

As Reported by the House Civil Justice Committee

134th General Assembly

Regular Session

2021-2022

Sub. H. B. No. 339

Representative Swearingen

Cosponsors: Representatives Hall, Bird, Sweeney, Loychik, Jordan, Cutrona, Ginter, Richardson, Carruthers, Baldrige, Leland, Hillyer, Lampton, Kick, Upchurch, Roemer, LaRe, Cross, Seitz, Ghanbari, Fraizer, John, Ray, Brinkman, White, Lanese

A BILL

To amend sections 147.051, 147.591, 317.32, 1
1337.11, 1337.12, 1337.22, 1337.25, 1345.01, 2
2107.01, 2107.03, 2107.07, 2107.17, 2107.24, 3
2107.27, 2107.29, 2107.30, 2107.31, 2107.33, 4
2107.60, 2107.63, 2129.05, 2133.01, 2133.02, 5
5302.22, 5817.01, and 5817.05 and to enact 6
sections 1337.121 and 2107.031 of the Revised 7
Code to expand the laws on wills, declarations 8
or living wills, durable powers of attorney for 9
health care, and transfer on death designation 10
affidavits by providing for their execution 11
electronically. 12

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

Section 1. That sections 147.051, 147.591, 317.32, 13
1337.11, 1337.12, 1337.22, 1337.25, 1345.01, 2107.01, 2107.03, 14
2107.07, 2107.17, 2107.24, 2107.27, 2107.29, 2107.30, 2107.31, 15
2107.33, 2107.60, 2107.63, 2129.05, 2133.01, 2133.02, 5302.22, 16
5817.01, and 5817.05 be amended and sections 1337.121 and 17

2107.031 of the Revised Code be enacted to read as follows: 18

Sec. 147.051. The secretary of state shall maintain a 19
database of notaries public on a publicly accessible web site. 20
The web site shall provide all of the following information in 21
relation to each notary public: 22

(A) A verification of the authority and good standing of 23
the individual to perform notarial acts; 24

(B) Whether the notary is registered to perform online 25
notarizations, as defined in section 147.60 of the Revised Code; 26

(C) A description of any administrative or disciplinary 27
action taken against the notary; 28

(D) Whether the notary has filed evidence satisfactory to 29
the secretary of state that the notary has obtained the 30
necessary bond and errors and omissions insurance to notarize 31
electronic estate planning documents pursuant to section 147.591 32
of the Revised Code. 33

Sec. 147.591. (A) As used in this section, "electronic 34
document," "electronic seal," "electronic signature," and 35
"online notarization" have the same meanings as in section 36
147.60 of the Revised Code. 37

(B) (1) An electronic document that is signed in the 38
physical presence of the notary public with an electronic 39
signature and notarized with an electronic seal shall be 40
considered an original document. 41

(2) Notwithstanding any other provision of the Revised 42
Code to the contrary, a digital copy of a document executed 43
electronically by the parties and acknowledged or sworn before a 44
notary acting pursuant to this section shall be accepted by 45

county auditors, engineers, and recorders for purposes of 46
approval, transfer, and recording to the same extent as any 47
other document that is submitted by an electronic recording 48
method and shall not be rejected solely by reason of containing 49
electronic signatures or an electronic notarization, including 50
an online notarization. 51

(3) A county auditor, engineer, and recorder shall accept 52
a printed document that was executed electronically for purposes 53
of approval, transfer, and recording if that document contains 54
an attached certificate in the following, or a substantially 55
similar, format: 56

"AUTHENTICATOR CERTIFICATE 57

I certify and warrant that the foregoing and annexed paper 58
document being presented for record, to which this certification 59
is attached, represents a true, exact, complete, and unaltered 60
copy of the original electronic document. The county offices of 61
the auditor, treasurer, recorder, and others necessary to 62
effectuate the transfer and recording of the instrument shall be 63
entitled to rely on such certification and warranty for all 64
purposes. 65

_____ [signature of authenticator] 66

_____ [printed name of authenticator] 67

_____ [street address of authenticator] 68

_____ [city, state, zip code of 69
authenticator] 70

_____ [telephone number of 71
authenticator] 72

73

1

2

A State of _____)

B _____):ss

C County of _____)

The foregoing authenticator certificate was subscribed and 74
sworn to in my presence by _____ [printed 75
name of authenticator] on this ____ day of _____, 20__ 76

_____ 77

Notary Public" 78

(C) Any notary public may obtain an electronic seal and an 79
electronic signature for the purposes of notarizing documents 80
under this section. 81

(D) A notary public shall comply with the provisions of 82
section 147.66 of the Revised Code pertaining to the electronic 83
seal and electronic signature. 84

(E) A notary public shall not notarize an electronic 85
document that is a will, trust, power of attorney, or other 86
estate planning document identified in rule by the secretary of 87
state unless the notary has filed with the office of the 88
secretary of state evidence satisfactory to the secretary of 89
state that the notary has obtained a bond that meets all of the 90
following and the bond is still in effect: 91

(1) The bond is in the amount of at least twenty-five 92
thousand dollars. 93

(2) The bond is payable to any individual harmed by a 94

<u>breach of duty by the notary acting in the notary's official</u>	95
<u>capacity as a notary public.</u>	96
<u>(3) The bond is conditioned on the notary faithfully</u>	97
<u>discharging the duties of office of notary public.</u>	98
<u>(4) The bond is on such terms as are specified in rule by</u>	99
<u>the secretary of state as reasonably necessary to protect the</u>	100
<u>public.</u>	101
<u>(F) A notary public shall not notarize an electronic</u>	102
<u>document that is a will, trust, power of attorney, or other</u>	103
<u>estate planning document identified in rule by the secretary of</u>	104
<u>state unless the notary has filed with the office of the</u>	105
<u>secretary of state evidence satisfactory to the secretary of</u>	106
<u>state that the notary has obtained errors and omissions</u>	107
<u>insurance from an insurer authorized to engage in the business</u>	108
<u>of insurance in this state that meets both of the following and</u>	109
<u>the insurance is still in effect:</u>	110
<u>(1) The insurance is in the amount of at least twenty-five</u>	111
<u>thousand dollars.</u>	112
<u>(2) The insurance is on such terms and conditions as are</u>	113
<u>specified in rule by the secretary of state as reasonably</u>	114
<u>necessary to protect the public.</u>	115
<u>(G) The secretary of state shall adopt rules specifying</u>	116
<u>the types of electronic estate-related documents that require a</u>	117
<u>bond and errors and omissions insurance and specifying other</u>	118
<u>terms and conditions the secretary of state considers reasonably</u>	119
<u>necessary to protect the public.</u>	120
Sec. 317.32. The county recorder shall charge and collect	121
the following fees, to include, except as otherwise provided in	122
division (A) (2) of this section, base fees for the recorder's	123

services and housing trust fund fees collected pursuant to 124
section 317.36 of the Revised Code: 125

(A) (1) Except as otherwise provided in division (A) (2) of 126
this section, for recording and indexing an instrument if the 127
photocopy or any similar process is employed, a base fee of 128
seventeen dollars for the first two pages and a housing trust 129
fund fee of seventeen dollars, and a base fee of four dollars 130
and a housing trust fund fee of four dollars for each subsequent 131
page, size eight and one-half inches by fourteen inches, or 132
fraction of a page, including the caption page, of such 133
instrument; 134

(2) For recording and indexing an instrument described in 135
division (D) of section 317.08 of the Revised Code if the 136
photocopy or any similar process is employed, a fee of twenty- 137
eight dollars for the first two pages to be deposited as 138
specified elsewhere in this division, and a fee of eight dollars 139
to be deposited in the same manner for each subsequent page, 140
size eight and one-half inches by fourteen inches, or fraction 141
of a page, including the caption page, of that instrument. If 142
the county recorder's technology fund has been established under 143
section 317.321 of the Revised Code, of the twenty-eight 144
dollars, fourteen dollars shall be deposited into the county 145
treasury to the credit of the county recorder's technology fund 146
and fourteen dollars shall be deposited into the county treasury 147
to the credit of the county general fund. If the county 148
recorder's technology fund has not been established, the twenty- 149
eight dollars shall be deposited into the county treasury to the 150
credit of the county general fund. 151

(B) For certifying a copy or electronic record from the 152
record previously recorded, a base fee of one dollar and a 153

housing trust fund fee of one dollar per page, size eight and 154
one-half inches by fourteen inches, or fraction of a page; for 155
each certification if the recorder's seal is required, except as 156
to instruments issued by the armed forces of the United States, 157
a base fee of fifty cents and a housing trust fund fee of fifty 158
cents; 159

(C) For entering or indexing any marginal reference, or 160
any reference previously accomplished as a marginal reference 161
now accomplished through electronic means, by separate recorded 162
instrument, a base fee of two dollars and a housing trust fund 163
fee of two dollars for each marginal reference, or reference 164
previously accomplished as a marginal reference now accomplished 165
through electronic means, set out in that instrument, in 166
addition to the fees set forth in division (A) (1) of this 167
section; 168

(D) For indexing in the real estate mortgage records, 169
pursuant to section 1309.519 of the Revised Code, financing 170
statements covering crops growing or to be grown, timber to be 171
cut, minerals or the like, including oil and gas, accounts 172
subject to section 1309.301 of the Revised Code, or fixture 173
filings made pursuant to section 1309.334 of the Revised Code, a 174
base fee of two dollars and a housing trust fund fee of two 175
dollars for each name indexed; 176

(E) For filing zoning resolutions, including text and 177
maps, in the office of the recorder as required under sections 178
303.11 and 519.11 of the Revised Code, a base fee of twenty-five 179
dollars and a housing trust fund fee of twenty-five dollars, 180
regardless of the size or length of the resolutions; 181

(F) For filing zoning amendments, including text and maps, 182
in the office of the recorder as required under sections 303.12 183

and 519.12 of the Revised Code, a base fee of ten dollars and a 184
housing trust fund fee of ten dollars regardless of the size or 185
length of the amendments; 186

(G) For photocopying a document, other than at the time of 187
recording and indexing as provided for in division (A)(1) or (2) 188
of this section, a base fee of one dollar and a housing trust 189
fund fee of one dollar per page, size eight and one-half inches 190
by fourteen inches, or fraction thereof; 191

(H) For local facsimile transmission of a document, a base 192
fee of one dollar and a housing trust fund fee of one dollar per 193
page, size eight and one-half inches by fourteen inches, or 194
fraction thereof; for long distance facsimile transmission of a 195
document, a base fee of two dollars and a housing trust fund fee 196
of two dollars per page, size eight and one-half inches by 197
fourteen inches, or fraction thereof; 198

