language in the trust instrument or other evidence to the contrary, a sufficient indication of an intent to negate the application of division (B)(2)(b) of this section. Words of survivorship under division (C)(2) of this section include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed as condition-precedent, condition-subsequent, or in any other form.

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

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

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

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

(3) If no taker is produced under divisions (D)(1) and (2) of this section, the transferor is deceased, and the trust was created in a nonresiduary gift under the terms of a revocable trust of the transferor, the property passes under the residuary clause in the transferor's revocable trust instrument. For purposes of division (D)(3) of this section, the residuary clause in the transferor's revocable trust instrument is treated as creating a future interest under the terms of a trust.

(4) If no taker is produced under divisions (D)(1), (2), and (3) of this section, the property passes to those persons who would succeed to the transferor's intestate estate and in the shares as provided in the intestate succession law of the transferor's domicile if the transferor died on the distribution date. Notwithstanding division (A)(10) of this section, for purposes of division (D)(4) of

this section, if the future interest was created by the exercise of a power of appointment, "transferor" means the donor if the power is a nongeneral power, or the donee if the power is a general power.

(E) This section applies to all trusts that become irrevocable on or after ~~the effective date of this section March 22, 2012~~. This section does not apply to any trust that was irrevocable before ~~the effective date of this section March 22, 2012~~, even if property was added to the trust on or after ~~that effective date March 22, 2012~~.

Sec. 5815.16. (A) Absent an express agreement to the contrary, an attorney who performs legal services for a fiduciary, by reason of the attorney performing those legal services for the fiduciary, has no duty or obligation in contract, tort, or otherwise to any third party to whom the fiduciary owes fiduciary obligations.

(B) Any communication between an attorney and a client who is acting as a fiduciary is privileged and protected from disclosure to third parties to whom the fiduciary owes fiduciary duties to the same extent as if the client was not acting as a fiduciary.

(C) As used in this section, "fiduciary" means a trustee under an express trust or an executor or administrator of a decedent's estate.

Sec. 5817.01. As used in this chapter:

(A)(1) "Beneficiary under a trust" means either of the following:

(a) Any person that has a present or future beneficial interest in a trust, whether vested or contingent;

(b) Any person that, in a capacity other than that of trustee, holds a power of appointment over trust property, but does not include the class of permitted appointees among whom the power holder may appoint.

(2) "Beneficiary under a trust" includes a charitable organization that is expressly designated in the terms of the trust to receive distributions, but does not include any charitable organization that is not expressly designated in the terms of the trust to receive distributions, but to whom the trustee may in its discretion make distributions.

(B)(1) "Beneficiary under a will" means either of the following:

(a) Any person designated in a will to receive a testamentary disposition of real or personal property;

(b) Any person that, in a capacity other than that of executor, holds a power of appointment over estate assets, but does not include the class of permitted appointees among whom the power holder may appoint.

(2) "Beneficiary under a will" includes a charitable organization that is expressly designated in the terms of the will to receive testamentary distributions, but does not include any charitable organization that is not expressly designated in the terms of the will to receive distributions, but to whom the executor may in its discretion make distributions.

(C) "Court" means the probate court of the county in which the complaint under section 5817.02 or 5817.03 of the Revised Code is filed or the general division of the court of common pleas to which the probate court transfers the proceeding under division (A) of section 5817.04 of the Revised Code.

(D) "Related trust" means a trust for which both of the following apply:

(1) The testator is the settlor of the trust.

(2) The trust is named as a beneficiary in the will in accordance with section 2107.63 of the Revised Code.

(E) "Related will" means a will for which both of the following apply:

(1) The testator is the settlor of a trust.

(2) The will names the trust as a beneficiary in accordance with section 2107.63 of the Revised Code.

(F) "Trust" means an inter vivos revocable or irrevocable trust instrument to which, at the time the complaint for declaration of validity is filed under section 5817.03 of the Revised Code, either of the following applies:

(1) The settlor resides in, or is domiciled in, this state.

(2) The trust's principal place of administration is in this state.

Sec. 5817.02. (A) A testator may file a complaint with the probate court to determine before the testator's death that the testator's will is a valid will subject only to subsequent revocation or modification of the will. The right to file a complaint for a determination of the validity of a testator's will under this chapter, or to voluntarily dismiss a complaint once filed, is personal to the testator and may not be exercised by the testator's guardian or an agent under the testator's power of attorney.

(B) A testator who desires to obtain a validity determination as to the testator's will shall file a complaint to determine the validity of both the will and any related trust.

