

# AN ACT

To amend sections 2105.14, 2107.34, 2109.301, 5302.23, and 5302.24 and to enact section 5801.12 of the Revised Code to amend the law related to transfer on death designation deeds and affidavits and to make changes in the probate and trust laws regarding the inheritance and beneficial rights of afterborn or pretermitted children or heirs.

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

SECTION 1. That sections 2105.14, 2107.34, 2109.301, 5302.23, and 5302.24 be amended and section 5801.12 of the Revised Code be enacted to read as follows:

Sec. 2105.14. ~~Descendants of an intestate begotten before the intestate's death, but born after the intestate's death, in all cases will inherit as if born in the lifetime of the intestate and surviving the intestate; but in no other case can a person~~ No descendant of an intestate shall inherit under this chapter unless living at the time of the death of surviving the intestate for at least one hundred twenty hours, or unless born within three hundred days after the death of the intestate and living for at least one hundred twenty hours after birth.

Sec. 2107.34. ~~If (A) Subject to division (C) of this section, if~~, after making a will, a testator has a child born alive, adopts a child, or designates an heir in the manner provided by section 2105.15 of the Revised Code, or if a child or designated heir who is absent and reported to be dead proves to be alive, and no provision has been made in the will or by settlement for the pretermitted child or heir, or for that child's or heir's issue, the will shall not be revoked. Unless it appears by the will that it was the intention of the testator to disinherit the pretermitted child or heir, the devises and legacies granted by the will, except those to a surviving spouse, shall be abated proportionately, or in any other manner that is necessary to give effect to the intention of the testator as shown by the will, so that the pretermitted child or heir will receive a share equal to that which the person would have been entitled to receive out of the estate if the testator had died intestate with no surviving spouse, owning only that portion of the testator's estate not devised or bequeathed to or for the use and benefit of a surviving spouse. If the pretermitted child or heir dies prior to the death of the testator, the issue of the deceased child or heir shall receive the share the parent would have received if living.

~~(B) If the pretermitted child or heir supposed to be dead at the time of executing the will has~~ (B) If the pretermitted child or heir supposed to be dead at the time of executing the will has lineal descendants, provision for whom is made by the testator, the other legatees and devisees need not contribute, but the pretermitted child or heir shall take the provision made for the pretermitted child's or heir's lineal descendants or that part of it as, in the opinion of the probate judge, may be equitable. In settling the claim of a pretermitted child or heir, any portion of the testator's estate received by a party interested, by way of advancement, is a portion of the estate and shall be charged to the party who has received it.

(C) Notwithstanding any provision in this chapter to the contrary, any person born more than three hundred days after the date of death of a testator shall not inherit under the testator's will as a child or heir of the testator unless the will clearly provides otherwise. If a will clearly provides that such a posthumously born child or heir shall inherit under the will, notwithstanding any provision in the will to the contrary, that child or heir shall inherit only if born within a period of one year and three hundred days from the date of death of the testator. This division does not apply to the terms of a testamentary trust.

(D) Though measured by Chapter 2105. of the Revised Code, the share taken by a child born after the making of a will or by a pretermitted child or heir pursuant to division (A) of this section shall be considered as a testate succession. This section does not prejudice the right of any fiduciary to act under any power given by the will, nor shall the title of innocent purchasers for value of any of the property of the testator's estate be affected by any right given by this section to a child born after the making of a will or a pretermitted child or heir.

Sec. 2109.301. (A) An administrator or executor shall render an account at any time other than a time otherwise mentioned in this section upon an order of the probate court issued for good cause shown either at its own instance or upon the motion of any person interested in the estate. Except as otherwise provided in division (B)(2) of this section, an administrator or executor shall render a final account within thirty days after completing the administration of the estate or within any other period of time that the court may order.

Every account shall include an itemized statement of all receipts of the administrator or executor during the accounting period and of all disbursements and distributions made by the executor or administrator during the accounting period. In addition, the account shall include an itemized statement of all funds, assets, and investments of the estate known to or in the possession of the administrator or executor at the end of the accounting period and shall show any changes in investments since the last previous account.

Every account shall be upon the signature of the administrator or executor. When two or more administrators or executors render an account, the court may allow the account upon the signature of one of them. The court may examine the administrator or executor under oath concerning the account.

When an administrator or executor is authorized by law or by the instrument governing distribution to distribute the assets of the estate, in whole or in part, the administrator or executor may do so and include a report of the distribution in the administrator's or executor's succeeding account.

