

As Introduced

133rd General Assembly

Regular Session

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H. B. No. 692

Representative Swearingen

**Cosponsors: Representatives Lipps, LaRe, Lanese, Carruthers, Roemer, Seitz,
Richardson, Stoltzfus, Sweeney, Upchurch, Cross, Scherer, Stein**

A BILL

To amend sections 317.32, 1337.11, 1337.12, 1
1337.22, 1337.25, 2107.01, 2107.03, 2107.07, 2
2107.17, 2107.18, 2107.24, 2107.27, 2107.29, 3
2107.30, 2107.31, 2107.33, 2107.60, 2107.63, 4
2129.05, 2133.01, 2133.02, 5302.22, 5817.01, and 5
5817.05 and to enact sections 1337.121 and 6
2107.031 of the Revised Code to expand the laws 7
on wills, declarations or living wills, durable 8
powers of attorney for health care, and transfer 9
on death designation affidavits by providing for 10
their execution electronically. 11

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

Section 1. That sections 317.32, 1337.11, 1337.12, 12
1337.22, 1337.25, 2107.01, 2107.03, 2107.07, 2107.17, 2107.18, 13
2107.24, 2107.27, 2107.29, 2107.30, 2107.31, 2107.33, 2107.60, 14
2107.63, 2129.05, 2133.01, 2133.02, 5302.22, 5817.01, and 15
5817.05 be amended and sections 1337.121 and 2107.031 of the 16
Revised Code be enacted to read as follows: 17

Sec. 317.32. The county recorder shall charge and collect 18

the following fees, to include, except as otherwise provided in 19
division (A) (2) of this section, base fees for the recorder's 20
services and housing trust fund fees collected pursuant to 21
section 317.36 of the Revised Code: 22

(A) (1) Except as otherwise provided in division (A) (2) of 23
this section, for recording and indexing an instrument if the 24
photocopy or any similar process is employed, a base fee of 25
seventeen dollars for the first two pages and a housing trust 26
fund fee of seventeen dollars, and a base fee of four dollars 27
and a housing trust fund fee of four dollars for each subsequent 28
page, size eight and one-half inches by fourteen inches, or 29
fraction of a page, including the caption page, of such 30
instrument; 31

(2) For recording and indexing an instrument described in 32
division (D) of section 317.08 of the Revised Code if the 33
photocopy or any similar process is employed, a fee of twenty- 34
eight dollars for the first two pages to be deposited as 35
specified elsewhere in this division, and a fee of eight dollars 36
to be deposited in the same manner for each subsequent page, 37
size eight and one-half inches by fourteen inches, or fraction 38
of a page, including the caption page, of that instrument. If 39
the county recorder's technology fund has been established under 40
section 317.321 of the Revised Code, of the twenty-eight 41
dollars, fourteen dollars shall be deposited into the county 42
treasury to the credit of the county recorder's technology fund 43
and fourteen dollars shall be deposited into the county treasury 44
to the credit of the county general fund. If the county 45
recorder's technology fund has not been established, the twenty- 46
eight dollars shall be deposited into the county treasury to the 47
credit of the county general fund. 48

(B) For certifying a photocopy from the record previously recorded, a base fee of one dollar and a housing trust fund fee of one dollar per page, size eight and one-half inches by fourteen inches, or fraction of a page; for each certification if the recorder's seal is required, except as to instruments issued by the armed forces of the United States, a base fee of fifty cents and a housing trust fund fee of fifty cents;

(C) For entering any marginal reference by separate recorded instrument, a base fee of two dollars and a housing trust fund fee of two dollars for each marginal reference set out in that instrument, in addition to the fees set forth in division (A) (1) of this section;

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

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

(F) For filing zoning amendments, including text and maps, in the office of the recorder as required under sections 303.12 and 519.12 of the Revised Code, a base fee of ten dollars and a housing trust fund fee of ten dollars regardless of the size or length of the amendments;

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

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

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

In any county in which the recorder employs the photostatic or any similar process for recording maps, plats, or prints the recorder shall determine, charge, and collect for the recording or rerecording of any map, plat, or print, a base fee

of five cents and a housing trust fund fee of five cents per 109
square inch, for each square inch of the map, plat, or print 110
filed for that recording or rerecording, with a minimum base fee 111
of twenty dollars and a minimum housing trust fund fee of twenty 112
dollars; for certifying a copy from the record, a base fee of 113
two cents and a housing trust fund fee of two cents per square 114
inch of the record, with a minimum base fee of two dollars and a 115
minimum housing trust fund fee of two dollars. 116

The fees provided in this section shall be paid upon the 117
presentation of the instruments for record or upon the 118
application for any certified copy of the record, except that 119
the payment of fees for providing copies of instruments 120
conveying or extinguishing agricultural easements to the office 121
of farmland preservation in the department of agriculture under 122
division (H) of section 5301.691 of the Revised Code shall be 123
governed by that division. 124

The fees provided for in this section shall not apply to 125
the recording, indexing, or making of a certified copy or to the 126
filing of any instrument by a county land reutilization 127
corporation, its wholly owned subsidiary, or any other electing 128
subdivision as defined in section 5722.01 of the Revised Code. 129

Sec. 1337.11. As used in sections 1337.11 to 1337.17 of 130
the Revised Code: 131

(A) "Adult" means a person who is eighteen years of age or 132
older. 133

(B) "Attending physician" means the physician to whom a 134
principal or the family of a principal has assigned primary 135
responsibility for the treatment or care of the principal or, if 136
the responsibility has not been assigned, the physician who has 137

accepted that responsibility. 138

(C) "Comfort care" means any of the following: 139

(1) Nutrition when administered to diminish the pain or 140
discomfort of a principal, but not to postpone death; 141

(2) Hydration when administered to diminish the pain or 142
discomfort of a principal, but not to postpone death; 143

(3) Any other medical or nursing procedure, treatment, 144
intervention, or other measure that is taken to diminish the 145
pain or discomfort of a principal, but not to postpone death. 146

(D) "Consulting physician" means a physician who, in 147
conjunction with the attending physician of a principal, makes 148
one or more determinations that are required to be made by the 149
attending physician, or to be made by the attending physician 150
and one other physician, by an applicable provision of sections 151
1337.11 to 1337.17 of the Revised Code, to a reasonable degree 152
of medical certainty and in accordance with reasonable medical 153
standards. 154

(E) "Declaration for mental health treatment" has the same 155
meaning as in section 2135.01 of the Revised Code. 156

(F) "Guardian" means a person appointed by a probate court 157
pursuant to Chapter 2111. of the Revised Code to have the care 158
and management of the person of an incompetent. 159