(I) For recording a declaration executed pursuant to 199
section 2133.02 of the Revised Code or a durable power of 200
attorney for health care executed pursuant to section 1337.12 of 201
the Revised Code, or both a declaration and a durable power of 202
attorney for health care, a base fee of at least fourteen 203
dollars but not more than twenty dollars and a housing trust 204
fund fee of at least fourteen dollars but not more than twenty 205
dollars. The instrument, if electronically executed under either 206
of those sections, whichever is applicable, is recorded under 207
this division by presenting a copy of a declaration, as defined 208
in section 2133.01 of the Revised Code, or an electronic durable 209
power of attorney for health care retrieved and copied in 210
readable text as described in section 1337.121 of the Revised 211
Code. 212

In any county in which the recorder employs the 213

photostatic or any similar process for recording maps, plats, or 214
prints the recorder shall determine, charge, and collect for the 215
recording or rerecording of any map, plat, or print, a base fee 216
of five cents and a housing trust fund fee of five cents per 217
square inch, for each square inch of the map, plat, or print 218
filed for that recording or rerecording, with a minimum base fee 219
of twenty dollars and a minimum housing trust fund fee of twenty 220
dollars; for certifying a copy from the record, a base fee of 221
two cents and a housing trust fund fee of two cents per square 222
inch of the record, with a minimum base fee of two dollars and a 223
minimum housing trust fund fee of two dollars. 224

The fees provided in this section shall be paid upon the 225
presentation of the instruments for record or upon the 226
application for any certified copy of the record, except that 227
the payment of fees for providing copies of instruments 228
conveying or extinguishing agricultural easements to the office 229
of farmland preservation in the department of agriculture under 230
division (H) of section 5301.691 of the Revised Code shall be 231
governed by that division, and payment of fees for electronic 232
recording may be made by electronic funds transfer, automated 233
clearing house, or other electronic means after presentation. 234

The fees provided for in this section shall not apply to 235
the recording, indexing, or making of a certified copy or to the 236
filing of any instrument by a county land reutilization 237
corporation. 238

The fees provided for in this section shall not apply to 239
the recording, indexing, or making of a certified copy or to the 240
filing of any instrument by a county land reutilization 241
corporation's wholly owned subsidiary or any other electing 242
subdivision as defined in section 5722.01 of the Revised Code if 243

the wholly owned subsidiary or the electing subdivision is 244
acting in capacity consistent with the purpose of the land 245
reutilization program. 246

Sec. 1337.11. As used in sections 1337.11 to 1337.17 of 247
the Revised Code: 248

(A) "Adult" means a person who is eighteen years of age or 249
older. 250

(B) "Attending physician" means the physician to whom a 251
principal or the family of a principal has assigned primary 252
responsibility for the treatment or care of the principal or, if 253
the responsibility has not been assigned, the physician who has 254
accepted that responsibility. 255

(C) "Comfort care" means any of the following: 256

(1) Nutrition when administered to diminish the pain or 257
discomfort of a principal, but not to postpone death; 258

(2) Hydration when administered to diminish the pain or 259
discomfort of a principal, but not to postpone death; 260

(3) Any other medical or nursing procedure, treatment, 261
intervention, or other measure that is taken to diminish the 262
pain or discomfort of a principal, but not to postpone death. 263

(D) "Consulting physician" means a physician who, in 264
conjunction with the attending physician of a principal, makes 265
one or more determinations that are required to be made by the 266
attending physician, or to be made by the attending physician 267
and one other physician, by an applicable provision of sections 268
1337.11 to 1337.17 of the Revised Code, to a reasonable degree 269
of medical certainty and in accordance with reasonable medical 270
standards. 271

(E) "Declaration for mental health treatment" has the same meaning as in section 2135.01 of the Revised Code.	272 273
(F) "Guardian" means a person appointed by a probate court pursuant to Chapter 2111. of the Revised Code to have the care and management of the person of an incompetent.	274 275 276
(G) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition or physical or mental health.	277 278 279
(H) "Health care decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to health care.	280 281 282
(I) "Health care facility" means any of the following:	283
(1) A hospital;	284
(2) A hospice care program, pediatric respite care program, or other institution that specializes in comfort care of patients in a terminal condition or in a permanently unconscious state;	285 286 287 288
(3) A nursing home;	289
(4) A home health agency;	290
(5) An intermediate care facility for individuals with intellectual disabilities;	291 292
(6) A regulated community mental health organization.	293
(J) "Health care personnel" means physicians, nurses, physician assistants, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical technicians-paramedic, medical technicians, dietitians, other authorized persons acting under the direction of an attending	294 295 296 297 298

physician, and administrators of health care facilities.	299
(K) "Home health agency" has the same meaning as in section 3740.01 of the Revised Code.	300 301
(L) "Hospice care program" and "pediatric respite care program" have the same meanings as in section 3712.01 of the Revised Code.	302 303 304
(M) "Hospital" has the same meanings as in sections 3701.01, 3727.01, and 5122.01 of the Revised Code.	305 306
(N) "Hydration" means fluids that are artificially or technologically administered.	307 308
(O) "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.	309 310
(P) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.	311 312 313
(Q) "Life-sustaining treatment" means any medical procedure, treatment, intervention, or other measure that, when administered to a principal, will serve principally to prolong the process of dying.	314 315 316 317
(R) "Medical claim" has the same meaning as in section 2305.113 of the Revised Code.	318 319
(S) "Mental health treatment" has the same meaning as in section 2135.01 of the Revised Code.	320 321
(T) "Nursing home" has the same meaning as in section 3721.01 of the Revised Code.	322 323
(U) "Nutrition" means sustenance that is artificially or technologically administered.	324 325

(V) "Permanently unconscious state" means a state of	326
permanent unconsciousness in a principal that, to a reasonable	327
degree of medical certainty as determined in accordance with	328
reasonable medical standards by the principal's attending	329
physician and one other physician who has examined the	330
principal, is characterized by both of the following:	331
(1) Irreversible unawareness of one's being and	332
environment.	333
(2) Total loss of cerebral cortical functioning, resulting	334
in the principal having no capacity to experience pain or	335
suffering.	336
(W) "Person" has the same meaning as in section 1.59 of	337
the Revised Code and additionally includes political	338
subdivisions and governmental agencies, boards, commissions,	339
departments, institutions, offices, and other instrumentalities.	340
(X) "Physician" means a person who is authorized under	341
Chapter 4731. of the Revised Code to practice medicine and	342
surgery or osteopathic medicine and surgery.	343
(Y) "Political subdivision" and "state" have the same	344
meanings as in section 2744.01 of the Revised Code.	345
(Z) "Professional disciplinary action" means action taken	346
by the board or other entity that regulates the professional	347
conduct of health care personnel, including the state medical	348
board and the board of nursing.	349
(AA) "Regulated community mental health organization"	350
means a residential facility as defined and licensed under	351
section 5119.34 of the Revised Code or a community mental health	352
services provider as defined in section 5122.01 of the Revised	353
Code.	354

(BB) "Terminal condition" means an irreversible, 355
incurable, and untreatable condition caused by disease, illness, 356
or injury from which, to a reasonable degree of medical 357
certainty as determined in accordance with reasonable medical 358
standards by a principal's attending physician and one other 359
physician who has examined the principal, both of the following 360
apply: 361

(1) There can be no recovery. 362

(2) Death is likely to occur within a relatively short 363
time if life-sustaining treatment is not administered. 364

(CC) "Tort action" means a civil action for damages for 365
injury, death, or loss to person or property, other than a civil 366
action for damages for a breach of contract or another agreement 367
between persons. 368

(DD) "Electronic," "electronically," "electronic 369
presence," "record," "sign," and "vulnerable adult" have the 370
same meanings as in section 2107.01 of the Revised Code. 371

Sec. 1337.12. (A) (1) An adult who is of sound mind 372
voluntarily may create a valid durable power of attorney for 373
health care by executing a durable power of attorney, in 374
accordance with section 1337.24 of the Revised Code, that 375
authorizes an attorney in fact as described in division (A) (2) 376
of this section to make health care decisions for the principal 377
at any time that the attending physician of the principal 378
determines that the principal has lost the capacity to make 379
informed health care decisions for the principal. The durable 380
power of attorney for health care may authorize the attorney in 381
fact, commencing immediately upon the execution of the 382
instrument or at any subsequent time and regardless of whether 383

the principal has lost the capacity to make informed health care 384
decisions, to obtain information concerning the principal's 385
health, including protected health information as defined in 45 386
C.F.R. 160.103. Except as otherwise provided in divisions (B) to 387
(F) of section 1337.13 of the Revised Code, the authorization 388
may include the right to give informed consent, to refuse to 389
give informed consent, or to withdraw informed consent to any 390
health care that is being or could be provided to the principal. 391
Additionally, to be valid, a durable power of attorney for 392
health care shall satisfy both of the following: 393

(a) ~~It~~ If a durable power of attorney for health care is 394
in writing, it shall be signed at the end of the instrument by 395
the principal and shall state the date of its execution. If a 396
durable power of attorney for health care is executed 397
electronically, the principal shall sign the record associated 398
with, and at the end of, the instrument and shall state the date 399
of its execution. 400

(b) It shall be witnessed in accordance with division (B) 401
of this section or be acknowledged by the principal in 402
accordance with division (C) of this section. 403

(c) The electronic execution of a durable power of 404
attorney for health care under division (A)(1)(a) of this 405
section and the witnessing or acknowledgment of the electronic 406
execution of a durable power of attorney for health care under 407
division (B) or (C) of this section, whichever is applicable, 408
shall be recorded by electronic media containing both audio and 409
visual components. The format of the recording shall be 410
preserved and stored in a safe, secure, and appropriate manner. 411
The recording may be cited as evidence of both of the following: 412

(i) That the principal executing the durable power of 413

attorney for health care is an adult of sound mind; 414

(ii) If the durable power of attorney for health care is 415
executed with witnesses, that the persons signing as witnesses 416
verbally acknowledge that they have signed the durable power of 417
attorney for health care and are not ineligible to be witnesses. 418

(2) Except as otherwise provided in this division, a 419
durable power of attorney for health care may designate any 420
competent adult as the attorney in fact. The attending physician 421
of the principal and an administrator of any nursing home in 422
which the principal is receiving care shall not be designated as 423
an attorney in fact in, or act as an attorney in fact pursuant 424
to, a durable power of attorney for health care. An employee or 425
agent of the attending physician of the principal and an 426
employee or agent of any health care facility in which the 427
principal is being treated shall not be designated as an 428
attorney in fact in, or act as an attorney in fact pursuant to, 429
a durable power of attorney for health care, except that these 430
limitations do not preclude a principal from designating either 431
type of employee or agent as the principal's attorney in fact if 432
the individual is a competent adult and related to the principal 433
by blood, marriage, or adoption, or if the individual is a 434
competent adult and the principal and the individual are members 435
of the same religious order. 436