In estates of decedents in which none of the legatees, devisees, or heirs is under a legal disability, each partial accounting of an executor or administrator may be waived by the written consent of all the legatees, devisees, or heirs filed in lieu of a partial accounting otherwise required.

(B)(1) Every administrator and executor, within six months after appointment, shall render a final and distributive account of the administrator's or executor's administration of the estate unless one or more of the following circumstances apply:

(a) An Ohio estate tax return must be filed for the estate.

(b) A proceeding contesting the validity of the decedent's will pursuant to section 2107.71 of the Revised Code has been commenced.

(c) The surviving spouse has filed an election to take against the will.

(d) The administrator or executor is a party in a civil action.

(e) The estate is insolvent.

(f) The decedent's will provides that a posthumously born child or heir, which includes a child or heir born through the use of assisted reproductive technologies as defined in section 5801.12 of the Revised Code, shall inherit under the will as provided in section 2107.34 of the Revised Code.

(g) For other reasons set forth by the administrator or executor, subject to court approval, it would be detrimental to the estate and its beneficiaries or heirs to file a final and distributive account.

(2) In estates of decedents in which the sole legatee, devisee, or heir is also the administrator or executor of the estate, no partial accountings are required. The administrator or executor of an estate of that type shall file a final account or final and distributive account or, in lieu of filing a final account, the administrator or executor may file with the court within thirty days after completing the administration of the estate a certificate of termination of an estate that states all of the following:

(a) All debts and claims presented to the estate have been paid in full or settled finally.

(b) An estate tax return, if required under the provisions of the Internal Revenue Code or Chapter 5731. of the Revised Code, has been filed, and any estate tax has been paid.

(c) All attorney's fees have been waived by or paid to counsel of record of the estate, and all executor or administrator fees have been waived or paid.

(d) The amount of attorney's fees and the amount of administrator or executor fees that have been paid.

(e) All assets remaining after completion of the activities described in divisions (B)(2)(a) to (d) of this section have been distributed to the sole legatee, devisee, or heir.

(3) In an estate of the type described in division (B)(2) of this section, a sole legatee, devisee, or heir of a decedent may be liable to creditors for debts of and claims against the estate that are presented after the filing of the certificate of termination described in that division and within the time allowed by section 2117.06 of the Revised Code for presentation of the creditors' claims.

(4) Not later than thirteen months after appointment, every administrator and executor shall render an account of the administrator's or executor's administration, unless a partial account is waived under division (A) of this section or a certificate of termination is filed under division (B)(2) of this section. After the initial account is rendered or a waiver of a partial account is filed, every administrator and executor shall, at least once each year, render further accounts or file waivers of partial accounts until the estate is closed, unless a certificate of termination is filed under division (B) (2) of this section.

Sec. 5302.23. (A) Any affidavit containing language that shows a clear intent to designate a transfer on death beneficiary shall be liberally construed to do so.

(B) Real property or an interest in real property that is the subject of a transfer on death designation affidavit as provided in section 5302.22 of the Revised Code or as described in division (A) of this section has all of the following characteristics and ramifications:

(1) An interest of a deceased owner shall be transferred to the transfer on death beneficiaries who are identified in the affidavit by name and who survive the deceased owner or that are in existence on the date of the deceased owner's death. If there is a designation of more than one transfer on death beneficiary, the beneficiaries shall take title to the interest in equal shares as tenants

in common, unless the deceased owner has specifically designated other than equal shares or has designated that the beneficiaries take title as survivorship tenants, subject to division (B)(3) of this section. If a transfer on death beneficiary does not survive the deceased owner or is not in existence on the date of the deceased owner's death, and the deceased owner has designated one or more persons as contingent transfer on death beneficiaries as provided in division (B)(2) of this section, the designated contingent transfer on death beneficiaries shall take the same interest that would have passed to the transfer on death beneficiary had that transfer on death beneficiary survived the deceased owner or been in existence on the date of the deceased owner's death. If none of the designated transfer on death beneficiaries survives the deceased owner or is in existence on the date of the deceased owner's death and no contingent transfer on death beneficiaries have been designated, have survived the deceased owner, or are in existence on the date of death of the deceased owner, the interest of the deceased owner shall be distributed as part of the probate estate of the deceased owner of the interest. If there are two or more transfer on death beneficiaries and the deceased owner has designated that title to the interest in the real property be taken by those beneficiaries as survivorship tenants, no designated contingent transfer on death beneficiaries shall take title to the interest unless none of the transfer on death beneficiaries survives the deceased owner on the date of death of the deceased owner.