(G) "Health care" means any care, treatment, service, or 160
procedure to maintain, diagnose, or treat an individual's 161
physical or mental condition or physical or mental health. 162

(H) "Health care decision" means informed consent, refusal 163
to give informed consent, or withdrawal of informed consent to 164
health care. 165

(I) "Health care facility" means any of the following:	166
(1) A hospital;	167
(2) A hospice care program, pediatric respite care	168
program, or other institution that specializes in comfort care	169
of patients in a terminal condition or in a permanently	170
unconscious state;	171
(3) A nursing home;	172
(4) A home health agency;	173
(5) An intermediate care facility for individuals with	174
intellectual disabilities;	175
(6) A regulated community mental health organization.	176
(J) "Health care personnel" means physicians, nurses,	177
physician assistants, emergency medical technicians-basic,	178
emergency medical technicians-intermediate, emergency medical	179
technicians-paramedic, medical technicians, dietitians, other	180
authorized persons acting under the direction of an attending	181
physician, and administrators of health care facilities.	182
(K) "Home health agency" has the same meaning as in	183
section 3701.881 of the Revised Code.	184
(L) "Hospice care program" and "pediatric respite care	185
program" have the same meanings as in section 3712.01 of the	186
Revised Code.	187
(M) "Hospital" has the same meanings as in sections	188
3701.01, 3727.01, and 5122.01 of the Revised Code.	189
(N) "Hydration" means fluids that are artificially or	190
technologically administered.	191
(O) "Incompetent" has the same meaning as in section	192

2111.01 of the Revised Code.	193
(P) "Intermediate care facility for individuals with	194
intellectual disabilities" has the same meaning as in section	195
5124.01 of the Revised Code.	196
(Q) "Life-sustaining treatment" means any medical	197
procedure, treatment, intervention, or other measure that, when	198
administered to a principal, will serve principally to prolong	199
the process of dying.	200
(R) "Medical claim" has the same meaning as in section	201
2305.113 of the Revised Code.	202
(S) "Mental health treatment" has the same meaning as in	203
section 2135.01 of the Revised Code.	204
(T) "Nursing home" has the same meaning as in section	205
3721.01 of the Revised Code.	206
(U) "Nutrition" means sustenance that is artificially or	207
technologically administered.	208
(V) "Permanently unconscious state" means a state of	209
permanent unconsciousness in a principal that, to a reasonable	210
degree of medical certainty as determined in accordance with	211
reasonable medical standards by the principal's attending	212
physician and one other physician who has examined the	213
principal, is characterized by both of the following:	214
(1) Irreversible unawareness of one's being and	215
environment.	216
(2) Total loss of cerebral cortical functioning, resulting	217
in the principal having no capacity to experience pain or	218
suffering.	219

(W) "Person" has the same meaning as in section 1.59 of 220
the Revised Code and additionally includes political 221
subdivisions and governmental agencies, boards, commissions, 222
departments, institutions, offices, and other instrumentalities. 223

(X) "Physician" means a person who is authorized under 224
Chapter 4731. of the Revised Code to practice medicine and 225
surgery or osteopathic medicine and surgery. 226

(Y) "Political subdivision" and "state" have the same 227
meanings as in section 2744.01 of the Revised Code. 228

(Z) "Professional disciplinary action" means action taken 229
by the board or other entity that regulates the professional 230
conduct of health care personnel, including the state medical 231
board and the board of nursing. 232

(AA) "Regulated community mental health organization" 233
means a residential facility as defined and licensed under 234
section 5119.34 of the Revised Code or a community mental health 235
services provider as defined in section 5122.01 of the Revised 236
Code. 237

(BB) "Terminal condition" means an irreversible, 238
incurable, and untreatable condition caused by disease, illness, 239
or injury from which, to a reasonable degree of medical 240
certainty as determined in accordance with reasonable medical 241
standards by a principal's attending physician and one other 242
physician who has examined the principal, both of the following 243
apply: 244

(1) There can be no recovery. 245

(2) Death is likely to occur within a relatively short 246
time if life-sustaining treatment is not administered. 247

(CC) "Tort action" means a civil action for damages for 248
injury, death, or loss to person or property, other than a civil 249
action for damages for a breach of contract or another agreement 250
between persons. 251

(DD) "Electronic," "electronically," "electronic 252
presence," "record," and "sign" have the same meanings as in 253
section 2107.01 of the Revised Code. 254

Sec. 1337.12. (A) (1) An adult who is of sound mind 255
voluntarily may create a valid durable power of attorney for 256
health care by executing a durable power of attorney, in 257
accordance with section 1337.24 of the Revised Code, that 258
authorizes an attorney in fact as described in division (A) (2) 259
of this section to make health care decisions for the principal 260
at any time that the attending physician of the principal 261
determines that the principal has lost the capacity to make 262
informed health care decisions for the principal. The durable 263
power of attorney for health care may authorize the attorney in 264
fact, commencing immediately upon the execution of the 265
instrument or at any subsequent time and regardless of whether 266
the principal has lost the capacity to make informed health care 267
decisions, to obtain information concerning the principal's 268
health, including protected health information as defined in 45 269
C.F.R. 160.103. Except as otherwise provided in divisions (B) to 270
(F) of section 1337.13 of the Revised Code, the authorization 271
may include the right to give informed consent, to refuse to 272
give informed consent, or to withdraw informed consent to any 273
health care that is being or could be provided to the principal. 274
Additionally, to be valid, a durable power of attorney for 275
health care shall satisfy both of the following: 276

(a) ~~If~~ If a durable power of attorney for health care is 277

in writing, it shall be signed at the end of the instrument by 278
the principal and shall state the date of its execution. If a 279
 durable power of attorney for health care is executed 280
electronically, the principal shall sign the record associated 281
with, and at the end of, the instrument and shall state the date 282
of its execution. 283

(b) It shall be witnessed in accordance with division (B) 284
of this section or be acknowledged by the principal in 285
accordance with division (C) of this section. 286

(2) Except as otherwise provided in this division, a 287
durable power of attorney for health care may designate any 288
competent adult as the attorney in fact. The attending physician 289
of the principal and an administrator of any nursing home in 290
which the principal is receiving care shall not be designated as 291
an attorney in fact in, or act as an attorney in fact pursuant 292
to, a durable power of attorney for health care. An employee or 293
agent of the attending physician of the principal and an 294
employee or agent of any health care facility in which the 295
principal is being treated shall not be designated as an 296
attorney in fact in, or act as an attorney in fact pursuant to, 297
a durable power of attorney for health care, except that these 298
limitations do not preclude a principal from designating either 299
type of employee or agent as the principal's attorney in fact if 300
the individual is a competent adult and related to the principal 301
by blood, marriage, or adoption, or if the individual is a 302
competent adult and the principal and the individual are members 303
of the same religious order. 304

