

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 464

Representatives Cupp, Rogers

**Cosponsors: Representatives Lipps, Seitz, Hambley, Grendell, Miranda, Roemer,
Ingram, Miller, J.**

A BILL

To amend sections 2106.13, 2111.50, 2701.10, 1
5804.11, and 5805.06 of the Revised Code to 2
expand a guardian's authority to create estate 3
plans for their wards, to clarify a surviving 4
spouse's allowance for support upon the spouse's 5
selection of an automobile, to make changes in 6
the Ohio Trust Code, and to make changes in the 7
law pertaining to the referral of actions to a 8
retired judge. 9

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

Section 1. That sections 2106.13, 2111.50, 2701.10, 10
5804.11, and 5805.06 of the Revised Code be amended to read as 11
follows: 12

Sec. 2106.13. (A) If a person dies leaving a surviving 13
spouse and no minor children, leaving a surviving spouse and 14
minor children, or leaving minor children and no surviving 15
spouse, the surviving spouse, minor children, or both shall be 16
entitled to receive, subject to division (B) of this section, in 17
money or property the sum of forty thousand dollars as an 18

allowance for support. If the surviving spouse selected ~~one or~~ 19
~~more automobiles~~ more than one automobile under section 2106.18 20
of the Revised Code, the allowance for support prescribed by 21
this section shall be reduced by the value of the automobile 22
having the lowest value ~~if more than one automobile is of the~~ 23
automobiles so selected. The money or property set off as an 24
allowance for support shall be considered estate assets. 25

(B) The probate court shall order the distribution of the 26
allowance for support described in division (A) of this section 27
as follows: 28

(1) If the person died leaving a surviving spouse and no 29
minor children, one hundred per cent to the surviving spouse; 30

(2) If the person died leaving a surviving spouse and 31
minor children, and if all of the minor children are the 32
children of the surviving spouse, one hundred per cent to the 33
surviving spouse; 34

(3) If the person died leaving a surviving spouse and 35
minor children, and if not all of the minor children are 36
children of the surviving spouse, in equitable shares, as fixed 37
by the probate court in accordance with this division, to the 38
surviving spouse and the minor children who are not the children 39
of the surviving spouse. In determining equitable shares under 40
this division, the probate court shall do all of the following: 41

(a) Consider the respective needs of the surviving spouse, 42
the minor children who are children of the surviving spouse, and 43
the minor children who are not children of the surviving spouse; 44

(b) Allocate to the surviving spouse, the share that is 45
equitable in light of the needs of the surviving spouse and the 46
minor children who are children of the surviving spouse; 47

(c) Allocate to the minor children who are not children of 48
the surviving spouse, the share that is equitable in light of 49
the needs of those minor children. 50

(4) If the person died leaving minor children and no 51
surviving spouse, in equitable shares, as fixed by the probate 52
court in accordance with this division, to the minor children. 53
In determining equitable shares under this division, the probate 54
court shall consider the respective needs of the minor children 55
and allocate to each minor child the share that is equitable in 56
light of the child's needs. 57

(C) If the surviving spouse selected ~~one or more~~ 58
~~automobiles more than one automobile~~ under section 2106.18 of 59
the Revised Code, the probate court, in considering the 60
respective needs of the surviving spouse and the minor children 61
when allocating an allowance for support under division (B) (3) 62
of this section, shall consider the benefit derived by the 63
surviving spouse from the transfer of the automobile having the 64
lowest value ~~if more than one automobile is~~ of the automobiles 65
so selected. 66

(D) If, pursuant to this section, the probate court must 67
allocate the allowance for support, the administrator or 68
executor, within five months of the initial appointment of an 69
administrator or executor, shall file with the probate court an 70
application to allocate the allowance for support. 71

(E) The administrator or executor shall pay the allowance 72
for support unless a competent adult or a guardian with the 73
consent of the court having jurisdiction over the guardianship 74
waives the allowance for support to which the adult or the ward 75
represented by the guardian is entitled. 76