(3) A durable power of attorney for health care shall not 437
expire, unless the principal specifies an expiration date in the 438
instrument. However, when a durable power of attorney contains 439
an expiration date, if the principal lacks the capacity to make 440
informed health care decisions for the principal on the 441
expiration date, the instrument shall continue in effect until 442
the principal regains the capacity to make informed health care 443

decisions for the principal. 444

(B) If witnessed for purposes of division (A) (1) (b) of 445
this section, a durable power of attorney for health care shall 446
be witnessed by at least two individuals who are adults and who 447
are not ineligible to be witnesses under this division. Any 448
person who is related to the principal by blood, marriage, or 449
adoption, any person who is designated as the attorney in fact 450
or alternate attorney in fact in the instrument, the attending 451
physician of the principal, and the administrator of any nursing 452
home in which the principal is receiving care are ineligible to 453
be witnesses. 454

The witnessing of a durable power of attorney for health 455
care shall involve the principal signing the applicable 456
instrument as described in division (A) (1) (a) of this section, 457
or acknowledging the principal's signature, at the end of the 458
instrument in the physical presence or electronic presence, as 459
applicable, of each witness. A witness for a durable power of 460
attorney for health care that is electronically executed may be 461
in either the physical or electronic presence of the principal. 462
A witness for a durable power of attorney for health care that 463
is executed electronically in the electronic presence of the 464
principal shall be located within this state. A witness for a 465
durable power of attorney for health care that is executed 466
electronically by the principal who is a vulnerable adult shall 467
sign the durable power of attorney for health care in the 468
physical presence of the principal. Then, each witness shall 469
subscribe the witness's signature after the signature of the 470
principal and, by doing so, attest to the witness's belief that 471
the principal appears to be of sound mind and not under or 472
subject to duress, fraud, or undue influence. The signatures of 473
the principal and the witnesses under this division are not 474

required to appear on the same page of the instrument. 475

~~(C)~~ (C) (1) If acknowledged for purposes of division (A) (1) 476
(b) of this section, a durable power of attorney for health care 477
shall be acknowledged before a notary public, ~~who~~. The notary 478
public shall make the certification described in section 147.53 479
of the Revised Code and also shall attest that the principal 480
appears to be of sound mind and not under or subject to duress, 481
fraud, or undue influence. 482

(2) If the durable power of attorney for health care is 483
executed electronically, the notary public performing the 484
certification and attestation described in division (C) (1) of 485
this section shall do so through an electronic notarization, 486
pursuant to section 147.591 of the Revised Code, or as an online 487
notarization pursuant to sections 147.60 to 147.66 of the 488
Revised Code. 489

(D) (1) If a principal has both a valid durable power of 490
attorney for health care and a valid declaration, division (B) 491
of section 2133.03 of the Revised Code applies. If a principal 492
has both a valid durable power of attorney for health care and a 493
DNR identification that is based upon a valid declaration and if 494
the declaration supersedes the durable power of attorney for 495
health care under division (B) of section 2133.03 of the Revised 496
Code, the DNR identification supersedes the durable power of 497
attorney for health care to the extent of any conflict between 498
the two. A valid durable power of attorney for health care 499
supersedes any DNR identification that is based upon a do-not- 500
resuscitate order that a physician issued for the principal 501
which is inconsistent with the durable power of attorney for 502
health care or a valid decision by the attorney in fact under a 503
durable power of attorney. 504

(2) As used in division (D) of this section:	505
(a) "Declaration" has the same meaning as in section 2133.01 of the Revised Code.	506 507
(b) "Do-not-resuscitate order" and "DNR identification" have the same meanings as in section 2133.21 of the Revised Code.	508 509 510
(E) (1) In a durable power of attorney for health care, a principal may nominate a guardian of the principal's person, estate, or both for consideration by a court if proceedings for the appointment of a guardian for the principal's person, estate, or both are commenced at a later time. The principal may authorize the person nominated as the guardian or the attorney in fact to nominate a successor guardian for consideration by the court. The principal's nomination of a guardian of the principal's person, estate, or both is revoked by the principal's subsequent nomination of a guardian of the principal's person, estate, or both, and, except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.	511 512 513 514 515 516 517 518 519 520 521 522 523
(2) The principal may direct that bond be waived for a person nominated as guardian or successor guardian under division (E) (1) of this section.	524 525 526
(3) A durable power of attorney for health care that contains the nomination of a person to be the guardian of the person, estate, or both of the principal may be filed with the probate court for safekeeping, and the probate court shall designate the nomination as the nomination of a standby guardian.	527 528 529 530 531 532
(4) If a guardian is appointed for the principal, a	533

534 durable power of attorney for health care is not terminated, and
535 the authority of the attorney in fact continues unless the
536 court, pursuant to its authority under section 2111.50 of the
537 Revised Code, limits, suspends, or terminates the power of
538 attorney after notice to the attorney in fact and upon a finding
539 that the limitation, suspension, or termination is in the best
540 interest of the principal.

541 **Sec. 1337.121.** A durable power of attorney for health care
542 executed electronically under section 1337.12 of the Revised
543 Code may include some or all of the information specified in the
544 printed form of the instrument in section 1337.17 of the Revised
545 Code according to the intention of the principal. The record of
546 an electronic durable power of attorney for health care may be
547 retrieved and copied in readable text.

548 **Sec. 1337.22.** As used in sections 1337.21 to 1337.64 of
549 the Revised Code:

550 (A) "Agent" means a person granted authority to act for a
551 principal under a power of attorney, whether denominated an
552 agent, attorney in fact, or otherwise. "Agent" includes an
553 original agent, coagent, successor agent, and a person to which
554 an agent's authority is delegated.

555 (B) "Durable," with respect to a power of attorney, means
556 not terminated by the principal's incapacity.

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

560 (D) "Good faith" means honesty in fact.

561 (E) "Incapacity" means inability of an individual to
562 manage property or business affairs for either of the following

reasons:	563
(1) The individual has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.	564 565 566
(2) The individual is any of the following:	567
(a) Missing;	568
(b) Detained, including incarcerated in a penal system;	569
(c) Outside the United States and unable to return.	570
(F) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.	571 572 573 574 575
(G) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.	576 577 578
(H) "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only	579 580 581 582 583 584 585 586 587 588 589 590

by will.	591
(I) "Principal" means an individual who grants authority to an agent in a power of attorney.	592 593
(J) "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.	594 595 596
(K) "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.	597 598 599
(L) "Sign" means, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol or to attach to or logically associate with the record an electronic sound, symbol, or process.	600 601 602 603
(M) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.	604 605 606 607
(N) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner, but does not include commodity futures contracts or call or put options on stocks or stock indexes.	608 609 610 611 612
<u>(O) "Conscious presence" means within the range of any of the principal's senses, excluding the sense of sight or sound that is sensed by telephonic, electronic, or other distant communication.</u>	613 614 615 616
<u>(P) "Electronic presence" has the same meaning as in section 2107.01 of the Revised Code.</u>	617 618

Sec. 1337.25. (A) A power of attorney ~~must~~ shall be signed 619
by the principal or in the principal's conscious presence or 620
electronic presence by another individual directed by the 621
principal to sign the principal's name on the power of attorney. 622
A signature on a power of attorney is presumed to be genuine if 623
the principal or the principal and other individual directed by 624
the principal to sign the principal's name acknowledges the 625
signature before a notary public or other individual authorized 626
by law to take acknowledgments. 627

(B) If a power of attorney is executed electronically, the 628
principal's signature shall only be acknowledged before a notary 629
public performing an electronic notarization, pursuant to 630
section 147.591 of the Revised Code, or an online notarization 631
pursuant to sections 147.60 to 147.66 of the Revised Code. 632

Sec. 1345.01. As used in sections 1345.01 to 1345.13 of 633
the Revised Code: 634

(A) "Consumer transaction" means a sale, lease, 635
assignment, award by chance, or other transfer of an item of 636
goods, a service, a franchise, or an intangible, to an 637
individual for purposes that are primarily personal, family, or 638
household, or solicitation to supply any of these things. 639

"Consumer transaction" also means services provided by a notary 640
public to a testator in the acknowledgement, certification, and 641
attestation pertaining to the testator's electronic will under 642
section 2107.03 of the Revised Code. "Consumer transaction" does 643
not include transactions between persons, defined in sections 644
4905.03 and 5725.01 of the Revised Code, and their customers, 645
except for transactions involving a loan made pursuant to 646
sections 1321.35 to 1321.48 of the Revised Code and transactions 647
in connection with residential mortgages between loan officers, 648

mortgage brokers, or nonbank mortgage lenders and their 649
customers; transactions involving a home construction service 650
contract as defined in section 4722.01 of the Revised Code; 651
transactions between certified public accountants or public 652
accountants and their clients; transactions between attorneys, 653
physicians, or dentists and their clients or patients; and 654
transactions between veterinarians and their patients that 655
pertain to medical treatment but not ancillary services. 656

(B) "Person" includes an individual, corporation, 657
government, governmental subdivision or agency, business trust, 658
estate, trust, partnership, association, cooperative, or other 659
legal entity. 660

(C) "Supplier" means a seller, lessor, assignor, 661
franchisor, or other person engaged in the business of effecting 662
or soliciting consumer transactions, whether or not the person 663
deals directly with the consumer. If the consumer transaction is 664
in connection with a residential mortgage, "supplier" does not 665
include an assignee or purchaser of the loan for value, except 666
as otherwise provided in section 1345.091 of the Revised Code. 667
For purposes of this division, in a consumer transaction in 668
connection with a residential mortgage, "seller" means a loan 669
officer, mortgage broker, or nonbank mortgage lender. 670

(D) "Consumer" means a person who engages in a consumer 671
transaction with a supplier. 672

(E) "Knowledge" means actual awareness, but such actual 673
awareness may be inferred where objective manifestations 674
indicate that the individual involved acted with such awareness. 675

(F) "Natural gas service" means the sale of natural gas, 676
exclusive of any distribution or ancillary service. 677