(3) A durable power of attorney for health care shall not 305
expire, unless the principal specifies an expiration date in the 306
instrument. However, when a durable power of attorney contains 307

an expiration date, if the principal lacks the capacity to make 308
informed health care decisions for the principal on the 309
expiration date, the instrument shall continue in effect until 310
the principal regains the capacity to make informed health care 311
decisions for the principal. 312

(B) If witnessed for purposes of division (A) (1) (b) of 313
this section, a durable power of attorney for health care shall 314
be witnessed by at least two individuals who are adults and who 315
are not ineligible to be witnesses under this division. Any 316
person who is related to the principal by blood, marriage, or 317
adoption, any person who is designated as the attorney in fact 318
or alternate attorney in fact in the instrument, the attending 319
physician of the principal, and the administrator of any nursing 320
home in which the principal is receiving care are ineligible to 321
be witnesses. 322

The witnessing of a durable power of attorney for health 323
care shall involve the principal signing the applicable 324
instrument as described in division (A) (1) (a) of this section, 325
or acknowledging the principal's signature, at the end of the 326
instrument in the physical presence or electronic presence, as 327
applicable, of each witness. A witness for a durable power of 328
attorney for health care that is electronically executed may be 329
in either the physical or electronic presence of the principal. 330
Then, each witness shall subscribe the witness's signature after 331
the signature of the principal and, by doing so, attest to the 332
witness's belief that the principal appears to be of sound mind 333
and not under or subject to duress, fraud, or undue influence. 334
The signatures of the principal and the witnesses under this 335
division are not required to appear on the same page of the 336
instrument. 337

(C) (1) If acknowledged for purposes of division (A) (1) (b) 338
of this section, a durable power of attorney for health care 339
shall be acknowledged before a notary public, ~~who~~. The notary 340
public shall make the certification described in section 147.53 341
of the Revised Code and also shall attest that the principal 342
appears to be of sound mind and not under or subject to duress, 343
fraud, or undue influence. 344

(2) If the durable power of attorney for health care is 345
executed electronically, the notary public performing the 346
certification and attestation described in division (C) (1) of 347
this section shall do so through an electronic notarization, 348
pursuant to section 147.591 of the Revised Code, or as an online 349
notarization pursuant to sections 147.60 to 147.66 of the 350
Revised Code. 351

(D) (1) If a principal has both a valid durable power of 352
attorney for health care and a valid declaration, division (B) 353
of section 2133.03 of the Revised Code applies. If a principal 354
has both a valid durable power of attorney for health care and a 355
DNR identification that is based upon a valid declaration and if 356
the declaration supersedes the durable power of attorney for 357
health care under division (B) of section 2133.03 of the Revised 358
Code, the DNR identification supersedes the durable power of 359
attorney for health care to the extent of any conflict between 360
the two. A valid durable power of attorney for health care 361
supersedes any DNR identification that is based upon a do-not- 362
resuscitate order that a physician issued for the principal 363
which is inconsistent with the durable power of attorney for 364
health care or a valid decision by the attorney in fact under a 365
durable power of attorney. 366

(2) As used in division (D) of this section: 367

(a) "Declaration" has the same meaning as in section 368
2133.01 of the Revised Code. 369

(b) "Do-not-resuscitate order" and "DNR identification" 370
have the same meanings as in section 2133.21 of the Revised 371
Code. 372

(E) (1) In a durable power of attorney for health care, a 373
principal may nominate a guardian of the principal's person, 374
estate, or both for consideration by a court if proceedings for 375
the appointment of a guardian for the principal's person, 376
estate, or both are commenced at a later time. The principal may 377
authorize the person nominated as the guardian or the attorney 378
in fact to nominate a successor guardian for consideration by 379
the court. The principal's nomination of a guardian of the 380
principal's person, estate, or both is revoked by the 381
principal's subsequent nomination of a guardian of the 382
principal's person, estate, or both, and, except for good cause 383
shown or disqualification, the court shall make its appointment 384
in accordance with the principal's most recent nomination. 385

(2) The principal may direct that bond be waived for a 386
person nominated as guardian or successor guardian under 387
division (E) (1) of this section. 388

(3) A durable power of attorney for health care that 389
contains the nomination of a person to be the guardian of the 390
person, estate, or both of the principal may be filed with the 391
probate court for safekeeping, and the probate court shall 392
designate the nomination as the nomination of a standby 393
guardian. 394

(4) If a guardian is appointed for the principal, a 395
durable power of attorney for health care is not terminated, and 396

the authority of the attorney in fact continues unless the 397
court, pursuant to its authority under section 2111.50 of the 398
Revised Code, limits, suspends, or terminates the power of 399
attorney after notice to the attorney in fact and upon a finding 400
that the limitation, suspension, or termination is in the best 401
interest of the principal. 402

Sec. 1337.121. A durable power of attorney for health care 403
executed electronically under section 1337.12 of the Revised 404
Code may include some or all of the information specified in the 405
printed form of the instrument in section 1337.17 of the Revised 406
Code according to the intention of the principal. The record of 407
an electronic durable power of attorney for health care may be 408
retrieved and copied in readable text. 409

Sec. 1337.22. As used in sections 1337.21 to 1337.64 of 410
the Revised Code: 411

(A) "Agent" means a person granted authority to act for a 412
principal under a power of attorney, whether denominated an 413
agent, attorney in fact, or otherwise. "Agent" includes an 414
original agent, coagent, successor agent, and a person to which 415
an agent's authority is delegated. 416

(B) "Durable," with respect to a power of attorney, means 417
not terminated by the principal's incapacity. 418

(C) "Electronic" means relating to technology having 419
electrical, digital, magnetic, wireless, optical, 420
electromagnetic, or similar capabilities. 421

(D) "Good faith" means honesty in fact. 422

(E) "Incapacity" means inability of an individual to 423
manage property or business affairs for either of the following 424
reasons: 425

(1) The individual has an impairment in the ability to 426
receive and evaluate information or make or communicate 427
decisions even with the use of technological assistance. 428

(2) The individual is any of the following: 429

(a) Missing; 430

(b) Detained, including incarcerated in a penal system; 431

(c) Outside the United States and unable to return. 432

(F) "Person" means an individual, corporation, business 433
trust, estate, trust, partnership, limited liability company, 434
association, joint venture, public corporation, government or 435
governmental subdivision, agency, or instrumentality, or any 436
other legal or commercial entity. 437

(G) "Power of attorney" means a writing or other record 438
that grants authority to an agent to act in the place of the 439
principal, whether or not the term power of attorney is used. 440