(F) For the purposes of this section, the value of an 77
automobile that a surviving spouse selects pursuant to section 78
2106.18 of the Revised Code is the value that the surviving 79
spouse specifies for the automobile in the affidavit executed 80
pursuant to division (B) of section 4505.10 of the Revised Code. 81

Sec. 2111.50. (A) (1) At all times, the probate court is 82
the superior guardian of wards who are subject to its 83
jurisdiction, and all guardians who are subject to the 84
jurisdiction of the court shall obey all orders of the court 85
that concern their wards or guardianships. 86

(2) (a) Subject to divisions (A) (2) (b) and (c) of this 87
section, the control of a guardian over the person, the estate, 88
or both of the guardian's ward is limited to the authority that 89
is granted to the guardian by the Revised Code, relevant 90
decisions of the courts of this state, and orders or rules of 91
the probate court. 92

(b) Except for the powers specified in division (E) of 93
this section and unless otherwise provided in or inconsistent 94
with another section of the Revised Code, the probate court may 95
confer upon a guardian any power that this section grants to the 96
probate court in connection with wards. Nothing in this section 97
is intended to create or imply a duty upon a guardian to apply 98
for authority to exercise any power authorized in this section. 99
No inference of impropriety or liability of the guardian or 100
others associated with the guardian shall arise as a result of a 101
guardian not applying for authority to exercise a power 102
authorized in this section. 103

(c) For good cause shown, the probate court may limit or 104
deny, by order or rule, any power that is granted to a guardian 105
by a section of the Revised Code or relevant decisions of the 106

courts of this state. 107

(B) In connection with any person whom the probate court 108
has found to be an incompetent or a minor subject to 109
guardianship and for whom the court has appointed a guardian, 110
the court has, subject to divisions (C) to (E) of this section, 111
all the powers that relate to the person and estate of the ward 112
and that the ward could exercise if present and not a minor or 113
under a disability, except the power to make or revoke a will. 114
These powers include, but are not limited to, the power to do 115
any of the following: 116

(1) ~~Convey or, release, or disclaim~~ the present, 117
contingent, or expectant interests in real or personal property 118
of the ward, including, but not limited to, dower and any right 119
of survivorship incident to a transfer on death designation, 120
payable on death designation, survivorship tenancy, joint 121
tenancy, or tenancy by the entireties; 122

(2) Exercise ~~or, release, or disclaim~~ powers as a trustee, 123
personal representative, custodian for a minor, guardian, or 124
donee of a power of appointment; 125

(3) ~~Enter~~ Subject to division (B) (4) of this section, 126
enter into contracts, or create revocable trusts of property of 127
the estate of the ward, that may not extend beyond the minority, 128
disability, or life of the ward; 129

(4) Create, amend, or revoke revocable trusts of property 130
of the estate of the ward that may extend beyond the minority, 131
disability, or life of the ward; 132

(5) Exercise options to purchase securities or other 133
property; 134

~~(5)~~ (6) Exercise rights to elect options under annuities 135

and insurance policies, <u>including changing beneficiaries of</u>	136
<u>insurance policies, retirement plans, individual retirement</u>	137
<u>accounts, and annuities,</u> and to surrender an annuity or	138
insurance policy for its cash value;	139
(6) <u>(7)</u> Exercise the right to an elective share in the	140
estate of the deceased spouse of the ward pursuant to section	141
2106.08 <u>Chapter 2106.</u> of the Revised Code;	142
(7) <u>(8)</u> Make gifts, in trust or otherwise, to relatives of	143
the ward and, consistent with any prior pattern of the ward of	144
giving to charities or of providing support for friends, to	145
charities and friends of the ward.	146
(C) Except for the powers specified in division (D) of	147
this section, all powers of the probate court that are specified	148
in this chapter and that relate either to any person whom it has	149
found to be an incompetent or a minor subject to guardianship	150
and for whom it has appointed a guardian and all powers of a	151
guardian that relate to the guardian's ward or guardianship as	152
described in division (A) (2) of this section, shall be exercised	153
in the best interest, as determined in the court's or guardian's	154
judgment, of the following:	155
(1) The ward whom the probate court has found to be an	156
incompetent or a minor subject to guardianship;	157
(2) The dependents of the ward;	158
(3) The members of the household of the ward.	159
(D) If the court is to exercise or direct the exercise,	160
pursuant to division (B) of this section, of the power to make	161
gifts in trust or otherwise, the following conditions shall	162
apply:	163