(G) "Public telecommunications service" means the 678
transmission by electromagnetic or other means, other than by a 679
telephone company as defined in section 4927.01 of the Revised 680
Code, of signs, signals, writings, images, sounds, messages, or 681
data originating in this state regardless of actual call 682
routing. "Public telecommunications service" excludes a system, 683
including its construction, maintenance, or operation, for the 684
provision of telecommunications service, or any portion of such 685
service, by any entity for the sole and exclusive use of that 686
entity, its parent, a subsidiary, or an affiliated entity, and 687
not for resale, directly or indirectly; the provision of 688
terminal equipment used to originate telecommunications service; 689
broadcast transmission by radio, television, or satellite 690
broadcast stations regulated by the federal government; or cable 691
television service. 692

(H) (1) "Loan officer" means an individual who for 693
compensation or gain, or in anticipation of compensation or 694
gain, takes or offers to take a residential mortgage loan 695
application; assists or offers to assist a buyer in obtaining or 696
applying to obtain a residential mortgage loan by, among other 697
things, advising on loan terms, including rates, fees, and other 698
costs; offers or negotiates terms of a residential mortgage 699
loan; or issues or offers to issue a commitment for a 700
residential mortgage loan. "Loan officer" also includes a 701
mortgage loan originator as defined in section 1322.01 of the 702
Revised Code. 703

(2) "Loan officer" does not include an employee of a bank, 704
savings bank, savings and loan association, credit union, or 705
credit union service organization organized under the laws of 706
this state, another state, or the United States; an employee of 707
a subsidiary of such a bank, savings bank, savings and loan 708

association, or credit union; or an employee of an affiliate 709
that (a) controls, is controlled by, or is under common control 710
with, such a bank, savings bank, savings and loan association, 711
or credit union and (b) is subject to examination, supervision, 712
and regulation, including with respect to the affiliate's 713
compliance with applicable consumer protection requirements, by 714
the board of governors of the federal reserve system, the 715
comptroller of the currency, the office of thrift supervision, 716
the federal deposit insurance corporation, or the national 717
credit union administration. 718

(I) "Residential mortgage" or "mortgage" means an 719
obligation to pay a sum of money evidenced by a note and secured 720
by a lien upon real property located within this state 721
containing two or fewer residential units or on which two or 722
fewer residential units are to be constructed and includes such 723
an obligation on a residential condominium or cooperative unit. 724

(J) (1) "Mortgage broker" means any of the following: 725

(a) A person that holds that person out as being able to 726
assist a buyer in obtaining a mortgage and charges or receives 727
from either the buyer or lender money or other valuable 728
consideration readily convertible into money for providing this 729
assistance; 730

(b) A person that solicits financial and mortgage 731
information from the public, provides that information to a 732
mortgage broker or a person that makes residential mortgage 733
loans, and charges or receives from either of them money or 734
other valuable consideration readily convertible into money for 735
providing the information; 736

(c) A person engaged in table-funding or warehouse-lending 737

mortgage loans that are residential mortgage loans. 738

(2) "Mortgage broker" does not include a bank, savings 739
bank, savings and loan association, credit union, or credit 740
union service organization organized under the laws of this 741
state, another state, or the United States; a subsidiary of such 742
a bank, savings bank, savings and loan association, or credit 743
union; an affiliate that (a) controls, is controlled by, or is 744
under common control with, such a bank, savings bank, savings 745
and loan association, or credit union and (b) is subject to 746
examination, supervision, and regulation, including with respect 747
to the affiliate's compliance with applicable consumer 748
protection requirements, by the board of governors of the 749
federal reserve system, the comptroller of the currency, the 750
office of thrift supervision, the federal deposit insurance 751
corporation, or the national credit union administration; or an 752
employee of any such entity. 753

(K) "Nonbank mortgage lender" means any person that 754
engages in a consumer transaction in connection with a 755
residential mortgage, except for a bank, savings bank, savings 756
and loan association, credit union, or credit union service 757
organization organized under the laws of this state, another 758
state, or the United States; a subsidiary of such a bank, 759
savings bank, savings and loan association, or credit union; or 760
an affiliate that (1) controls, is controlled by, or is under 761
common control with, such a bank, savings bank, savings and loan 762
association, or credit union and (2) is subject to examination, 763
supervision, and regulation, including with respect to the 764
affiliate's compliance with applicable consumer protection 765
requirements, by the board of governors of the federal reserve 766
system, the comptroller of the currency, the office of thrift 767
supervision, the federal deposit insurance corporation, or the 768

national credit union administration. 769

(L) For purposes of divisions (H), (J), and (K) of this 770
section: 771

(1) "Control" of another entity means ownership, control, 772
or power to vote twenty-five per cent or more of the outstanding 773
shares of any class of voting securities of the other entity, 774
directly or indirectly or acting through one or more other 775
persons. 776

(2) "Credit union service organization" means a CUSO as 777
defined in 12 C.F.R. 702.2. 778

Sec. 2107.01. ~~As~~ Unless the context otherwise requires, as 779
used in Chapters 2101. to 2131. of the Revised Code: 780

~~(A)~~ (A) (1) "Will" includes ~~codicils~~ the following: 781

(a) Codicils to wills admitted to probate, ~~lost~~; 782

(b) Lost, spoliated, or destroyed wills, ~~and instruments~~; 783

(c) Instruments declared valid under division (A) (1) of 784
section 5817.10 of the Revised Code, ~~but "will"~~; 785

(d) Electronic wills and copies of electronic wills. 786

(2) "Will" does not include inter vivos trusts or other 787
instruments that have not been admitted to probate. 788

(B) "Testator" means any person who makes a will. 789

(C) "Copy of an electronic will" means a copy of the 790
record of an electronic will that is readable as text. 791

(D) "Electronic" or "electronically" means relating to 792
technology having electrical, digital, magnetic, wireless, 793
optical, electromagnetic, or similar capabilities. 794

(E) "Electronic presence" means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location. 795
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(F) "Electronic will" means a will that is executed electronically pursuant to section 2107.03 of the Revised Code, and includes a copy of an electronic will. 799
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(G) "Original will" means the original will in writing or the copy of an electronic will that is offered for or admitted to probate. 802
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(H) "Record" means information that is inscribed in a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form. 805
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(I) "Sign" means to do either of the following with the present intent to authenticate or adopt a record: 808
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(1) Execute or adopt a tangible symbol; 810

(2) Affix to or logically associate with a record an electronic symbol or process. 811
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(J) "Vulnerable adult" means a person who is eighteen years of age or older and whose ability to perform the normal activities of daily living or to provide for the person's own care or protection is impaired due to a mental, emotional, sensory, or long-term physical or developmental, disability or dysfunction, or brain damage, or the debilitating infirmities of aging. 813
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(K) "Will annexed" means the original will, a copy of the original will in writing, or a copy of the electronic will, whichever is applicable. 820
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Sec. 2107.03. (A) Except oral wills governed by section 823
2107.60 of the Revised Code, every will shall be in writing, but 824
may be including handwritten or typewritten, or be an electronic 825
will. 826

(B) (1) Both of the following apply to a will in writing: 827

(a) The will shall be signed at the end by the testator or 828
by some other person in the testator's conscious presence and at 829
the testator's express direction. 830

(b) The will shall be attested and subscribed in the 831
conscious presence of the testator, by two or more competent 832
witnesses, who saw the testator subscribe, or heard the testator 833
acknowledge the testator's signature. 834

(2) For purposes of division (B) (1) of this section, 835
"conscious presence" means within the range of any of the 836
testator's senses, excluding the sense of sight or sound that is 837
sensed by telephonic, electronic, or other distant 838
communication. 839

(C) All of the following apply to an electronic will: 840

(1) (a) The will shall be a record that is readable as text 841
at the time it is signed under divisions (C) (2) and (3) of this 842
section. 843

(b) Prior to signing the will under divisions (C) (2) and 844
(3) of this section, the testator or the individual who will 845
sign the will in the testator's name, and the witnesses to the 846
will may review the contents of the will. 847

(2) The will shall be signed at the end by the testator or 848
by another individual in the testator's name, in the testator's 849
physical presence or electronic presence, and by the testator's 850

direction. 851

(3) The will shall be signed in the physical presence or 852
electronic presence of the testator by two or more competent 853
witnesses and all of the following apply: 854

(a) If the witnesses sign the will in the electronic 855
presence of the testator, they shall be located in this state. 856

(b) If the testator is a vulnerable adult, the witnesses 857
shall sign the will in the physical presence of the testator. 858

(c) The witnesses shall sign the will within a reasonable 859
time after witnessing the signing of the will under division (C) 860
(2) of this section. 861

(d) The witnesses shall subscribe and attest their 862
signatures to the will. 863

(4) (a) The will shall be acknowledged before a notary 864
public who shall make the certification described in section 865
147.53 of the Revised Code and also shall attest that the 866
testator appears to be of sound mind and not subject to duress, 867
fraud, or undue influence. The notary public performing the 868
certification and attestation shall do so through an electronic 869
notarization, pursuant to section 147.591 of the Revised Code, 870
or as an online notarization pursuant to sections 147.60 to 871
147.66 of the Revised Code. 872

(b) If the notary public before whom the will is 873
acknowledged under division (C) (4) (a) of this section has 874
reasonable cause to believe during the course of the 875
certification proceedings that the testator does not appear to 876
be of sound mind or is subject to duress, fraud, or undue 877
influence, the notary public shall terminate the certification 878
proceedings. 879