(H) "Presently exercisable general power of appointment," 441
with respect to property or a property interest subject to a 442
power of appointment, means power exercisable at the time in 443
question to vest absolute ownership in the principal 444
individually, the principal's estate, the principal's creditors, 445
or the creditors of the principal's estate. The term includes a 446
power of appointment not exercisable until the occurrence of a 447
specified event, the satisfaction of an ascertainable standard, 448
or the passage of a specified period only after the occurrence 449
of the specified event, the satisfaction of the ascertainable 450
standard, or the passage of the specified period. The term does 451
not include a power exercisable in a fiduciary capacity or only 452
by will. 453

(I) "Principal" means an individual who grants authority 454
to an agent in a power of attorney. 455

(J) "Property" means anything that may be the subject of 456
ownership, whether real or personal, or legal or equitable, or 457
any interest or right therein. 458

(K) "Record" means information that is inscribed on a 459
tangible medium or that is stored in an electronic or other 460
medium and is retrievable in perceivable form. 461

(L) "Sign" means, with present intent to authenticate or 462
adopt a record, to execute or adopt a tangible symbol or to 463
attach to or logically associate with the record an electronic 464
sound, symbol, or process. 465

(M) "State" means a state of the United States, the 466
District of Columbia, Puerto Rico, the United States Virgin 467
Islands, or any territory or insular possession subject to the 468
jurisdiction of the United States. 469

(N) "Stocks and bonds" means stocks, bonds, mutual funds, 470
and all other types of securities and financial instruments, 471
whether held directly, indirectly, or in any other manner, but 472
does not include commodity futures contracts or call or put 473
options on stocks or stock indexes. 474

(O) "Conscious presence" means within the range of any of 475
the principal's senses, excluding the sense of sight or sound 476
that is sensed by telephonic, electronic, or other distant 477
communication. 478

(P) "Electronic presence" has the same meaning as in 479
section 2107.01 of the Revised Code. 480

Sec. 1337.25. (A) A power of attorney ~~must~~shall be signed 481

by the principal or in the principal's conscious presence or 482
electronic presence by another individual directed by the 483
principal to sign the principal's name on the power of attorney. 484
A signature on a power of attorney is presumed to be genuine if 485
the principal or the principal and other individual directed by 486
the principal to sign the principal's name acknowledges the 487
signature before a notary public or other individual authorized 488
by law to take acknowledgments. 489

(B) If a power of attorney is executed electronically, the 490
principal's signature shall only be acknowledged before a notary 491
public performing an electronic notarization, pursuant to 492
section 147.591 of the Revised Code, or an online notarization 493
pursuant to sections 147.60 to 147.66 of the Revised Code. 494

Sec. 2107.01. ~~As~~ Unless the context otherwise requires, as 495
used in Chapters 2101. to 2131. of the Revised Code: 496

(A) (1) "Will" includes ~~codicils~~ the following: 497
(a) Codicils to wills admitted to probate, ~~lost;~~ 498
(b) ~~Lost,~~ spoliated, or destroyed wills, ~~and instruments;~~ 499
(c) Instruments declared valid under division (A) (1) of 500
section 5817.10 of the Revised Code, ~~but "will";~~ 501
(d) Electronic wills and copies of electronic wills. 502
(2) "Will" does not include inter vivos trusts or other 503
instruments that have not been admitted to probate. 504

(B) "Testator" means any person who makes a will. 505

(C) "Copy of an electronic will" means a copy of the 506
record of an electronic will that is readable as text. 507

(D) "Electronic" or "electronically" means relating to 508

technology having electrical, digital, magnetic, wireless, 509
optical, electromagnetic, or similar capabilities. 510

(E) "Electronic presence" means the relationship of two or 511
more individuals in different locations communicating in real 512
time to the same extent as if the individuals were physically 513
present in the same location. 514

(F) "Electronic will" means a will that is executed 515
electronically pursuant to section 2107.03 of the Revised Code, 516
and includes a copy of an electronic will. 517

(G) "Original will" means the original will in writing or 518
the copy of an electronic will that is offered for or admitted 519
to probate. 520

(H) "Record" means information that is inscribed in a 521
tangible medium or that is stored in an electronic medium and is 522
retrievable in perceivable form. 523

(I) "Sign" means to do either of the following with the 524
present intent to authenticate or adopt a record: 525

(1) Execute or adopt a tangible symbol; 526

(2) Affix to or logically associate with a record an 527
electronic symbol or process. 528

(J) "Will annexed" means the original will, a copy of the 529
original will in writing, or a copy of the electronic will, 530
whichever is applicable. 531

Sec. 2107.03. (A) Except oral wills governed by section 532
2107.60 of the Revised Code, every will shall be in writing, but 533
may be including handwritten or typewritten, or be an electronic 534
will. 535

<u>(B) (1) Both of the following apply to a will in writing:</u>	536
<u>(a) The will shall be signed at the end by the testator or</u>	537
<u>by some other person in the testator's conscious presence and at</u>	538
<u>the testator's express direction.</u>	539
<u>(b) The will shall be attested and subscribed in the</u>	540
<u>conscious presence of the testator, by two or more competent</u>	541
<u>witnesses, who saw the testator subscribe, or heard the testator</u>	542
<u>acknowledge the testator's signature.</u>	543
<u>(2) For purposes of division (B) (1) of this section,</u>	544
<u>"conscious presence" means within the range of any of the</u>	545
<u>testator's senses, excluding the sense of sight or sound that is</u>	546
<u>sensed by telephonic, electronic, or other distant</u>	547
<u>communication.</u>	548
<u>(C) All of the following apply to an electronic will:</u>	549
<u>(1) The will shall be a record that is readable as text at</u>	550
<u>the time it is signed under divisions (C) (2) and (3) of this</u>	551
<u>section.</u>	552
<u>(2) The will shall be signed at the end by the testator or</u>	553
<u>by another individual in the testator's name, in the testator's</u>	554
<u>physical presence or electronic presence, and by the testator's</u>	555
<u>direction.</u>	556
<u>(3) The will shall be signed in the physical presence or</u>	557
<u>electronic presence of the testator by two or more competent</u>	558
<u>witnesses and all of the following apply:</u>	559
<u>(a) If the witnesses sign in the electronic presence of</u>	560
<u>the testator, they shall be located in this state or in another</u>	561
<u>state.</u>	562
<u>(b) The witnesses shall sign the will within a reasonable</u>	563

time after witnessing the signing of the will under division (C) 564
(2) of this section. 565

(c) The witnesses shall subscribe and attest their 566
signatures to the will. 567

(D) The intent of the testator that the record described 568
in division (C)(1) of this section is the testator's electronic 569
will may be established by extrinsic evidence. 570