(C) The failure of a testator to file a complaint for a judgment declaring the validity of a will shall not be construed as evidence or an admission that the will is not valid.

(D) A complaint for a determination of the validity of a testator's will shall be accompanied by an express written waiver of the testator's physician-patient privilege provided in division (B) of section 2317.02 of the Revised Code.

Sec. 5817.03. (A) A settlor may file a complaint with the probate court to determine before the settlor's death that the settlor's trust is valid and enforceable under its terms, subject only to a subsequent revocation or modification of the trust. The right to file a complaint for a determination of the validity of a settlor's trust under this chapter, or to voluntarily dismiss a complaint once filed, is personal to the settlor and may not be exercised by the settlor's guardian or an agent under the settlor's power of attorney.

(B) A settlor who desires to obtain a validity determination as to the settlor's trust shall file a complaint to determine the validity of both the trust and the related will.

(C) The failure of a settlor to file a complaint for a judgment declaring the validity of a trust shall not be construed as evidence or an admission that the trust is not valid.

(D) A complaint for a determination of the validity of a settlor's trust shall be accompanied by an express written waiver of the settlor's physician-patient privilege provided in division (B) of section 2317.02 of the Revised Code.

Sec. 5817.04. (A) A complaint to determine the validity of a will or a trust shall be filed with the probate court. The probate judge, upon the motion of a party or the judge's own motion, may transfer the proceeding to the general division of the court of common pleas.

(B) The venue for a complaint under section 5817.02 of the Revised Code is either of the following:

(1) The probate court of the county in this state where the testator is domiciled;

(2) If the testator is not domiciled in this state, the probate court of any county in this state where any real property or personal property of the testator is located or, if there is no such property, the probate court of any county in this state.

(C) The venue for a complaint under section 5817.03 of the Revised Code is either of the following:

(1) The probate court of the county in this state where the settlor resides or is domiciled;

(2) If the settlor does not reside or is not domiciled in this state, the probate court of the county in this state in which the trust's principal place of administration is located.

Sec. 5817.05. (A) A complaint under section 5817.02 of the Revised Code shall name as party defendants all of the following, as applicable:

(1) The testator's spouse;

(2) The testator's children;

(3) The testator's heirs who would take property pursuant to section 2105.06 of the Revised Code had the testator died intestate at the time the complaint is filed;

(4) The testator's beneficiaries under the will;

(5) Any beneficiary under the testator's most recent prior will.

(B) A complaint under section 5817.02 of the Revised Code may name as a party defendant any other person that the testator believes may have a pecuniary interest in the determination of the validity of the testator's will.

(C) A complaint under section 5817.02 of the Revised Code may contain all or any of the following:

(1) A statement that a copy of the will has been filed with the court;

(2) A statement that the will is in writing;

(3) A statement that the will was signed by the testator, or was signed in the testator's name by another person in the testator's conscious presence and at the testator's express direction;

(4) A statement that the will was signed in the conscious presence of the testator by two or more competent individuals, each of whom either witnessed the testator sign the will, or heard the testator acknowledge signing the will;

(5) A statement that the will was executed with the testator's testamentary intent;

(6) A statement that the testator had testamentary capacity;

(7) A statement that the testator executed the will free from undue influence, not under restraint or duress, and in the exercise of the testator's free will;

(8) A statement that the execution of the will was not the result of fraud or mistake;

(9) The names and addresses of the testator and all of the defendants and, if any of the defendants are minors, their ages;

(10) A statement that the will has not been revoked or modified;

(11) A statement that the testator is familiar with the contents of the will.

Sec. 5817.06. (A) A complaint under section 5817.03 of the Revised Code shall name as party defendants the following, as applicable:

(1) The settlor's spouse;

(2) The settlor's children;

(3) The settlor's heirs who would take property pursuant to section 2105.06 of the Revised

Code had the settlor died intestate at the time the complaint is filed;

(4) The trustee or trustees under the trust;

(5) The beneficiaries under the trust;

(6) If the trust amends, amends and restates, or replaces a prior trust, any beneficiary under the settlor's most recent prior trust.

(B) A complaint under section 5817.03 of the Revised Code may name as a party defendant any other person that the settlor believes may have a pecuniary interest in the determination of the validity of the settlor's trust.