(5) Prior to the acknowledgment of the will by the notary public under division (C) (4) (a) of this section, the notary public shall require the presentation of a government-issued identification credential by the testator and the witnesses, and shall perform the credential analysis and identity proofing of the testator and the witnesses, in accordance with division (E) of section 147.64 of the Revised Code and the standards adopted by the secretary of state to implement that division. 880
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(D) (1) The procedures under divisions (C) (2), (3), (4), and (5) of this section shall be recorded by electronic media containing both audio and visual components. The format of the recording shall be preserved and stored in a safe, secure, and appropriate manner. 888
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(2) The recording required under division (D) (1) of this section may be cited as evidence of both of the following: 893
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(a) That the person executing the electronic will is the testator of the will; 895
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(b) That the persons signing the electronic will under divisions (C) (2) and (3) of this section verbally acknowledge that they have signed the electronic will, that they recognize the consequences of their signing the electronic will, and that they understand the significance of the electronic will. 897
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(E) The testator of the electronic will may request that a copy of the electronic will, certified as provided for in division (C) (4) (a) of this section, be sent to the testator and any other person designated by the testator in either of the following forms and manners: 902
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(1) In paper form, by certified mail, return receipt requested, to the respective residence addresses; 907
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<u>(2) In portable document format or PDF, by electronic</u>	909
<u>mail, to the respective electronic mail addresses.</u>	910
<u>(F) The intent of the testator that the record described</u>	911
<u>in division (C) (1) of this section is the testator's electronic</u>	912
<u>will may be established by extrinsic evidence.</u>	913
<u>(G) Electronic wills are subject to Chapter 1345. of the</u>	914
<u>Revised Code.</u>	915
Sec. 2107.031. <u>(A) On and after the effective date of this</u>	916
<u>section, the laws of this state that are applicable to wills</u>	917
<u>apply to electronic wills unless it is clear from the context or</u>	918
<u>meaning of a particular provision of the law that it applies</u>	919
<u>only to a will in writing or a will other than an electronic</u>	920
<u>will.</u>	921
<u>(B) The principles of equity apply to an electronic will.</u>	922
Sec. 2107.07. <u>(A) A will in writing or an electronic will</u>	923
may be deposited by the testator, or by some person for the	924
testator, in the office of the judge of the probate court in the	925
county in which the testator lives, before or after the death of	926
the testator, and if deposited after the death of the testator,	927
with or without applying for its probate.	928
Upon the payment of the fee of twenty-five dollars to the	929
court, the judge shall receive, keep, and give a certificate of	930
deposit for the will. That will shall be safely kept until	931
delivered or disposed of as provided by section 2107.08 of the	932
Revised Code. If the will is not delivered or disposed of as	933
provided in that section within one hundred years after the date	934
the will was deposited, the judge may dispose of the will in any	935
manner the judge considers feasible. The judge shall retain an	936
electronic copy of the will prior to its disposal after one	937

hundred years under this section. 938

(B) Every will that is not an electronic will and that is 939
so deposited shall be enclosed in a sealed envelope that shall 940
be indorsed with the name of the testator. The judge shall 941
indorse on the envelope the date of delivery and the person by 942
whom the will was delivered. The envelope may be indorsed with 943
the name of a person to whom it is to be delivered after the 944
death of the testator. The will shall not be opened or read 945
until delivered to a person entitled to receive it, until the 946
testator files a complaint in the probate court for a 947
declaratory judgment of the validity of the will pursuant to 948
section 5817.02 of the Revised Code, or until otherwise disposed 949
of as provided in section 2107.08 of the Revised Code. Subject 950
to section 2107.08 of the Revised Code, the deposited will shall 951
not be a public record until the time that an application is 952
filed to probate it. 953

Sec. 2107.17. When a witness to a will, or other witness 954
competent to testify at a probate or declaratory judgment 955
proceeding, resides out of its jurisdiction, or resides within 956
it but is infirm and unable to attend court, the probate court 957
may issue a commission with the will annexed directed to any 958
suitable person. In lieu of the original will, the probate 959
court, in its discretion, may annex to the commission a 960
photocopy of the original will or a copy of ~~the that~~ will made 961
by any similar process. The person to whom the commission is 962
directed shall take the deposition or authorize the taking of 963
the deposition of the witness as provided by the Rules of Civil 964
Procedure. The testimony, certified and returned, shall be 965
admissible and have the same effect in the proceedings as if 966
taken in open court. 967

Sec. 2107.24. (A) If a document that is executed that 968
purports to be a will in writing is not executed in compliance 969
with the requirements of division (B) of section 2107.03 of the 970
Revised Code, that document shall be treated as if it had been 971
executed as a will in writing in compliance with the 972
requirements of that ~~section~~division if a probate court, after 973
holding a hearing, finds that the proponent of the document as a 974
purported will in writing has established, by clear and 975
convincing evidence, all of the following: 976

(1) The decedent prepared the document or caused the 977
document to be prepared. 978

(2) The decedent signed the document and intended the 979
document to constitute the decedent's will. 980

(3) The decedent signed the document under division (A) (2) 981
of this section in the conscious presence of two or more 982
witnesses. As used in division (A) (3) of this section, 983
"conscious presence" means within the range of any of the 984
witnesses' senses, excluding the sense of sight or sound that is 985
sensed by telephonic, electronic, or other distant 986
communication. 987

(B) ~~If the~~If a document that is executed that purports to 988
be an electronic will is not executed in compliance with the 989
requirements of division (C) of section 2107.03 of the Revised 990
Code, that document shall be treated as if it had been executed 991
as an electronic will in compliance with the requirements of 992
that division if a probate court, after holding a hearing, finds 993
that the proponent of the document as a purported electronic 994
will has established, by clear and convincing evidence, all of 995
the following: 996

<u>(1) The decedent prepared the document or caused the</u>	997
<u>document to be prepared.</u>	998
<u>(2) The decedent signed the document and intended the</u>	999
<u>document to constitute the decedent's will.</u>	1000
<u>(3) The requirements of division (C) of section 2107.03 of</u>	1001
<u>the Revised Code were complied with.</u>	1002
<u>(C) The executor may file an action in the probate court</u>	1003
<u>to recover court costs and attorney's fees from the attorney, if</u>	1004
<u>any, responsible for the execution of the document if either of</u>	1005
<u>the following applies:</u>	1006
<u>(1) The probate court holds a hearing pursuant to division</u>	1007
(A) of this section and finds that the proponent of the document	1008
as a purported will <u>in writing</u> has established by clear and	1009
convincing evidence the requirements under divisions (A) (1),	1010
(2), and (3) of this section, the executor may file an action in	1011
the probate court to recover court costs and attorney's fees	1012
from the attorney, if any, responsible for the execution of the	1013
document.	1014
<u>(2) The probate court holds a hearing pursuant to division</u>	1015
<u>(B) of this section and finds that the proponent of the document</u>	1016
<u>as a purported electronic will has established by clear and</u>	1017
<u>convincing evidence the requirements under divisions (B) (1),</u>	1018
<u>(2), and (3) of this section.</u>	1019
Sec. 2107.27. (A) When application is made to the probate	1020
court to admit to probate a will that has been lost, spoliated,	1021
or destroyed as provided in section 2107.26 of the Revised Code	1022
or a document that is treated as a will as provided in section	1023
2107.24 of the Revised Code, the party seeking to prove the will	1024
shall give a written notice by certified mail to the surviving	1025

spouse of the testator, to all persons who would be entitled to 1026
inherit from the testator under Chapter 2105. of the Revised 1027
Code if the testator had died intestate, to all legatees and 1028
devisees that are named in the will, and to all legatees and 1029
devisees that are named in the most recent will prior to the 1030
lost, spoliated, or destroyed will that is known to the 1031
applicant or in the most recent will prior to the document that 1032
is treated as a will if the most recent will is known to the 1033
applicant. 1034

(B) In the cases described in division (A) of this 1035
section, the proponents and opponents of the will shall cause 1036
the witnesses to the will, and any other witnesses that have 1037
relevant and material knowledge about the will, to appear before 1038
the court to testify. If any witnesses reside out of its 1039
jurisdiction, or reside within its jurisdiction but are infirm 1040
or unable to attend, the probate court may order their testimony 1041
to be taken and reduced to writing by some competent person. The 1042
testimony shall be filed in the records of the probate court 1043
pertaining to the testator's estate. 1044

(C) If upon such proof the court finds that the 1045
requirements of section 2107.24 or 2107.26 of the Revised Code, 1046
whichever is applicable, have been met, the probate court shall 1047
find and establish the contents of the will as near as can be 1048
ascertained. The contents of the will established under section 1049
2107.26 of the Revised Code shall be as effectual for all 1050
purposes as if the original will had been admitted to probate 1051
and record. The contents of the will established under section 1052
2107.24 of the Revised Code shall be as effectual for all 1053
purposes as if the document treated as a will had satisfied all 1054
of the requirements of division (B) or (C) of section 2107.03 of 1055
the Revised Code, whichever is applicable, and had been admitted 1056

to probate and record. 1057

Sec. 2107.29. When the court record of a will is 1058
destroyed, a copy of the will or a copy of the will and its 1059
probate may be recorded by the probate court if it appears to 1060
the court's satisfaction that the court record has been 1061
destroyed and if it appears, by reason of a certificate signed 1062
and sealed by the probate judge, that the copy is a true copy of 1063
the original will or a true copy of the original will and its 1064
probate. 1065

Sec. 2107.30. When the court record of a will has been 1066
destroyed, the original will may again be admitted to probate 1067
and record. 1068

Sec. 2107.31. Sections 2107.29 and 2107.30 of the Revised 1069
Code do not affect the proceedings or extend the time for 1070
contesting the validity of any will or for asserting rights 1071
~~thereunder under the will~~. The court record provided for in ~~such~~ 1072
~~those~~ sections ~~must~~shall show that the original court record 1073
was destroyed, and the time, as near as may be, when the will 1074
was originally admitted to probate and record. 1075

Sec. 2107.33. (A) A will in writing shall be revoked in 1076
any of the following manners: 1077

(1) By the testator by tearing, canceling, obliterating, 1078
or destroying it with the intention of revoking it; 1079

(2) By some person, at the request of the testator and in 1080
the testator's physical presence, by tearing, canceling, 1081
obliterating, or destroying it with the intention of revoking 1082
it; 1083

(3) By some person tearing, canceling, obliterating, or 1084
destroying it pursuant to the testator's express written 1085

direction; 1086

(4) By some other written will or codicil or by an 1087
electronic will, executed as prescribed by this chapter; 1088

(5) By some other writing that is signed, attested, and 1089
subscribed in the manner provided by this chapter. 1090

~~(B)~~ (B) (1) An electronic will shall be revoked in either of 1091
the following manners: 1092

(a) By the testator's subsequent will that revokes all or 1093
part of the electronic will expressly or by inconsistency; 1094

(b) By a physical act, if it is established by a 1095
preponderance of the evidence that the testator, with the intent 1096
of revoking all or part of the will, performed the act or 1097
directed another individual who performed the act in the 1098
physical presence of the testator. 1099

(2) As used in division (B) (1) (b) of this section, 1100
"physical act" includes, but is not limited to, using a delete 1101
or trash function on the computer pertaining to the electronic 1102
will or typing or writing "revoked" on an electronic or printed 1103
copy of the electronic will. 1104

(C) If after executing a will, a testator is divorced, 1105
obtains a dissolution of marriage, has the testator's marriage 1106
annulled, or, upon actual separation from the testator's spouse, 1107
enters into a separation agreement pursuant to which the parties 1108
intend to fully and finally settle their prospective property 1109
rights in the property of the other, whether by expected 1110
inheritance or otherwise, any disposition or appointment of 1111
property made by the will to the former spouse or to a trust 1112
with powers created by or available to the former spouse, any 1113
provision in the will conferring a general or special power of 1114

appointment on the former spouse, and any nomination in the will 1115
of the former spouse as executor, trustee, or guardian shall be 1116
revoked unless the will expressly provides otherwise. 1117