Sec. 2107.031. (A) On and after the effective date of this 571
section, the laws of this state that are applicable to wills 572
apply to electronic wills unless it is clear from the context or 573
meaning of a particular provision of the law that it applies 574
only to a will in writing or a will other than an electronic 575
will. 576

(B) The principles of equity apply to an electronic will. 577

Sec. 2107.07. (A)(1) A will in writing may be deposited by 578
the testator, or by some person for the testator, in the office 579
of the judge of the probate court in the county in which the 580
testator lives, before or after the death of the testator, and 581
if deposited after the death of the testator, with or without 582
applying for its probate. 583

(2) A copy of an electronic will shall be deposited by the 584
testator or by some other person for the testator, in the office 585
of the judge of the probate court in the county in which the 586
testator lives, before or after the death of the testator. A 587
copy of an electronic will may be deposited after the death of 588
the testator with or without applying for its probate. If a copy 589
of an electronic will is deposited by some person for the 590
testator under this division, that person shall attach with that 591
copy an affidavit attested to by the testator authorizing the 592

person to deposit the copy of the electronic will under this 593
division. 594

(B) Upon the payment of the fee of twenty-five dollars to 595
the court, the judge shall receive, keep, and give a certificate 596
of deposit for the will. That will shall be safely kept until 597
delivered or disposed of as provided by section 2107.08 of the 598
Revised Code. If the will is not delivered or disposed of as 599
provided in that section within one hundred years after the date 600
the will was deposited, the judge may dispose of the will in any 601
manner the judge considers feasible. The judge shall retain an 602
electronic copy of the will prior to its disposal after one 603
hundred years under this section. 604

(C) Every will that is ~~so~~ deposited under division (A) (1) 605
of this section shall be enclosed in a sealed envelope that 606
shall be indorsed with the name of the testator. The judge shall 607
indorse on the envelope the date of delivery and the person by 608
whom the will was delivered. The envelope may be indorsed with 609
the name of a person to whom it is to be delivered after the 610
death of the testator. Every will deposited under division (A) 611
(2) of this section shall be stored in a separate file in the 612
court's records and contain information analogous to that 613
required for wills in writing. The will shall not be opened or 614
read until delivered to a person entitled to receive it, until 615
the testator files a complaint in the probate court for a 616
declaratory judgment of the validity of the will pursuant to 617
section 5817.02 of the Revised Code, or until otherwise disposed 618
of as provided in section 2107.08 of the Revised Code. Subject 619
to section 2107.08 of the Revised Code, the deposited will shall 620
not be a public record until the time that an application is 621
filed to probate it. 622

Sec. 2107.17. When a witness to a will, or other witness 623
competent to testify at a probate or declaratory judgment 624
proceeding, resides out of its jurisdiction, or resides within 625
it but is infirm and unable to attend court, the probate court 626
may issue a commission with the will annexed directed to any 627
suitable person. In lieu of the original will, the probate 628
court, in its discretion, may annex to the commission a 629
photocopy of the original will or a copy of ~~the~~ that will made 630
by any similar process. The person to whom the commission is 631
directed shall take the deposition or authorize the taking of 632
the deposition of the witness as provided by the Rules of Civil 633
Procedure. The testimony, certified and returned, shall be 634
admissible and have the same effect in the proceedings as if 635
taken in open court. 636

Sec. 2107.18. The probate court shall admit a will to 637
probate if it appears from the face of the will, or if the 638
probate court requires, in its discretion, the testimony of the 639
witnesses to a will and it appears from that testimony, that the 640
execution of the will complies with the law in force at the time 641
of the execution of the will in the jurisdiction in which ~~the~~ 642
~~testator was physically present when~~ it was executed, with the 643
law in force in this state at the time of the death of the 644
testator, or with the law in force in the jurisdiction in which 645
the testator was domiciled at the time of the testator's death. 646

The probate court shall admit a will to probate when there 647
has been a prior judgment by a court declaring that the will is 648
valid, rendered pursuant to division (A)(1) of section 5817.10 649
of the Revised Code, if the will has not been revoked. 650

Sec. 2107.24. (A) If a document that is executed that 651
purports to be a will in writing is not executed in compliance 652

with the requirements of division (B) of section 2107.03 of the 653
Revised Code, that document shall be treated as if it had been 654
executed as a will in writing in compliance with the 655
requirements of that ~~section~~ division if a probate court, after 656
holding a hearing, finds that the proponent of the document as a 657
purported will in writing has established, by clear and 658
convincing evidence, all of the following: 659

(1) The decedent prepared the document or caused the 660
document to be prepared. 661

(2) The decedent signed the document and intended the 662
document to constitute the decedent's will. 663

(3) The decedent signed the document under division (A) (2) 664
of this section in the conscious presence of two or more 665
witnesses. As used in division (A) (3) of this section, 666
"conscious presence" means within the range of any of the 667
witnesses' senses, excluding the sense of sight or sound that is 668
sensed by telephonic, electronic, or other distant 669
communication. 670

(B) ~~If the~~ If a document that is executed that purports to 671
be an electronic will is not executed in compliance with the 672
requirements of division (C) of section 2107.03 of the Revised 673
Code, that document shall be treated as if it had been executed 674
as an electronic will in compliance with the requirements of 675
that division if a probate court, after holding a hearing, finds 676
that the proponent of the document as a purported electronic 677
will has established, by clear and convincing evidence, all of 678
the following: 679

(1) The decedent prepared the document or caused the 680
document to be prepared. 681

(2) The decedent signed the document and intended the 682
document to constitute the decedent's will. 683

(3) The requirements of division (C) of section 2107.03 of 684
the Revised Code were complied with. 685

(C) The executor may file an action in the probate court 686
to recover court costs and attorney's fees from the attorney, if 687
any, responsible for the execution of the document if either of 688
the following applies: 689

(1) The probate court holds a hearing pursuant to division 690
(A) of this section and finds that the proponent of the document 691
as a purported will in writing has established by clear and 692
convincing evidence the requirements under divisions (A) (1), 693
(2), and (3) of this section, ~~the executor may file an action in~~ 694
~~the probate court to recover court costs and attorney's fees~~ 695
~~from the attorney, if any, responsible for the execution of the~~ 696
~~document.~~ 697

(2) The probate court holds a hearing pursuant to division 698
(B) of this section and finds that the proponent of the document 699
as a purported electronic will has established by clear and 700
convincing evidence the requirements under divisions (B) (1), 701
(2), and (3) of this section. 702

Sec. 2107.27. (A) When application is made to the probate 703
court to admit to probate a will that has been lost, spoliated, 704
or destroyed as provided in section 2107.26 of the Revised Code 705
or a document that is treated as a will as provided in section 706
2107.24 of the Revised Code, the party seeking to prove the will 707
shall give a written notice by certified mail to the surviving 708
spouse of the testator, to all persons who would be entitled to 709
inherit from the testator under Chapter 2105. of the Revised 710