(C) A complaint under section 5817.03 of the Revised Code may contain all or any of the following:

(1) A statement that a copy of the trust has been filed with the court;

(2) A statement that the trust is in writing and was signed by the settlor;

(3) A statement that the trust was executed with the intent to create a trust;

(4) A statement that the settlor had the legal capacity to enter into and establish the trust;

(5) A statement that the trust has a definite beneficiary or is one of the following:

(a) A charitable trust;

(b) A trust for the care of an animal as provided in section 5804.08 of the Revised Code;

(c) A trust for a noncharitable purpose as provided in section 5804.09 of the Revised Code.

(6) A statement that the trustee of the trust has duties to perform;

(7) A statement that the same person is not the sole trustee and sole beneficiary of the trust;

(8) A statement that the settlor executed the trust free from undue influence, not under restraint or duress, and in the exercise of the settlor's free will;

(9) A statement that execution of the trust was not the result of fraud or mistake;

(10) The names and addresses of the settlor and all of the defendants and, if any of the defendants are minors, their ages;

(11) A statement that the trust has not been revoked or modified;

(12) A statement that the settlor is familiar with the contents of the trust.

Sec. 5817.07. (A) Service of process, with a copy of the complaint and the will, and a copy of the related trust, if applicable, shall be made on every party defendant named in the complaint filed under section 5817.02 of the Revised Code, as provided in the applicable Rules of Civil Procedure.

(B) Service of process, with a copy of the complaint and the trust, and a copy of the related will, if applicable, shall be made on every party defendant named in the complaint filed under section 5817.03 of the Revised Code, as provided in the applicable Rules of Civil Procedure.

Sec. 5817.08. (A) After a complaint is filed under section 5817.02 or 5817.03 of the Revised Code, the court shall fix a time and place for a hearing.

(B) Notice of the hearing shall be given to the testator or settlor, as applicable, and to all party defendants, as provided in the applicable Rules of Civil Procedure.

(C) The hearing shall be adversarial in nature and shall be conducted pursuant to sections 2101.31 and 2721.10 of the Revised Code, except as otherwise provided in this chapter.

Sec. 5817.09. (A) The testator or settlor has the burden of establishing prima facie proof of the execution of the will or trust, as applicable. A person who opposes the complaint has the burden of establishing one or more of the following:

- (1) The lack of testamentary intent or the intent to create a trust, as the case may be;
- (2) The lack of the testator's testamentary capacity, or the settlor's legal capacity to enter into and establish the trust;
- (3) Undue influence, restraint, or duress on the testator or settlor;
- (4) Fraud or mistake in the execution of the will or trust;
- (5) Revocation of the will or trust.
- (B) A party to the proceeding has the ultimate burden of persuasion as to the matters for which the party has the initial burden of proof.
- Sec. 5817.10. (A)(1) The court shall declare the will valid if it finds all of the following:
- (a) The will was properly executed pursuant to section 2107.03 of the Revised Code or under any prior law of this state that was in effect at the time of execution.
- (b) The testator had the requisite testamentary capacity, was free from undue influence, and was not under restraint or duress.
- (c) The execution of the will was not the result of fraud or mistake.
- (2) After the testator's death, unless the will is modified or revoked after the court's declaration under division (A)(1) of this section, the will has full legal effect as the instrument of the disposition of the testator's estate and shall be admitted to probate upon request.
- (B)(1) The court shall declare the trust valid if it finds all of the following:
- (a) The trust meets the requirements of section 5804.02 of the Revised Code.
- (b) The settlor had the legal capacity to enter into and establish the trust, was free from undue influence, and was not under restraint or duress.
- (c) The execution of the trust was not the result of fraud or mistake.
- (2) Unless the trust is modified or revoked after the court's declaration, the trust has full legal effect.
- (C) The court may, if it finds the will or trust to be valid, attach a copy of the valid document to the court's judgment entry, but failure to do so shall not affect the determination of validity of the will or trust.
- Sec. 5817.11. (A) Unless the will or trust is modified or revoked, and except as otherwise provided in this section, no person may contest the validity of a will or trust that is declared valid in a proceeding pursuant to this chapter.
- (B) The failure to name a necessary defendant under division (A) of section 5817.05 of the Revised Code is not jurisdictional. A declaration of a will's validity under this chapter shall be binding upon all defendants who were named or represented, and properly served pursuant to division (A) of section 5817.07 of the Revised Code, notwithstanding the failure to name a necessary defendant. However, if a person is one who should have been named a party defendant in the action in which the will was declared valid and if the person was not named a defendant and properly served in that action, that person, after the testator's death, may contest the validity of a will declared valid.
- (C) The failure to name a necessary defendant under division (A) of section 5817.06 of the Revised Code is not jurisdictional. A declaration of a trust's validity under this chapter shall be binding upon all defendants who were named or represented, and properly served pursuant to division (B) of section 5817.07 of the Revised Code, notwithstanding the failure to name a necessary



defendant. However, if a person is one who should have been named a party defendant in the action in which the trust was declared valid and if the person was not named a defendant and properly served in that action, that person may contest the validity of a trust declared valid.