(1) The exercise of the particular power shall not impair 164
the financial ability of the estate of the ward whom the probate 165
court has found to be an incompetent or a minor subject to 166
guardianship and for whom the court has appointed a guardian, to 167
provide for the ward's foreseeable needs for maintenance and 168
care; 169

(2) If applicable, the court shall consider any of the 170
following: 171

(a) The estate, income, and other tax advantages of the 172
exercise of a particular power to the estate of a ward whom the 173
probate court has found to be an incompetent or a minor subject 174
to guardianship and for whom the court has appointed a guardian; 175

(b) Any pattern of giving of, or any pattern of support 176
provided by, the ward prior to the ward's incompetence; 177

(c) The disposition of property made by the ward's will or 178
revocable trust; 179

(d) If there is no knowledge of a will or revocable trust 180
of the ward, the ward's prospective heirs; 181

(e) Any relevant and trustworthy statements of the ward, 182
whether established by hearsay or other evidence. 183

(E) (1) The probate court shall cause notice as described 184
in division (E) (2) of this section to be given and a hearing to 185
be conducted prior to its exercise or direction of the exercise 186
of any of the following powers pursuant to division (B) of this 187
section: 188

(a) The exercise ~~or~~ release, or disclaimer of powers as a 189
donee of a power of appointment; 190

(b) Unless the amount of the gift is no more than one 191

thousand dollars, the making of a gift, in trust or otherwise;	192
<u>(c) The power to create, amend, or revoke a revocable</u>	193
<u>trust as described in division (B)(4) of this section;</u>	194
<u>(d) The power to exercise rights to elect options under</u>	195
<u>annuities and insurance policies, including changing</u>	196
<u>beneficiaries of insurance policies, retirement plans,</u>	197
<u>individual retirement accounts, and annuities, and to surrender</u>	198
<u>an annuity or insurance policy for its cash value, as described</u>	199
<u>in division (B)(6) of this section.</u>	200
(2) The notice required by division (E)(1) of this section	201
shall be given to the following persons:	202
(a) Unless a guardian of a ward has applied for the	203
exercise of a power specified in division (E)(1) of this	204
section, to the guardian;	205
(b) To the ward whom the probate court has found to be an	206
incompetent or a minor subject to guardianship;	207
(c) If known, to a guardian who applied for the exercise	208
of a power specified in division (E)(1) of this section, to the	209
prospective heirs of the ward whom the probate court has found	210
to be an incompetent or a minor subject to guardianship under	211
section 2105.06 of the Revised Code, <u>to the beneficiaries under</u>	212
<u>the last known will of the ward or under an existing revocable</u>	213
<u>trust of the ward, and to</u> any person who has a legal interest in	214
property that may be divested or limited as the result of the	215
exercise of a power specified in division (E)(1) of this	216
section;	217
(d) <u>To all of the following as applicable:</u>	218
<u>(i) The heirs at law and next of kin of the ward;</u>	219