(2) A transfer on death designation affidavit may contain a designation of one or more persons as contingent transfer on death beneficiaries, who shall take the interest of the deceased owner that would otherwise have passed to the transfer on death beneficiary if that named transfer on death beneficiary does not survive the deceased owner or is not in existence on the date of death of the deceased owner. Persons designated as contingent transfer on death beneficiaries shall be identified in the affidavit by name.

(3) Any transfer on death beneficiary or contingent transfer on death beneficiary may be a natural or legal person, including, but not limited to, a bank as trustee of a trust, except that if two or more transfer on death beneficiaries are designated as survivorship tenants, all of those beneficiaries shall be natural persons and if two or more contingent transfer on death beneficiaries are designated as survivorship tenants, all of those contingent beneficiaries shall be natural persons. A natural person who is designated a transfer on death beneficiary or contingent transfer on death beneficiary solely in that natural person's capacity as a trustee of a trust is not considered a natural person for purposes of designating the transfer on death beneficiaries or contingent transfer on death beneficiaries as survivorship tenants under division (B)(3) of this section.

(4) The designation of a transfer on death beneficiary has no effect on the present ownership of real property, and a person designated as a transfer on death beneficiary has no interest in the real property until the death of the owner of the interest.

(5) The designation in a transfer on death designation affidavit of any transfer on death beneficiary may be revoked or changed at any time, without the consent of that transfer on death beneficiary, by the owner of the interest, by the surviving survivorship tenants of the interest, or by the remaining tenant by the entireties of the interest, by executing and recording, prior to the death of the owner of the interest, of the surviving survivorship tenants of the interest, or of the remaining tenant by the entireties of the interest, as the case may be, a new transfer on death designation affidavit pursuant to section 5302.22 of the Revised Code stating the revocation or change in that

designation. The new transfer on death designation affidavit shall automatically supersede and revoke all prior recorded transfer on death designation affidavits with respect to the real property or the interest in real property identified in the new affidavit, provided that the prior recorded affidavit was executed before the later recorded affidavit.

(6) A fee simple title or any fractional interest in a fee simple title may be subjected to a transfer on death beneficiary designation.

(7)(a) A transfer on death beneficiary takes only the interest that the deceased owner or owners of the interest held on the date of death, subject to all encumbrances, reservations, and exceptions.

(b) If the owners hold title to the interest in a survivorship tenancy, the death of all except the last survivorship tenant automatically terminates and nullifies any transfer on death beneficiary designations made solely by the deceased survivorship tenant or tenants without joinder by the last surviving survivorship tenant. The termination or nullification of any transfer on death beneficiary designations under division (B)(7)(b) of this section is effective as of the date of death of a deceased survivorship tenant. No affirmative act of revocation is required of the last surviving survivorship tenant for the termination or nullification of the transfer on death beneficiary designations to occur as described in division (B)(7)(b) of this section. If the last surviving survivorship tenant dies with no transfer on death beneficiary designation, the entire interest of that last surviving survivorship tenant shall be distributed as part of the tenant's probate estate.

(c) If the owners hold title to the interest in a tenancy by the entireties, the death of the first tenant by the entireties automatically terminates and nullifies any transfer on death beneficiary designations made solely by that deceased first tenant without joinder by the remaining tenant by the entireties. The termination or nullification of any transfer on death beneficiary designations under division (B)(7)(c) of this section is effective as of the date of death of the first tenant by the entireties. No affirmative act of revocation is required of the remaining tenant by the entireties for the termination or nullification of the transfer on death beneficiary designations to occur as described in division (B)(7)(c) of this section. If the remaining tenant by the entireties dies with no transfer on death beneficiary designation, the entire interest of that remaining tenant shall be distributed as part of the tenant's probate estate.

(8) No rights of any lienholder, including, but not limited to, any mortgagee, judgment creditor, or mechanic's lien holder, shall be affected by the designation of a transfer on death beneficiary pursuant to this section and section 5302.22 of the Revised Code. If any lienholder takes action to enforce the lien, by foreclosure or otherwise through a court proceeding, it is not necessary to join any transfer on death beneficiary as a party defendant in the action unless the transfer on death beneficiary has another interest in the real property.