(D) In determining whether a person was a party defendant and properly served in an action to declare a will or trust valid under this chapter, the representation rules of Chapter 5803. of the Revised Code shall be applied, and a person represented in the action under those rules is bound by the declaration of validity even if, by the time of the testator's death, or the challenge to the trust, the representing person has died or would no longer be able to represent the person to be represented in the proceeding under this chapter.

Sec. 5817.12. (A) After a declaration of a will's validity under division (A)(1) of section 5817.10 of the Revised Code, the will may be modified by a later will or codicil executed according to the laws of this state or another state, and the will may be revoked under section 2107.33 of the Revised Code or other applicable law.

(B) The revocation by a later will, or other document under section 2107.33 of the Revised Code, of a will that has been declared valid under division (A)(1) of section 5817.10 of the Revised Code does not affect the will or the prior declaration of its validity if the later will or other document is found by a court of competent jurisdiction to be invalid due to the testator's lack of testamentary capacity, or undue influence, restraint, or duress on the testator, or otherwise.

(C) The amendment by a later codicil of a will that has been declared valid under division (A) (1) of section 5817.10 of the Revised Code does not affect the will or the prior declaration of its validity except as provided by the codicil. However, the codicil is not considered validated under this chapter unless its validity is also declared as provided in this chapter.

Sec. 5817.13. (A) After a declaration of a trust's validity under division (B)(1) of section 5817.10 of the Revised Code, the trust may be modified, terminated, revoked, or reformed under sections 5804.10 to 5804.16 of the Revised Code, or other applicable law.

(B) The modification, termination, revocation, or reformation by a new trust or other document of a trust that has been declared valid under division (B)(1) of section 5817.10 of the Revised Code does not affect the trust or the prior declaration of its validity if the later trust or other document is found by a court of competent jurisdiction to be invalid due to the settlor's lack of capacity, or undue influence, restraint, or duress on the settlor, or otherwise.

(C) An amendment of a trust that has been declared valid under division (B)(1) of section 5817.10 of the Revised Code does not affect the trust or the prior declaration of its validity except as provided by the amendment. However, the amendment is not considered validated under this chapter unless its validity is also declared as provided in this chapter.

Sec. 5817.14. (A) The finding of facts by a court in a proceeding brought under this chapter is not admissible as evidence in any proceeding other than a proceeding brought to determine the validity of a will or trust.

(B) The determination or judgment rendered in a proceeding under this chapter is not binding upon the parties to that proceeding in any action that is not brought to determine the validity of a will or trust.

(C) The failure of a testator to file a complaint for a judgment declaring the validity of a will that the testator has executed is not admissible as evidence in any proceeding to determine the

validity of that will or any other will executed by the testator.

(D) The failure of a settlor to file a complaint for a judgment declaring the validity of a trust that the settlor has executed is not admissible as evidence in any proceeding to determine the validity of that trust or any other trust executed by the settlor.

SECTION 2. That existing sections 313.14, 1901.26, 1907.24, 2101.24, 2105.19, 2107.01, 2107.05, 2107.07, 2107.08, 2107.09, 2107.10, 2107.11, 2107.12, 2107.16, 2107.18, 2107.20, 2107.22, 2107.33, 2107.52, 2107.71, 2109.41, 2129.05, 2137.01, 2323.30, 2323.31, 2323.33, 2701.09, 2721.03, 3105.011, 3109.06, 4705.09, 5163.21, 5802.03, 5806.04, 5808.19, and 5815.16 and sections 2107.081, 2107.082, 2107.083, 2107.084, and 2107.085 of the Revised Code are hereby repealed.

SECTION 3. This act's amendment of section 2107.05 of the Revised Code is intended to abrogate the holdings of the Ohio Supreme Court in *Hageman v. Cleveland Trust Company*, 45 Ohio St.2d 178 (1976) and the Ohio Second District Court of Appeals in *Gehrke v. Senkiw*, 2016 Ohio 2657 (2016).

SECTION 4. Section 2101.24 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. S.B. 23 of the 130th General Assembly and Sub. H.B. 158 of the 131st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

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

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*Director, Legislative Service Commission.*

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

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_