<u>(ii) The beneficiaries under an existing will or revocable trust of the ward;</u>	220 221
<u>(iii) The beneficiaries of any insurance policies, retirement plans, individual retirement accounts, and annuities owned by the ward;</u>	222 223 224
<u>(iv) The beneficiaries under any proposed revocable trust and the proposed beneficiaries under any changes in the designation of beneficiaries of any insurance policies, retirement plans, individual retirement accounts, or annuities as described in division (E) (2) (d) (iii) of this section.</u>	225 226 227 228 229
<u>(e) To any other persons the court orders.</u>	230
(F) When considering any question related to, and issuing orders for, medical or surgical care or treatment of incompetents or minors subject to guardianship, the probate court has full parens patriae powers unless otherwise provided by a section of the Revised Code.	231 232 233 234 235
Sec. 2701.10. (A) Any voluntarily retired judge, or any judge who is retired under Section 6 of Article IV, Ohio Constitution, may register with the clerk of any court of common pleas, municipal court, or county court for the purpose of receiving referrals for adjudication of civil actions or proceedings, and submissions for determination of specific issues or questions of fact or law in any civil action or proceeding, pending in the court. There is no limitation upon the number, type, or location of courts with which a retired judge may register under this division. Upon registration with the clerk of any court under this division, the retired judge is eligible to receive referrals and submissions from that court, in accordance with this section. Each court of common pleas,	236 237 238 239 240 241 242 243 244 245 246 247 248

municipal court, and county court shall maintain an index of all 249
retired judges who have registered with the clerk of that court 250
pursuant to this division and shall make the index available to 251
any person, upon request. 252

(B) (1) The parties to any civil action or proceeding 253
pending in any court of common pleas, municipal court, or county 254
court unanimously may choose to have the action or proceeding in 255
its entirety referred for adjudication, or to have any specific 256
issue or question of fact or law in the action or proceeding 257
submitted for determination, to a judge of their choosing who 258
has registered with the clerk of that court in accordance with 259
division (A) of this section. 260

If the parties unanimously do choose to have a referral or 261
submission made to a retired judge pursuant to this section, all 262
of the parties to the action or proceeding shall enter into a 263
written agreement with the retired judge that does all of the 264
following: 265

(a) Designates the retired judge to whom the referral or 266
submission is to be made; 267

(b) If a submission is to be made, describes in detail the 268
specific issue or question to be submitted; 269

(c) Indicates either of the following: 270

(i) That the action or proceeding in its entirety is to be 271
referred to, and is to be tried, determined, and adjudicated by 272
that retired judge; 273

(ii) Indicates that the issue or question is to be 274
submitted, and is to be tried and determined by that retired 275
judge. 276

(d) Indicates that the parties will assume the 277
responsibility for providing facilities, equipment, and 278
personnel reasonably needed by the retired judge during ~~his~~ the 279
retired judge's consideration of the action or proceeding and 280
will pay all costs arising out of the provision of the 281
facilities, equipment, and personnel; 282

(e) Identifies an amount of compensation to be paid by the 283
parties to the retired judge for ~~his~~ the retired judge's 284
services and the manner of payment of the compensation; 285

(f) Indicates a procedure for terminating the agreement 286
with the retired judge. 287

(2) In any case described in division (B)(1) of this 288
section, the agreement shall be filed with the clerk of the 289
court or the judge before whom the action or proceeding is 290
pending. ~~Upon the filing of the agreement, the~~ The judge before 291
whom the action or proceeding is pending shall address the 292
agreement within fourteen days after its filing. That judge, by 293
journal entry, shall may, at the judge's discretion, order the 294
referral or submission in accordance with the agreement. No 295
referral or submission shall be made to a retired judge under 296
this section, unless the parties to the action or proceeding 297
unanimously choose to have the referral or submission made, 298
enter into an agreement of the type described in division (B)(1) 299
of this section with the retired judge, and file the agreement 300
in accordance with this division. 301

(C) Upon the entry of an order of referral or submission 302
in accordance with division (B)(2) of this section, the retired 303
judge to whom the referral or submission is made, relative to 304
the action or proceeding referred or the issue or question 305
submitted, shall have all of the powers, duties, and authority 306

of an active judge of the court in which the action or 307
proceeding is pending. The court in which the action or 308
proceeding is pending is not required to provide the retired 309
judge with court or other facilities, equipment, or personnel 310
during ~~his~~ the retired judge's consideration of the action, 311
proceeding, issue, or question. The retired judge shall not 312
receive any compensation, other than that agreed to by the 313
parties and the retired judge, for ~~his~~ the retired judge's 314
services during ~~his~~ consideration of the action, proceeding, 315
issue, or question. 316