~~(C)~~ (D) Property prevented from passing to a former spouse 1118
or to a trust with powers created by or available to the former 1119
spouse because of revocation by this section shall pass as if 1120
the former spouse failed to survive the decedent, and other 1121
provisions conferring some power or office on the former spouse 1122
shall be interpreted as if the spouse failed to survive the 1123
decedent. If provisions are revoked solely by this section, they 1124
shall be deemed to be revived by the testator's remarriage with 1125
the former spouse or upon the termination of a separation 1126
agreement executed by them. 1127

~~(D)~~ (E) A bond, agreement, or covenant made by a testator, 1128
for a valuable consideration, to convey property previously 1129
devised or bequeathed in a will does not revoke the devise or 1130
bequest. The property passes by the devise or bequest, subject 1131
to the remedies on the bond, agreement, or covenant, for a 1132
specific performance or otherwise, against the devisees or 1133
legatees, that might be had by law against the heirs of the 1134
testator, or the testator's next of kin, if the property had 1135
descended to them. 1136

~~(E)~~ (F) A testator's revocation of a will shall be valid 1137
only if the testator, at the time of the revocation, has the 1138
same capacity as the law requires for the execution of a will. 1139

~~(F)~~ (G) As used in this section: 1140

(1) "Trust with powers created by or available to the 1141
former spouse" means a trust that is revocable by the former 1142
spouse, with respect to which the former spouse has a power of 1143

withdrawal, or with respect to which the former spouse may take 1144
a distribution that is not subject to an ascertainable standard 1145
but does not mean a trust in which those powers of the former 1146
spouse are revoked by section 5815.31 of the Revised Code or 1147
similar provisions in the law of another state. 1148

(2) "Ascertainable standard" means a standard that is 1149
related to a trust beneficiary's health, maintenance, support, 1150
or education. 1151

Sec. 2107.60. (A) An oral will, made in the last sickness, 1152
shall be valid in respect to personal property if the oral will 1153
is reduced to writing or transcribed electronically and 1154
~~subscribed by two competent disinterested witnesses~~ within ten 1155
days after the speaking of the testamentary words by two 1156
competent disinterested witnesses who were, at the time the 1157
testamentary words were spoken, in the physical presence or 1158
electronic presence of the testator. The witnesses who were, at 1159
the time the testamentary words were spoken, in the electronic 1160
presence of the testator shall be located within this state. The 1161
witnesses shall prove that the testator was of sound mind and 1162
memory, not under restraint, and that the testator called upon 1163
some person physically or electronically present at the time the 1164
testamentary words were spoken to bear testimony to the 1165
disposition as the testator's will. 1166

(B) No oral will shall be admitted to record unless it is 1167
offered for probate within three months after the death of the 1168
testator. 1169

Sec. 2107.63. A testator may by will devise, bequeath, or 1170
appoint real or personal property or any interest in real or 1171
personal property to a trustee of a trust that is evidenced by a 1172
written or electronic instrument signed by the testator or any 1173

other settlor either before or on the same date of the execution 1174
of the will of the testator, that is identified in the will, and 1175
that has been signed, or is signed at any time after the 1176
execution of the testator's will, by the trustee or trustees 1177
identified in the will or their successors or by any other 1178
person lawfully serving, by court appointment or otherwise, as a 1179
trustee. 1180

The property or interest so devised, bequeathed, or 1181
appointed to the trustee shall become a part of the trust 1182
estate, shall be subject to the jurisdiction of the court having 1183
jurisdiction of the trust, and shall be administered in 1184
accordance with the terms and provisions of the instrument 1185
creating the trust, including, unless the will specifically 1186
provides otherwise, any amendments or modifications of the trust 1187
made in writing or electronically before, concurrently with, or 1188
after the making of the will and prior to the death of the 1189
testator. The termination of the trust, or its entire revocation 1190
prior to the testator's death, shall invalidate the devise, 1191
bequest, or appointment to the trustee. 1192

This section shall not affect any of the rights accorded 1193
to a surviving spouse under section 2106.01 of the Revised Code. 1194
This section applies, and shall be construed as applying, to the 1195
wills of decedents who die on or after the effective date of 1196
this amendment, regardless of the date of the execution of their 1197
wills. 1198

Sec. 2129.05. Authenticated copies of wills of persons ~~not~~ 1199
~~domiciled in this state,~~ executed and proved according to the 1200
laws of any state or territory of the United States, relative to 1201
property in this state, may be admitted to record in the probate 1202
court of a county where a part of that property is situated. The 1203

authenticated copies, so recorded, shall be as valid as wills 1204
made in this state. 1205

When such a will, or authenticated copy, is admitted to 1206
record, a copy of the will or of the authenticated copy, with 1207
the copy of the order to record it annexed to that copy, 1208
certified by the probate judge under the seal of the probate 1209
court, may be filed and recorded in the office of the probate 1210
judge of any other county where a part of the property is 1211
situated, and it shall be as effectual as the authenticated copy 1212
of the will would be if approved and admitted to record by the 1213
court. 1214

Sec. 2133.01. Unless the context otherwise requires, as 1215
used in sections 2133.01 to 2133.15 of the Revised Code: 1216

(A) "Adult" means an individual who is eighteen years of 1217
age or older. 1218

(B) "Attending physician" means the physician to whom a 1219
declarant or other patient, or the family of a declarant or 1220
other patient, has assigned primary responsibility for the 1221
treatment or care of the declarant or other patient, or, if the 1222
responsibility has not been assigned, the physician who has 1223
accepted that responsibility. 1224

(C) "Comfort care" means any of the following: 1225

(1) Nutrition when administered to diminish the pain or 1226
discomfort of a declarant or other patient, but not to postpone 1227
the declarant's or other patient's death; 1228

(2) Hydration when administered to diminish the pain or 1229
discomfort of a declarant or other patient, but not to postpone 1230
the declarant's or other patient's death; 1231

(3) Any other medical or nursing procedure, treatment, 1232
intervention, or other measure that is taken to diminish the 1233
pain or discomfort of a declarant or other patient, but not to 1234
postpone the declarant's or other patient's death. 1235

(D) "Consulting physician" means a physician who, in 1236
conjunction with the attending physician of a declarant or other 1237
patient, makes one or more determinations that are required to 1238
be made by the attending physician, or to be made by the 1239
attending physician and one other physician, by an applicable 1240
provision of this chapter, to a reasonable degree of medical 1241
certainty and in accordance with reasonable medical standards. 1242

(E) "Declarant" means any adult who has executed a 1243
declaration in accordance with section 2133.02 of the Revised 1244
Code. 1245

(F) "Declaration" means a written or an electronic 1246
document executed in accordance with section 2133.02 of the 1247
Revised Code. 1248

(G) "Durable power of attorney for health care" means a 1249
document created pursuant to sections 1337.11 to 1337.17 of the 1250
Revised Code. 1251

(H) "Guardian" means a person appointed by a probate court 1252
pursuant to Chapter 2111. of the Revised Code to have the care 1253
and management of the person of an incompetent. 1254

(I) "Health care facility" means any of the following: 1255

(1) A hospital; 1256

(2) A hospice care program, pediatric respite care 1257
program, or other institution that specializes in comfort care 1258
of patients in a terminal condition or in a permanently 1259

unconscious state;	1260
(3) A nursing home or residential care facility, as defined in section 3721.01 of the Revised Code;	1261 1262
(4) A home health agency and any residential facility where a person is receiving care under the direction of a home health agency;	1263 1264 1265
(5) An intermediate care facility for individuals with intellectual disabilities.	1266 1267
(J) "Health care personnel" means physicians, nurses, physician assistants, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical technicians-paramedic, medical technicians, dietitians, other authorized persons acting under the direction of an attending physician, and administrators of health care facilities.	1268 1269 1270 1271 1272 1273
(K) "Home health agency" has the same meaning as in section 3740.01 of the Revised Code.	1274 1275
(L) "Hospice care program" and "pediatric respite care program" have the same meanings as in section 3712.01 of the Revised Code.	1276 1277 1278
(M) "Hospital" has the same meanings as in sections 3701.01, 3727.01, and 5122.01 of the Revised Code.	1279 1280
(N) "Hydration" means fluids that are artificially or technologically administered.	1281 1282
(O) "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.	1283 1284
(P) "Intermediate care facility for the individuals with intellectual disabilities" has the same meaning as in section	1285 1286

5124.01 of the Revised Code.	1287
(Q) "Life-sustaining treatment" means any medical	1288
procedure, treatment, intervention, or other measure that, when	1289
administered to a qualified patient or other patient, will serve	1290
principally to prolong the process of dying.	1291
(R) "Nurse" means a person who is licensed to practice	1292
nursing as a registered nurse or to practice practical nursing	1293
as a licensed practical nurse pursuant to Chapter 4723. of the	1294
Revised Code.	1295
(S) "Nursing home" has the same meaning as in section	1296
3721.01 of the Revised Code.	1297
(T) "Nutrition" means sustenance that is artificially or	1298
technologically administered.	1299
(U) "Permanently unconscious state" means a state of	1300
permanent unconsciousness in a declarant or other patient that,	1301
to a reasonable degree of medical certainty as determined in	1302
accordance with reasonable medical standards by the declarant's	1303
or other patient's attending physician and one other physician	1304
who has examined the declarant or other patient, is	1305
characterized by both of the following:	1306
(1) Irreversible unawareness of one's being and	1307
environment.	1308
(2) Total loss of cerebral cortical functioning, resulting	1309
in the declarant or other patient having no capacity to	1310
experience pain or suffering.	1311
(V) "Person" has the same meaning as in section 1.59 of	1312
the Revised Code and additionally includes political	1313
subdivisions and governmental agencies, boards, commissions,	1314

departments, institutions, offices, and other instrumentalities. 1315

(W) "Physician" means a person who is authorized under 1316
Chapter 4731. of the Revised Code to practice medicine and 1317
surgery or osteopathic medicine and surgery. 1318

(X) "Political subdivision" and "state" have the same 1319
meanings as in section 2744.01 of the Revised Code. 1320

(Y) "Professional disciplinary action" means action taken 1321
by the board or other entity that regulates the professional 1322
conduct of health care personnel, including the state medical 1323
board and the board of nursing. 1324

(Z) "Qualified patient" means an adult who has executed a 1325
declaration and has been determined to be in a terminal 1326
condition or in a permanently unconscious state. 1327