Code if the testator had died intestate, to all legatees and 711
devisees that are named in the will, and to all legatees and 712
devisees that are named in the most recent will prior to the 713
lost, spoliated, or destroyed will that is known to the 714
applicant or in the most recent will prior to the document that 715
is treated as a will if the most recent will is known to the 716
applicant. 717

(B) In the cases described in division (A) of this 718
section, the proponents and opponents of the will shall cause 719
the witnesses to the will, and any other witnesses that have 720
relevant and material knowledge about the will, to appear before 721
the court to testify. If any witnesses reside out of its 722
jurisdiction, or reside within its jurisdiction but are infirm 723
or unable to attend, the probate court may order their testimony 724
to be taken and reduced to writing by some competent person. The 725
testimony shall be filed in the records of the probate court 726
pertaining to the testator's estate. 727

(C) If upon such proof the court finds that the 728
requirements of section 2107.24 or 2107.26 of the Revised Code, 729
whichever is applicable, have been met, the probate court shall 730
find and establish the contents of the will as near as can be 731
ascertained. The contents of the will established under section 732
2107.26 of the Revised Code shall be as effectual for all 733
purposes as if the original will had been admitted to probate 734
and record. The contents of the will established under section 735
2107.24 of the Revised Code shall be as effectual for all 736
purposes as if the document treated as a will had satisfied all 737
of the requirements of division (B) or (C) of section 2107.03 of 738
the Revised Code, whichever is applicable, and had been admitted 739
to probate and record. 740

Sec. 2107.29. When the court record of a will is 741
destroyed, a copy of the will or a copy of the will and its 742
probate may be recorded by the probate court if it appears to 743
the court's satisfaction that the court record has been 744
destroyed and if it appears, by reason of a certificate signed 745
and sealed by the probate judge, that the copy is a true copy of 746
the original will or a true copy of the original will and its 747
probate. 748

Sec. 2107.30. When the court record of a will has been 749
destroyed, the original will may again be admitted to probate 750
and record. 751

Sec. 2107.31. Sections 2107.29 and 2107.30 of the Revised 752
Code do not affect the proceedings or extend the time for 753
contesting the validity of any will or for asserting rights 754
~~thereunder~~ under the will. The court record provided for in ~~such~~ 755
those sections ~~must~~ shall show that the original court record 756
was destroyed, and the time, as near as may be, when the will 757
was originally admitted to probate and record. 758

Sec. 2107.33. (A) A will in writing shall be revoked in 759
any of the following manners: 760

(1) By the testator by tearing, canceling, obliterating, 761
or destroying it with the intention of revoking it; 762

(2) By some person, at the request of the testator and in 763
the testator's physical presence, by tearing, canceling, 764
obliterating, or destroying it with the intention of revoking 765
it; 766

(3) By some person tearing, canceling, obliterating, or 767
destroying it pursuant to the testator's express written 768
direction; 769

(4) By some other written will or codicil or by an 770
electronic will, executed as prescribed by this chapter; 771

(5) By some other writing that is signed, attested, and 772
subscribed in the manner provided by this chapter. 773

(B) (1) An electronic will shall be revoked in either of 774
the following manners: 775

(a) By the testator's subsequent will that revokes all or 776
part of the electronic will expressly or by inconsistency; 777

(b) By a physical act, if it is established by a 778
preponderance of the evidence that the testator, with the intent 779
of revoking all or part of the will, performed the act or 780
directed another individual who performed the act in the 781
physical presence of the testator. 782

(2) As used in division (B) (1) (b) of this section, 783
"physical act" includes, but is not limited to, using a delete 784
or trash function on the computer pertaining to the electronic 785
will or typing or writing "revoked" on an electronic or printed 786
copy of the electronic will. 787

(C) If after executing a will, a testator is divorced, 788
obtains a dissolution of marriage, has the testator's marriage 789
annulled, or, upon actual separation from the testator's spouse, 790
enters into a separation agreement pursuant to which the parties 791
intend to fully and finally settle their prospective property 792
rights in the property of the other, whether by expected 793
inheritance or otherwise, any disposition or appointment of 794
property made by the will to the former spouse or to a trust 795
with powers created by or available to the former spouse, any 796
provision in the will conferring a general or special power of 797
appointment on the former spouse, and any nomination in the will 798

of the former spouse as executor, trustee, or guardian shall be 799
revoked unless the will expressly provides otherwise. 800

~~(C)~~ (D) Property prevented from passing to a former spouse 801
or to a trust with powers created by or available to the former 802
spouse because of revocation by this section shall pass as if 803
the former spouse failed to survive the decedent, and other 804
provisions conferring some power or office on the former spouse 805
shall be interpreted as if the spouse failed to survive the 806
decedent. If provisions are revoked solely by this section, they 807
shall be deemed to be revived by the testator's remarriage with 808
the former spouse or upon the termination of a separation 809
agreement executed by them. 810

~~(D)~~ (E) A bond, agreement, or covenant made by a testator, 811
for a valuable consideration, to convey property previously 812
devised or bequeathed in a will does not revoke the devise or 813
bequest. The property passes by the devise or bequest, subject 814
to the remedies on the bond, agreement, or covenant, for a 815
specific performance or otherwise, against the devisees or 816
legatees, that might be had by law against the heirs of the 817
testator, or the testator's next of kin, if the property had 818
descended to them. 819

~~(E)~~ (F) A testator's revocation of a will shall be valid 820
only if the testator, at the time of the revocation, has the 821
same capacity as the law requires for the execution of a will. 822

~~(F)~~ (G) As used in this section: 823

(1) "Trust with powers created by or available to the 824
former spouse" means a trust that is revocable by the former 825
spouse, with respect to which the former spouse has a power of 826
withdrawal, or with respect to which the former spouse may take 827

a distribution that is not subject to an ascertainable standard 828
but does not mean a trust in which those powers of the former 829
spouse are revoked by section 5815.31 of the Revised Code or 830
similar provisions in the law of another state. 831

(2) "Ascertainable standard" means a standard that is 832
related to a trust beneficiary's health, maintenance, support, 833
or education. 834

Sec. 2107.60. (A) An oral will, made in the last sickness, 835
shall be valid in respect to personal property if the oral will 836
is reduced to writing or transcribed electronically and 837
~~subscribed by two competent disinterested witnesses within ten~~ 838
days after the speaking of the testamentary words by two 839
competent disinterested witnesses who were, at the time the 840
testamentary words were spoken, in the physical presence or 841
electronic presence of the testator. The witnesses shall prove 842
that the testator was of sound mind and memory, not under 843
restraint, and that the testator called upon some person 844
physically or electronically present at the time the 845
testamentary words were spoken to bear testimony to the 846
disposition as the testator's will. 847