(D) (1) A retired judge to whom a referral is made under 317
this section shall try all of the issues in the action or 318
proceeding, shall prepare relevant findings of fact and 319
conclusions of law, and shall enter a judgment in the action or 320
proceeding in the same manner as if ~~he~~ the retired judge were an 321
active judge of the court. A retired judge to whom a submission 322
is made under this section shall try the specific issue or 323
question submitted, shall prepare relevant findings of fact or 324
conclusions of law, shall make a determination on the issue or 325
question submitted, and shall file the findings, conclusions, 326
and determination with the clerk of the court in which the 327
action or proceeding is pending. Any judgment entered, and any 328
finding of fact, conclusion of law, or determination of an issue 329
or question made, by a retired judge in accordance with this 330
section shall have the same force and effect as if it had been 331
entered or made by an active judge of the court, and any appeal 332
from the judgment, finding, conclusion, or determination shall 333
be made as if the judgment had been entered, or the finding, 334
conclusion, or determination had been made, by an active judge 335
of the court. 336

(2) Upon conclusion of the referred action or proceeding 337

or determination of the submitted issue or question, 338
jurisdiction is returned to the referring judge. 339

(E) Any judge who registers with any court in accordance 340
with division (A) of this section may have ~~his~~ the judge's name 341
removed from the index of registered retired judges maintained 342
by that court at any time after the registration. On and after 343
the date of removal of the name of a retired judge from the 344
index of a court, the retired judge is not eligible under this 345
section to receive referrals or submissions from that court. 346

(F) This section does not affect, and shall not be 347
construed as affecting, the provisions of section 141.16 of the 348
Revised Code. This section does not apply to any action or 349
proceeding pending in a small claims division of a municipal 350
court or county court. 351

Sec. 5804.11. (A) If upon petition the court finds that 352
the settlor and all beneficiaries consent to the modification or 353
termination of a noncharitable irrevocable trust, that all 354
consents, including any given by representatives under Chapter 355
5803. of the Revised Code, are valid, and that all parties 356
giving consent are competent to do so, the court shall enter an 357
order approving the modification or termination even if the 358
modification or termination is inconsistent with a material 359
purpose of the trust. An agent under a power of attorney may 360
exercise a settlor's power to consent to a trust's modification 361
or termination only to the extent expressly authorized by both 362
the power of attorney and the terms of the trust. The settlor's 363
guardian of the estate may exercise a settlor's power to consent 364
to a trust's modification or termination with the approval of 365
the court supervising the guardianship if an agent is not so 366
authorized. The guardian of the settlor's person may exercise a 367

settlor's power to consent to a trust's modification or 368
termination with the approval of the court supervising the 369
guardianship if an agent is not so authorized and a guardian of 370
the estate has not been appointed. This division does not apply 371
to a noncharitable irrevocable trust described in 42 U.S.C. 372
1396p(d) (4) . 373

(B) A noncharitable irrevocable trust may be terminated 374
upon consent of all of the beneficiaries if the court concludes 375
that continuance of the trust is not necessary to achieve any 376
material purpose of the trust. A noncharitable irrevocable trust 377
may be modified, but not to remove or replace the currently 378
serving trustee, upon consent of all of the beneficiaries if the 379
court concludes that modification is not inconsistent with a 380
material purpose of the trust. A spendthrift provision in the 381
terms of the trust may, but is not presumed to, constitute a 382
material purpose of the trust. In determining what constitutes a 383
material purpose of a trust, a court may but is not required to 384
consider extrinsic evidence indicating a settlor's intent at the 385
time the instrument was executed. 386

(C) Upon termination of a trust under division (A) or (B) 387
of this section, the trustee shall distribute the trust property 388
as agreed by the beneficiaries. 389