(AA) "Terminal condition" means an irreversible, 1328
incurable, and untreatable condition caused by disease, illness, 1329
or injury from which, to a reasonable degree of medical 1330
certainty as determined in accordance with reasonable medical 1331
standards by a declarant's or other patient's attending 1332
physician and one other physician who has examined the declarant 1333
or other patient, both of the following apply: 1334

(1) There can be no recovery. 1335

(2) Death is likely to occur within a relatively short 1336
time if life-sustaining treatment is not administered. 1337

(BB) "Tort action" means a civil action for damages for 1338
injury, death, or loss to person or property, other than a civil 1339
action for damages for breach of a contract or another agreement 1340
between persons. 1341

(CC) "Copy of a declaration" means a printed or electronic 1342

copy of a declaration in writing, a copy of the record of a 1343
declaration executed electronically that is readable as text, or 1344
an electronic copy of the record of a declaration executed 1345
electronically. 1346

(DD) "Electronic," "electronically," "electronic 1347
presence," "record," "sign," and "vulnerable adult" have the 1348
same meanings as in section 2107.01 of the Revised Code. 1349

Sec. 2133.02. (A) (1) An adult who is of sound mind 1350
voluntarily may execute at any time a declaration governing the 1351
use or continuation, or the withholding or withdrawal, of life- 1352
sustaining treatment. ~~The~~ If the declaration is in writing, it 1353
shall be signed at the end by the declarant or by another 1354
individual at the direction of the declarant, and shall state 1355
the date of its execution, and either. If the declaration is 1356
executed electronically, the declarant or another individual at 1357
the direction of the declarant shall sign the record associated 1358
with, and at the end of, the declaration, and shall state the 1359
date of its execution. The declaration shall be witnessed as 1360
described in division (B) (1) of this section or be acknowledged 1361
by the declarant in accordance with division (B) (2) of this 1362
section. The declaration may include a designation by the 1363
declarant of one or more persons who are to be notified by the 1364
declarant's attending physician at any time that life-sustaining 1365
treatment would be withheld or withdrawn pursuant to the 1366
declaration. The declaration may include a specific 1367
authorization for the use or continuation or the withholding or 1368
withdrawal of CPR, but the failure to include a specific 1369
authorization for the withholding or withdrawal of CPR does not 1370
preclude the withholding or withdrawal of CPR in accordance with 1371
sections 2133.01 to 2133.15 or sections 2133.21 to 2133.26 of 1372
the Revised Code. 1373

(2) Depending upon whether the declarant intends the
declaration to apply when the declarant is in a terminal
condition, in a permanently unconscious state, or in either a
terminal condition or a permanently unconscious state, the
declarant's declaration shall use either or both of the terms
"terminal condition" and "permanently unconscious state" and
shall define or otherwise explain those terms in a manner that
is substantially consistent with the provisions of section
2133.01 of the Revised Code.

(3) (a) If a declarant who has authorized the withholding
or withdrawal of life-sustaining treatment intends that the
declarant's attending physician withhold or withdraw nutrition
or hydration when the declarant is in a permanently unconscious
state and when the nutrition and hydration will not or no longer
will serve to provide comfort to the declarant or alleviate the
declarant's pain, then the declarant shall authorize the
declarant's attending physician to withhold or withdraw
nutrition or hydration when the declarant is in the permanently
unconscious state by doing both of the following in the
declaration:

(i) Including a statement in capital letters or other
conspicuous type, including, but not limited to, a different
font, bigger type, or boldface type, that the declarant's
attending physician may withhold or withdraw nutrition and
hydration if the declarant is in a permanently unconscious state
and if the declarant's attending physician and at least one
other physician who has examined the declarant determine, to a
reasonable degree of medical certainty and in accordance with
reasonable medical standards, that nutrition or hydration will
not or no longer will serve to provide comfort to the declarant
or alleviate the declarant's pain, or checking or otherwise

marking a box or line that is adjacent to a similar statement on 1405
a printed form of a declaration; 1406

(ii) Placing the declarant's initials or ~~signature~~ signing 1407
underneath or adjacent to the statement, check, or other mark 1408
described in division (A) (3) (a) (i) of this section. 1409

(b) Division (A) (3) (a) of this section does not apply to 1410
the extent that a declaration authorizes the withholding or 1411
withdrawal of life-sustaining treatment when a declarant is in a 1412
terminal condition. The provisions of division (E) of section 1413
2133.12 of the Revised Code pertaining to comfort care shall 1414
apply to a declarant in a terminal condition. 1415

(B) (1) If witnessed for purposes of division (A) of this 1416
section, a declaration shall be witnessed by two individuals as 1417
described in this division in whose physical presence, if the 1418
declaration is in writing, or physical or electronic presence, 1419
if the declaration is executed electronically, the declarant, or 1420
another individual at the direction of the declarant, signed the 1421
declaration. The witnesses to a declaration that is executed 1422
electronically in the electronic presence of the declarant or 1423
another individual at the direction of the declarant shall be 1424
located within this state. The witnesses to a declaration that 1425
is executed electronically by a declarant who is a vulnerable 1426
adult or by another individual at the direction of a declarant 1427
who is a vulnerable adult shall sign the declaration in the 1428
physical presence of the declarant. The witnesses to a 1429
declaration shall be adults who are not related to the declarant 1430
by blood, marriage, or adoption, who are not the attending 1431
physician of the declarant, and who are not the administrator of 1432
any nursing home in which the declarant is receiving care. Each 1433
witness shall subscribe the witness' signature after the 1434

signature of the declarant or other individual at the direction 1435
of the declarant and, by doing so, attest to the witness' belief 1436
that the declarant appears to be of sound mind and not under or 1437
subject to duress, fraud, or undue influence. The signatures of 1438
the declarant or other individual at the direction of the 1439
declarant under division (A) of this section and of the 1440
witnesses under this division are not required to appear on the 1441
same page of the declaration. 1442

~~(2)~~(2)(a) If acknowledged for purposes of division (A) of 1443
this section, a declaration shall be acknowledged before a 1444
notary public, who shall make the certification described in 1445
section 147.53 of the Revised Code and also shall attest that 1446
the declarant appears to be of sound mind and not under or 1447
subject to duress, fraud, or undue influence. 1448

(b) If a declaration is executed electronically, a notary 1449
public performing the certification and attestation described in 1450
division (B)(2)(a) of this section shall do so through an 1451
electronic notarization, pursuant to section 147.591 of the 1452
Revised Code, or as an online notarization pursuant to sections 1453
147.60 to 147.66 of the Revised Code. 1454

(C) An attending physician, or other health care personnel 1455
acting under the direction of an attending physician, who is 1456
furnished a copy of a declaration shall make it a part of the 1457
declarant's medical record and, when section 2133.05 of the 1458
Revised Code is applicable, also shall comply with that section. 1459

(D) (1) Subject to division (D) (2) of this section, an 1460
attending physician of a declarant or a health care facility in 1461
which a declarant is confined may refuse to comply or allow 1462
compliance with the declarant's declaration on the basis of a 1463
matter of conscience or on another basis. An employee or agent 1464

of an attending physician of a declarant or of a health care 1465
facility in which a declarant is confined may refuse to comply 1466
with the declarant's declaration on the basis of a matter of 1467
conscience. 1468

(2) If an attending physician of a declarant or a health 1469
care facility in which a declarant is confined is not willing or 1470
not able to comply or allow compliance with the declarant's 1471
declaration, the physician or facility promptly shall so advise 1472
the declarant and comply with the provisions of section 2133.10 1473
of the Revised Code, or, if the declaration has become operative 1474
as described in division (A) of section 2133.03 of the Revised 1475
Code, shall comply with the provisions of section 2133.10 of the 1476
Revised Code. 1477

(E) As used in this section, "CPR" has the same meaning as 1478
in section 2133.21 of the Revised Code. 1479

Sec. 5302.22. (A) As—Unless the context otherwise 1480
requires, as used in sections 5302.22, 5302.222, 5302.23, and 1481
5302.24 of the Revised Code: 1482

(1) "Affidavit of confirmation" means an affidavit 1483
executed under division (A) of section 5302.222 of the Revised 1484
Code. 1485

(2) "Survivorship tenancy" means an ownership of real 1486
property or any interest in real property by two or more persons 1487
that is created by executing a deed pursuant to section 5302.17 1488
of the Revised Code. 1489

(3) "Survivorship tenant" means one of the owners of real 1490
property or any interest in real property in a survivorship 1491
tenancy. 1492

(4) "Tenants by the entireties" mean only those persons 1493

who are vested as tenants in an estate by the entireties with 1494
survivorship pursuant to any deed recorded between February 9, 1495
1972, and April 3, 1985, under section 5302.17 of the Revised 1496
Code as it existed during that period of time. Nothing in 1497
sections 5302.22, 5302.222, 5302.23, and 5302.24 of the Revised 1498
Code authorizes the creation of a tenancy by the entireties or 1499
recognizes a tenancy by the entireties created outside that 1500
period of time. 1501

(5) "Transfer on death designation affidavit" means an 1502
affidavit executed under this section. 1503

(6) "Transfer on death beneficiary or beneficiaries" means 1504
the beneficiary or beneficiaries designated in a transfer on 1505
death designation affidavit. 1506

(7) "Electronic" and "record" have the same meanings as in 1507
section 2107.01 of the Revised Code. 1508

(B) Any individual who, under the Revised Code or the 1509
common law of this state, owns real property or any interest in 1510
real property as a sole owner, as a tenant in common, or as a 1511
survivorship tenant, or together with the individual's spouse 1512
owns an indivisible interest in real property as tenants by the 1513
entireties, may designate the entire interest, or any specified 1514
part that is less than the entire interest, in that real 1515
property as transferable on death to a designated beneficiary or 1516
beneficiaries by executing, together with the individual's 1517
spouse, if any, a transfer on death designation affidavit as 1518
provided in this section. 1519

A transfer on death designation affidavit may be executed 1520
in writing or in an electronic manner. If executed in an 1521
electronic manner, a certified copy or a copy of the affidavit 1522

that is readable as text shall be considered to be a certified 1523
copy or a copy of the record of the affidavit. A copy of that 1524
affidavit shall be offered for recording with the county 1525
recorder as provided in this section. 1526

If the affidavit is executed by an individual together 1527
with the individual's spouse, if any, the dower rights of the 1528
spouse are subordinate to the vesting of title to the interest 1529
in the real property in the transfer on death beneficiary or 1530
beneficiaries designated under this section. The affidavit shall 1531
be recorded in the office of the county recorder in the county 1532
in which the real property is located, and, when so recorded, 1533
the affidavit or a certified copy of the affidavit shall be 1534
evidence of the transfer on death beneficiary or beneficiaries 1535
so designated in the affidavit insofar as the affidavit affects 1536
title to the real property. 1537