(B) No oral will shall be admitted to record unless it is 848
offered for probate within three months after the death of the 849
testator. 850

Sec. 2107.63. A testator may by will devise, bequeath, or 851
appoint real or personal property or any interest in real or 852
personal property to a trustee of a trust that is evidenced by a 853
written or electronic instrument signed by the testator or any 854
other settlor either before or on the same date of the execution 855
of the will of the testator, that is identified in the will, and 856
that has been signed, or is signed at any time after the 857

execution of the testator's will, by the trustee or trustees 858
identified in the will or their successors or by any other 859
person lawfully serving, by court appointment or otherwise, as a 860
trustee. 861

The property or interest so devised, bequeathed, or 862
appointed to the trustee shall become a part of the trust 863
estate, shall be subject to the jurisdiction of the court having 864
jurisdiction of the trust, and shall be administered in 865
accordance with the terms and provisions of the instrument 866
creating the trust, including, unless the will specifically 867
provides otherwise, any amendments or modifications of the trust 868
made in writing or electronically before, concurrently with, or 869
after the making of the will and prior to the death of the 870
testator. The termination of the trust, or its entire revocation 871
prior to the testator's death, shall invalidate the devise, 872
bequest, or appointment to the trustee. 873

This section shall not affect any of the rights accorded 874
to a surviving spouse under section 2106.01 of the Revised Code. 875
This section applies, and shall be construed as applying, to the 876
wills of decedents who die on or after the effective date of 877
this amendment, regardless of the date of the execution of their 878
wills. 879

Sec. 2129.05. Authenticated copies of wills of persons ~~not~~ 880
~~domiciled in this state,~~ executed and proved according to the 881
laws of any state or territory of the United States, relative to 882
property in this state, may be admitted to record in the probate 883
court of a county where a part of that property is situated. The 884
authenticated copies, so recorded, shall be as valid as wills 885
made in this state. 886

When such a will, or authenticated copy, is admitted to 887

record, a copy of the will or of the authenticated copy, with 888
the copy of the order to record it annexed to that copy, 889
certified by the probate judge under the seal of the probate 890
court, may be filed and recorded in the office of the probate 891
judge of any other county where a part of the property is 892
situated, and it shall be as effectual as the authenticated copy 893
of the will would be if approved and admitted to record by the 894
court. 895

Sec. 2133.01. Unless the context otherwise requires, as 896
used in sections 2133.01 to 2133.15 of the Revised Code: 897

(A) "Adult" means an individual who is eighteen years of 898
age or older. 899

(B) "Attending physician" means the physician to whom a 900
declarant or other patient, or the family of a declarant or 901
other patient, has assigned primary responsibility for the 902
treatment or care of the declarant or other patient, or, if the 903
responsibility has not been assigned, the physician who has 904
accepted that responsibility. 905

(C) "Comfort care" means any of the following: 906

(1) Nutrition when administered to diminish the pain or 907
discomfort of a declarant or other patient, but not to postpone 908
the declarant's or other patient's death; 909

(2) Hydration when administered to diminish the pain or 910
discomfort of a declarant or other patient, but not to postpone 911
the declarant's or other patient's death; 912

(3) Any other medical or nursing procedure, treatment, 913
intervention, or other measure that is taken to diminish the 914
pain or discomfort of a declarant or other patient, but not to 915
postpone the declarant's or other patient's death. 916

(D) "Consulting physician" means a physician who, in 917
conjunction with the attending physician of a declarant or other 918
patient, makes one or more determinations that are required to 919
be made by the attending physician, or to be made by the 920
attending physician and one other physician, by an applicable 921
provision of this chapter, to a reasonable degree of medical 922
certainty and in accordance with reasonable medical standards. 923

(E) "Declarant" means any adult who has executed a 924
declaration in accordance with section 2133.02 of the Revised 925
Code. 926

(F) "Declaration" means a written or an electronic 927
document executed in accordance with section 2133.02 of the 928
Revised Code. 929

(G) "Durable power of attorney for health care" means a 930
document created pursuant to sections 1337.11 to 1337.17 of the 931
Revised Code. 932

(H) "Guardian" means a person appointed by a probate court 933
pursuant to Chapter 2111. of the Revised Code to have the care 934
and management of the person of an incompetent. 935

(I) "Health care facility" means any of the following: 936

(1) A hospital; 937

(2) A hospice care program, pediatric respite care 938
program, or other institution that specializes in comfort care 939
of patients in a terminal condition or in a permanently 940
unconscious state; 941

(3) A nursing home or residential care facility, as 942
defined in section 3721.01 of the Revised Code; 943

(4) A home health agency and any residential facility 944

where a person is receiving care under the direction of a home 945
health agency; 946

(5) An intermediate care facility for individuals with 947
intellectual disabilities. 948

(J) "Health care personnel" means physicians, nurses, 949
physician assistants, emergency medical technicians-basic, 950
emergency medical technicians-intermediate, emergency medical 951
technicians-paramedic, medical technicians, dietitians, other 952
authorized persons acting under the direction of an attending 953
physician, and administrators of health care facilities. 954

(K) "Home health agency" has the same meaning as in 955
section 3701.881 of the Revised Code. 956

(L) "Hospice care program" and "pediatric respite care 957
program" have the same meanings as in section 3712.01 of the 958
Revised Code. 959

(M) "Hospital" has the same meanings as in sections 960
3701.01, 3727.01, and 5122.01 of the Revised Code. 961

(N) "Hydration" means fluids that are artificially or 962
technologically administered. 963

(O) "Incompetent" has the same meaning as in section 964
2111.01 of the Revised Code. 965

(P) "Intermediate care facility for the individuals with 966
intellectual disabilities" has the same meaning as in section 967
5124.01 of the Revised Code. 968

(Q) "Life-sustaining treatment" means any medical 969
procedure, treatment, intervention, or other measure that, when 970
administered to a qualified patient or other patient, will serve 971
principally to prolong the process of dying. 972

(R) "Nurse" means a person who is licensed to practice 973
nursing as a registered nurse or to practice practical nursing 974
as a licensed practical nurse pursuant to Chapter 4723. of the 975
Revised Code. 976

(S) "Nursing home" has the same meaning as in section 977
3721.01 of the Revised Code. 978

(T) "Nutrition" means sustenance that is artificially or 979
technologically administered. 980