(D) If not all of the beneficiaries consent to a proposed 390
modification or termination of the trust under division (A) or 391
(B) of this section, the court may approve the modification or 392
termination if the court is satisfied of both of the following: 393

(1) That if all of the beneficiaries had consented, the 394
trust could have been modified or terminated under this section; 395

(2) That the interests of a beneficiary who does not 396

consent will be adequately protected. 397

Sec. 5805.06. (A) Whether or not the terms of a trust 398
contain a spendthrift provision, all of the following apply: 399

(1) During the lifetime of the settlor, the property of a 400
revocable trust is subject to claims of the settlor's creditors. 401

(2) Except to the extent that a trust is established 402
pursuant to, or otherwise is wholly or partially governed by or 403
subject to Chapter 5816. of the Revised Code, with respect to an 404
irrevocable trust, a creditor or assignee of the settlor may 405
reach the maximum amount that can be distributed to or for the 406
settlor's benefit. If an irrevocable trust has more than one 407
settlor, the amount distributable to or for a settlor's benefit 408
that the creditor or assignee of a particular settlor may reach 409
may not exceed that settlor's interest in the portion of the 410
trust attributable to that settlor's contribution. The right of 411
a creditor or assignee to reach a settlor's interest in an 412
irrevocable trust shall be subject to Chapter 5816. of the 413
Revised Code to the extent that that chapter applies to that 414
trust. 415

(3) With respect to a trust described in 42 U.S.C. section 416
1396p(d) (4) (A) or (C), the court may limit the award of a 417
settlor's creditor under division (A) (1) or (2) of this section 418
to the relief that is appropriate under the circumstances, 419
considering among any other factors determined appropriate by 420
the court, the supplemental needs of the beneficiary. 421

(B) For purposes of this section, all of the following 422
apply: 423

(1) The holder of a power of withdrawal is treated in the 424
same manner as the settlor of a revocable trust to the extent of 425

the property subject to the power during the period the power
may be exercised. 426
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~~(2) Upon the lapse, release, or waiver of the power of
withdrawal, the holder is treated as the settlor of the trust
only to the extent the value of the property affected by the
lapse, release, or waiver exceeds the greatest of the following
amounts:~~ 428
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~~(a) The amount specified in section 2041(b)(2) or 2514(e)
of the Internal Revenue Code;~~ 433
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~~(b) If the donor of the property subject to the holder's
power of withdrawal is not married at the time of the transfer
of the property to the trust, the amount specified in section
2503(b) of the Internal Revenue Code;~~ 435
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~~(c) If the donor of the property subject to the holder's
power of withdrawal is married at the time of the transfer of
the property to the trust, twice the amount specified in section
2503(b) of the Internal Revenue Code.~~ 439
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~~(3) None of the following shall be considered an amount
that can be distributed to or for the benefit of the settlor:~~ 443
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(a) Trust property that could be, but has not yet been,
distributed to or for the benefit of the settlor only as a
result of the exercise of a power of appointment held in a
nonfiduciary capacity by any person other than the settlor; 445
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(b) Trust property that could be, but has not yet been,
distributed to or for the benefit of the settlor of a trust
pursuant to the power of the trustee to make distributions or
pursuant to the power of another in a fiduciary capacity to
direct distributions, if and to the extent that the
distributions could be made from trust property the value of 449
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which was included in the gross estate of the settlor's spouse 455
for federal estate tax purposes under section 2041 or 2044 of 456
the Internal Revenue Code or that was treated as a transfer by 457
the settlor's spouse under section 2514 or 2519 of the Internal 458
Revenue Code; 459

(c) Trust property that, pursuant to the exercise of a 460
discretionary power by a person other than the settlor, could be 461
paid to a taxing authority or to reimburse the settlor for any 462
income tax on trust income or principal that is payable by the 463
settlor under the law imposing the tax. 464

Section 2. That existing sections 2106.13, 2111.50, 465
2701.10, 5804.11, and 5805.06 of the Revised Code are hereby 466
repealed. 467