(9) Any transfer on death of real property or of an interest in real property that results from a transfer on death designation affidavit designating a transfer on death beneficiary is not testamentary. That transfer on death shall supersede any attempted testate or intestate transfer of that real property or interest in real property.

(10) The execution and recording of a transfer on death designation affidavit shall be effective to terminate the designation of a transfer on death beneficiary in a transfer on death deed involving the same real property or interest in real property and recorded prior to the effective date of

this section.

(11) The execution and recording of a transfer on death designation affidavit shall be effective to bar the vesting of any rights of dower in a subsequent spouse of the owner of the real property who executed that affidavit unless the affidavit is revoked or changed.

(12) If, after the execution and recording of a transfer on death designation affidavit under which the owner of the real property's spouse is designated the transfer on death beneficiary, the owner of the real property and such owner's spouse are divorced, obtain a dissolution of the marriage, or have the marriage annulled, then the designation of the owner's spouse as a transfer on death beneficiary on such instrument shall be terminated and the spouse shall be deemed to have predeceased the owner of the real property.

(C) If, after the execution and recording of a transfer on death deed under which the owner of the real property's spouse is designated the transfer on death beneficiary, the owner of the real property and such owner's spouse are divorced, obtain a dissolution of the marriage, or have the marriage annulled, then the designation of the owner's spouse as a transfer on death beneficiary on such instrument shall be terminated and the spouse shall be deemed to have predeceased the owner of the real property.

Sec. 5302.24. Sections Except as otherwise provided in divisions (B)(12) and (C) of section 5302.23 of the Revised Code, sections 5302.22, 5302.222, and 5302.23 of the Revised Code do not affect any deed that was executed and recorded prior to the effective date of this section December 28, 2009, or any transfer on death beneficiary designation made, pursuant to section 5302.22 of the Revised Code as it existed prior to the effective that date of this section. If that deed or designation is valid on the day prior to the effective that date of this section, the deed or designation continues to be valid on and after the effective that date of this section. A grantee of that deed need not execute a transfer on death designation affidavit that designates the same transfer on death beneficiary or beneficiaries as in the deed unless the grantee chooses to do so.

Sec. 5801.12. (A) As used in this section:

(1) "Assisted reproductive technologies" means any medical or scientific technology or method designed to assist one or more persons to cause a pregnancy through means other than by sexual intercourse, including technologies that are developed after the date of this amendment.

(2) "Trust" includes a revocable or irrevocable trust.

(B) Notwithstanding any other section of the Revised Code, this section governs the beneficial rights under a trust of any child born through the use of any assisted reproductive technologies, and also applies to the exercise of any power of appointment granted under a trust instrument or any other power to otherwise expand the class of beneficiaries under a trust instrument.

(C) No child of a settlor born through the use of any assisted reproductive technologies more than three hundred days after the date of death of the settlor of a trust instrument shall be considered the settlor's child under that trust instrument, under the exercise of any power to appoint trust assets in favor of the settlor's children, or under the exercise of any other power to otherwise expand the class of beneficiaries under the trust instrument, unless the terms of the trust clearly provide otherwise. No other person born through the use of any assisted reproductive technologies more than three hundred days after the date of the event that caused a class of beneficiaries to close under the terms of a trust shall be included in that class unless the terms of the trust clearly provide otherwise.

(D)(1) If the terms of a trust provide for a child or other person born through the use of assisted reproductive technologies and further provide for a time period in which that child or other person must be born in order to benefit under the terms of the trust, that time period shall apply in order for the child or other person to benefit under the terms of the trust, subject to a maximum time period of five years from the date of death of the settlor or the date of the event that caused a class of beneficiaries to close, whichever is applicable.

(2) If the terms of a trust provide for a child or other person born through the use of assisted reproductive technologies but do not provide for a time period in which that child or other person must be born in order to benefit under the terms of the trust, that child or other person must be born within a period of one year and three hundred days from the date of death of the settlor or the date of the event that caused a class of beneficiaries to close, whichever is applicable, in order for the child or other person to benefit under the terms of the trust.

SECTION 2. That existing sections 2105.14, 2107.34, 2109.301, 5302.23, and 5302.24 of the Revised Code are hereby repealed.

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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.*



Sub. S. B. No. 232

131st G.A.

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 \_\_\_\_\_