(C) (1) If an individual who owns real property or an 1538
interest in real property as a sole owner or as a tenant in 1539
common executes a transfer on death designation affidavit, upon 1540
the death of that individual, title to the real property or 1541
interest in the real property specified in the affidavit vests 1542
in the transfer on death beneficiary or beneficiaries designated 1543
in the affidavit. 1544

(2) If an individual who owns real property or an interest 1545
in real property as a survivorship tenant executes a transfer on 1546
death designation affidavit, upon the death of that individual 1547
or of one but not all of the surviving survivorship tenants, 1548
title to the real property or interest in the real property 1549
specified in the affidavit vests in the surviving survivorship 1550
tenant or tenants. Upon the death of the last surviving 1551
survivorship tenant, title to the real property or interest in 1552

the real property vests in the transfer on death beneficiary or 1553
beneficiaries designated in the affidavit, subject to division 1554
(B) (7) of section 5302.23 of the Revised Code. 1555

(3) If an individual who together with the individual's 1556
spouse owns an indivisible interest in real property as tenants 1557
by the entireties executes a transfer on death designation 1558
affidavit, upon the death of that individual, title to the real 1559
property or interest in the real property vests in the remaining 1560
tenant by the entireties. Upon the death of the remaining tenant 1561
by the entireties, title to the real property or interest in the 1562
real property vests in the transfer on death beneficiary or 1563
beneficiaries designated in the affidavit, subject to division 1564
(B) (7) of section 5302.23 of the Revised Code. 1565

(D) A transfer on death designation affidavit shall be 1566
verified before any person authorized to administer oaths and 1567
shall include all of the following: 1568

(1) A description of the real property the title to which 1569
is affected by the affidavit and a reference to an instrument of 1570
record containing that description; 1571

(2) If less than the entire interest in the real property 1572
is to be transferred on death under the affidavit, a statement 1573
of the specific interest or part of the interest in the real 1574
property that is to be so transferred; 1575

(3) A statement by the individual executing the affidavit 1576
that the individual is the person appearing on the record of the 1577
real property as the owner of the real property or interest in 1578
the real property at the time of the recording of the affidavit 1579
and the marital status of that owner. If the owner is married, 1580
the affidavit shall include a statement by the owner's spouse 1581

stating that the spouse's dower rights are subordinate to the 1582
vesting of title to the real property or interest in the real 1583
property in the transfer on death beneficiary or beneficiaries 1584
designated in the affidavit. 1585

(4) A statement designating one or more persons, 1586
identified by name, as transfer on death beneficiary or 1587
beneficiaries. 1588

(E) The county recorder of the county in which a transfer 1589
on death designation affidavit is offered for recording shall 1590
receive the affidavit and cause it to be recorded in the same 1591
manner as deeds are recorded. The county recorder shall collect 1592
a fee for recording the affidavit in the same amount as the fee 1593
for recording deeds. The county recorder shall index the 1594
affidavit in the name of the owner of record of the real 1595
property or interest in the real property who executed the 1596
affidavit. 1597

(F) A transfer on death designation affidavit need not be 1598
supported by consideration and need not be delivered to the 1599
transfer on death beneficiary or beneficiaries designated in the 1600
affidavit to be effective. However, in order to be effective, 1601
that affidavit shall be recorded with the county recorder as 1602
described in this section prior to the death of the individual 1603
who executed the affidavit. 1604

(G) Subject to division (C) of this section, upon the 1605
death of any individual who owns real property or an interest in 1606
real property that is subject to a transfer on death beneficiary 1607
designation made under a transfer on death designation affidavit 1608
as provided in this section, that real property or interest in 1609
real property of the deceased owner shall be transferred only to 1610
the transfer on death beneficiary or beneficiaries who are 1611

identified in the affidavit by name and who survive the deceased 1612
owner or that are in existence on the date of death of the 1613
deceased owner. 1614

For purposes of this division, if a natural or legal 1615
person designated by name in the affidavit as a transfer on 1616
death beneficiary or as a contingent transfer on death 1617
beneficiary as provided in division (B) (2) of section 5302.23 of 1618
the Revised Code solely in that person's capacity as a trustee 1619
of a trust has died, has resigned, or otherwise has been 1620
replaced by a successor trustee of the trust on the date of 1621
death of the deceased owner, the successor trustee of the trust 1622
shall be considered the transfer on death beneficiary or 1623
contingent transfer on death beneficiary in existence on the 1624
date of death of the deceased owner in full compliance with this 1625
division, notwithstanding that the successor trustee is not 1626
named as a transfer on death beneficiary or contingent transfer 1627
on death beneficiary in the affidavit. 1628

(H) Any person who knowingly makes any false statement in 1629
a transfer on death designation affidavit is guilty of 1630
falsification under division (A) (6) of section 2921.13 of the 1631
Revised Code. 1632

Sec. 5817.01. As used in this chapter: 1633

(A) (1) "Beneficiary under a trust" means either of the 1634
following: 1635

(a) Any person that has a present or future beneficial 1636
interest in a trust, whether vested or contingent; 1637

(b) Any person that, in a capacity other than that of 1638
trustee, holds a power of appointment over trust property, but 1639
does not include the class of permitted appointees among whom 1640

the power holder may appoint. 1641

(2) "Beneficiary under a trust" includes a charitable 1642
organization that is expressly designated in the terms of the 1643
trust to receive distributions, but does not include any 1644
charitable organization that is not expressly designated in the 1645
terms of the trust to receive distributions, but to whom the 1646
trustee may in its discretion make distributions. 1647

(B) (1) "Beneficiary under a will" means either of the 1648
following: 1649

(a) Any person designated in a will to receive a 1650
testamentary disposition of real or personal property; 1651

(b) Any person that, in a capacity other than that of 1652
executor, holds a power of appointment over estate assets, but 1653
does not include the class of permitted appointees among whom 1654
the power holder may appoint. 1655

(2) "Beneficiary under a will" includes a charitable 1656
organization that is expressly designated in the terms of the 1657
will to receive testamentary distributions, but does not include 1658
any charitable organization that is not expressly designated in 1659
the terms of the will to receive distributions, but to whom the 1660
executor may in its discretion make distributions. 1661

(C) "Court" means the probate court of the county in which 1662
the complaint under section 5817.02 or 5817.03 of the Revised 1663
Code is filed or the general division of the court of common 1664
pleas to which the probate court transfers the proceeding under 1665
division (A) of section 5817.04 of the Revised Code. 1666

(D) "Related trust" means a trust for which both of the 1667
following apply: 1668

(1) The testator is the settlor of the trust.	1669
(2) The trust is named as a beneficiary in the will in accordance with section 2107.63 of the Revised Code.	1670 1671
(E) "Related will" means a will for which both of the following apply:	1672 1673
(1) The testator is the settlor of a trust.	1674
(2) The will names the trust as a beneficiary in accordance with section 2107.63 of the Revised Code.	1675 1676
(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:	1677 1678 1679 1680
(1) The settlor resides in, or is domiciled in, this state.	1681 1682
(2) The trust's principal place of administration is in this state.	1683 1684
<u>(G) "Will" includes an electronic will.</u>	1685
<u>(H) "Copy of an electronic will," "electronic presence," "electronic will," and "sign" have the same meanings as in section 2107.01 of the Revised Code.</u>	1686 1687 1688
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:	1689 1690 1691
(1) The testator's spouse;	1692
(2) The testator's children;	1693
(3) The testator's heirs who would take property pursuant	1694

to section 2105.06 of the Revised Code had the testator died 1695
intestate at the time the complaint is filed; 1696

(4) The testator's beneficiaries under the will; 1697

(5) Any beneficiary under the testator's most recent prior 1698
will. 1699

(B) A complaint under section 5817.02 of the Revised Code 1700
may name as a party defendant any other person that the testator 1701
believes may have a pecuniary interest in the determination of 1702
the validity of the testator's will. 1703

(C) A complaint under section 5817.02 of the Revised Code 1704
may contain all or any of the following: 1705

(1) A statement that a copy of the written or electronic 1706
will has been filed with the court; 1707

(2) A statement that the will is in writing or is an 1708
electronic will; 1709

(3) A statement that the will, if in writing, was signed 1710
by the testator, or was signed in the testator's name by another 1711
person in the testator's conscious presence and at the 1712
testator's express direction; or a statement that the will, if 1713
an electronic will, was signed at the end by the testator or by 1714
another individual in the testator's name, in the testator's 1715
physical presence or electronic presence, and at the testator's 1716
express direction; 1717

(4) A statement that the will, if in writing, was signed 1718
in the conscious presence of the testator by two or more 1719
competent individuals, each of whom either witnessed the 1720
testator sign the will, or heard the testator acknowledge 1721
signing the will; or a statement that the will, if an electronic 1722

will, was signed in the physical presence or electronic presence 1723
of the testator by two or more competent individuals and that 1724
all of the applicable requirements specified in divisions (C) (3) 1725
(a), (b), (c), and (d) of section 2107.03 of the Revised Code 1726
were complied with; 1727

(5) A statement that the will was executed with the 1728
testator's testamentary intent; 1729

(6) A statement that the testator had testamentary 1730
capacity; 1731

(7) A statement that the testator executed the will free 1732
from undue influence, not under restraint or duress, and in the 1733
exercise of the testator's free will; 1734

(8) A statement that the execution of the will was not the 1735
result of fraud or mistake; 1736

(9) The names and addresses of the testator and all of the 1737
defendants and, if any of the defendants are minors, their ages; 1738

(10) A statement that the will has not been revoked or 1739
modified; 1740

(11) A statement that the testator is familiar with the 1741
contents of the will. 1742

Section 2. That existing sections 147.051, 147.591, 1743
317.32, 1337.11, 1337.12, 1337.22, 1337.25, 1345.01, 2107.01, 1744
2107.03, 2107.07, 2107.17, 2107.24, 2107.27, 2107.29, 2107.30, 1745
2107.31, 2107.33, 2107.60, 2107.63, 2129.05, 2133.01, 2133.02, 1746
5302.22, 5817.01, and 5817.05 of the Revised Code are hereby 1747
repealed. 1748

Section 3. The General Assembly respectfully requests that 1749
the Supreme Court amend its rules and procedures to further 1750

implement the purposes of this act in relation to electronically	1751
executed wills, declarations or living wills, and powers of	1752
attorney.	1753