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# MALPRACTICE ALERT!

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## **PROBATE LEGISLATION ENACTED BY OHIO GENERAL ASSEMBLY**

### **Sub. HB 242 – UNIFORM SIMULTANEOUS DEATH ACT Effective 5/16/02**

**SUMMARY** – This Bill enacts the Uniform Simultaneous Death Act, and repeals RC 2105.21 regarding Presumption of Order of Death.

A person who is not established by clear and convincing evidence to have survived another specified person by 120 hours is deemed to have predeceased the other person

Applies the survivorship requirement to non-probate assets such as survivorship title to real or personal property. Also applies to the elective share of an intestate estate; elective interest in the mansion house; elective interest in allowance for support. This section does not apply if its application would result in escheat to the state.

The same survival requirements would apply for 1) purposes of a provision of a governing instrument that relates to surviving an event with certain exceptions, 2) co-ownership in real or personal property. Certain exceptions include if the governing instrument contains explicit language dealing with simultaneous death or the instrument expressly indicates that a person is not required to survive an event by any specified period in order for any right to vest or transfer.

Describes requirements for presumption of death. Provides liability protection for 3<sup>rd</sup> party transfers done in good faith.

Applies sections 2105.31 to 2105.39 to any governing instrument that is executed, or any multiple-party account that is opened, prior to January 1, 2002. Does not apply to any act done in any proceeding, or any right that accrued, before January 1, 2002, under any provision of the Revised Code, the provision of the applicable section of the Revised Code applies with respect to that right.

**AMENDS:** 2105.02, 2105.04, 2105.07, 2105.08, 2106.04, 2107.34, 2121.02, and 2121.06  
**ENACTS:** 2105.31 – 2105.39  
**REPEALS:** 2105.21

### **Sub HB 345 – Omnibus Probate Revisions Most sections Effective July 23, 2002**

**SUMMARY** – Changes the valuation limit for the termination of a trust from \$50,000 to \$100,000.

Enacts a transfer on death deed provision on a certificate of title for motor vehicles, watercraft, or other vehicles with outboard motors.

Under Internal Revenue Code §2140, if a trustee has the ability to make distributions to himself or his creditors, or the power to remove a trustee, the corpus of the trust may be subject to estate tax in the trustee's estate as a power of appointment. Revised Code §1340.22 eliminates this risk by prohibiting distributions by the trustee to herself or her creditors. The statute has a number of exceptions in it to allow for distributions when the power has no estate tax consequences. H.B. 345 clarifies some issues as to who can be appointed as successor trustee without running afoul of the statute, as well as a number of additional exceptions to the statute to allow for distribution powers, which have no

adverse estate tax consequences. The bill also allows for the beneficiaries to "opt out" of the statute in some cases. For testamentary trusts, the election for "opting out" is filed in the probate court where the will is admitted to probate.

Defines the term "Decedent's Business" and extends the time for which an Executor or Administrator may continue the decedent's business from 1 month to 4 months.

Specifies that an application for certificate of transfer of real property may be filed after the filing of an estate inventory, but prior to filing of the final account. The Court shall issue the certificate of transfer within 5 days of filing the application.

Allows a person paying a creditor's claim under R.C. 2117.25 to be subrogated to the rights of that creditor proportionate to the amount paid and shall be entitled to reimbursement for that amount in accordance with the priority of claims in that section.

Disallows a person under the age of 18 from witnessing a will executed pursuant to R.C. 2107.03 or an agreement to make a will pursuant to R.C. 2107.04.

Specifically requires notice of the application for lost, spoliated or destroyed wills be given to all

persons entitled to inherit under 2105 if the testator died intestate, to all legatees and devisees that are named in the most recent will prior to the lost, spoliated, or destroyed will. Provides that the proponents and opponents of the will, not the Court, shall cause the witnesses to the will and any other relevant and material witnesses to testify. The Probate Court shall find and establish the contents of the will if the requirements of R.C. 2107.26 are met; this language replaces specific factors previously stated in R.C. 2107.27.

Enacts a two-year statute of limitations for actions relating to revocable trusts that are made irrevocable by the death of the grantor.

Requires insurance companies to pay interest on proceeds that become due to the terms of a policy of sickness and accident insurance due to the death of the insured by sickness or accident.

Repeals R.C. 2105.39 of the Uniform Simultaneous Death Act as enacted by Am. Sub. HB 242 of 124<sup>th</sup> General Assembly.

Thanks to The Honorable Lawrence A. Belskis, Franklin County Probate Judge, for allowing us to reprint this information from the LEGISLATIVE BILL ANALYSIS OF THE 124<sup>TH</sup> GENERAL ASSEMBLY he prepared.

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