(U) "Permanently unconscious state" means a state of 981
permanent unconsciousness in a declarant or other patient that, 982
to a reasonable degree of medical certainty as determined in 983
accordance with reasonable medical standards by the declarant's 984
or other patient's attending physician and one other physician 985
who has examined the declarant or other patient, is 986
characterized by both of the following: 987

(1) Irreversible unawareness of one's being and 988
environment. 989

(2) Total loss of cerebral cortical functioning, resulting 990
in the declarant or other patient having no capacity to 991
experience pain or suffering. 992

(V) "Person" has the same meaning as in section 1.59 of 993
the Revised Code and additionally includes political 994
subdivisions and governmental agencies, boards, commissions, 995
departments, institutions, offices, and other instrumentalities. 996

(W) "Physician" means a person who is authorized under 997
Chapter 4731. of the Revised Code to practice medicine and 998
surgery or osteopathic medicine and surgery. 999

(X) "Political subdivision" and "state" have the same 1000

meanings as in section 2744.01 of the Revised Code. 1001

(Y) "Professional disciplinary action" means action taken 1002
by the board or other entity that regulates the professional 1003
conduct of health care personnel, including the state medical 1004
board and the board of nursing. 1005

(Z) "Qualified patient" means an adult who has executed a 1006
declaration and has been determined to be in a terminal 1007
condition or in a permanently unconscious state. 1008

(AA) "Terminal condition" means an irreversible, 1009
incurable, and untreatable condition caused by disease, illness, 1010
or injury from which, to a reasonable degree of medical 1011
certainty as determined in accordance with reasonable medical 1012
standards by a declarant's or other patient's attending 1013
physician and one other physician who has examined the declarant 1014
or other patient, both of the following apply: 1015

(1) There can be no recovery. 1016

(2) Death is likely to occur within a relatively short 1017
time if life-sustaining treatment is not administered. 1018

(BB) "Tort action" means a civil action for damages for 1019
injury, death, or loss to person or property, other than a civil 1020
action for damages for breach of a contract or another agreement 1021
between persons. 1022

(CC) "Copy of a declaration" means a printed or electronic 1023
copy of a declaration in writing, a copy of the record of a 1024
declaration executed electronically that is readable as text, or 1025
an electronic copy of the record of a declaration executed 1026
electronically. 1027

(DD) "Electronic," "electronically," "electronic 1028

presence," "record," and "sign" have the same meanings as in 1029
section 2107.01 of the Revised Code. 1030

Sec. 2133.02. (A) (1) An adult who is of sound mind 1031
voluntarily may execute at any time a declaration governing the 1032
use or continuation, or the withholding or withdrawal, of life- 1033
sustaining treatment. ~~The~~ If the declaration is in writing, it 1034
shall be signed at the end by the declarant or by another 1035
individual at the direction of the declarant, and shall state 1036
the date of its execution, ~~and either~~. If the declaration is 1037
executed electronically, the declarant or another individual at 1038
the direction of the declarant shall sign the record associated 1039
with, and at the end of, the declaration, and shall state the 1040
date of its execution. The declaration shall be witnessed as 1041
described in division (B) (1) of this section or be acknowledged 1042
by the declarant in accordance with division (B) (2) of this 1043
section. The declaration may include a designation by the 1044
declarant of one or more persons who are to be notified by the 1045
declarant's attending physician at any time that life-sustaining 1046
treatment would be withheld or withdrawn pursuant to the 1047
declaration. The declaration may include a specific 1048
authorization for the use or continuation or the withholding or 1049
withdrawal of CPR, but the failure to include a specific 1050
authorization for the withholding or withdrawal of CPR does not 1051
preclude the withholding or withdrawal of CPR in accordance with 1052
sections 2133.01 to 2133.15 or sections 2133.21 to 2133.26 of 1053
the Revised Code. 1054

(2) Depending upon whether the declarant intends the 1055
declaration to apply when the declarant is in a terminal 1056
condition, in a permanently unconscious state, or in either a 1057
terminal condition or a permanently unconscious state, the 1058
declarant's declaration shall use either or both of the terms 1059

"terminal condition" and "permanently unconscious state" and 1060
shall define or otherwise explain those terms in a manner that 1061
is substantially consistent with the provisions of section 1062
2133.01 of the Revised Code. 1063

(3) (a) If a declarant who has authorized the withholding 1064
or withdrawal of life-sustaining treatment intends that the 1065
declarant's attending physician withhold or withdraw nutrition 1066
or hydration when the declarant is in a permanently unconscious 1067
state and when the nutrition and hydration will not or no longer 1068
will serve to provide comfort to the declarant or alleviate the 1069
declarant's pain, then the declarant shall authorize the 1070
declarant's attending physician to withhold or withdraw 1071
nutrition or hydration when the declarant is in the permanently 1072
unconscious state by doing both of the following in the 1073
declaration: 1074

(i) Including a statement in capital letters or other 1075
conspicuous type, including, but not limited to, a different 1076
font, bigger type, or boldface type, that the declarant's 1077
attending physician may withhold or withdraw nutrition and 1078
hydration if the declarant is in a permanently unconscious state 1079
and if the declarant's attending physician and at least one 1080
other physician who has examined the declarant determine, to a 1081
reasonable degree of medical certainty and in accordance with 1082
reasonable medical standards, that nutrition or hydration will 1083
not or no longer will serve to provide comfort to the declarant 1084
or alleviate the declarant's pain, or checking or otherwise 1085
marking a box or line that is adjacent to a similar statement on 1086
a printed form of a declaration; 1087

(ii) Placing the declarant's initials or ~~signature~~ signing 1088
underneath or adjacent to the statement, check, or other mark 1089

described in division (A) (3) (a) (i) of this section. 1090

(b) Division (A) (3) (a) of this section does not apply to 1091
the extent that a declaration authorizes the withholding or 1092
withdrawal of life-sustaining treatment when a declarant is in a 1093
terminal condition. The provisions of division (E) of section 1094
2133.12 of the Revised Code pertaining to comfort care shall 1095
apply to a declarant in a terminal condition. 1096

(B) (1) If witnessed for purposes of division (A) of this 1097
section, a declaration shall be witnessed by two individuals as 1098
described in this division in whose physical presence, if the 1099
declaration is in writing, or physical or electronic presence, 1100
if the declaration is executed electronically, the declarant, or 1101
another individual at the direction of the declarant, signed the 1102
declaration. The witnesses to a declaration shall be adults who 1103
are not related to the declarant by blood, marriage, or 1104
adoption, who are not the attending physician of the declarant, 1105
and who are not the administrator of any nursing home in which 1106
the declarant is receiving care. Each witness shall subscribe 1107
the witness' signature after the signature of the declarant or 1108
other individual at the direction of the declarant and, by doing 1109
so, attest to the witness' belief that the declarant appears to 1110
be of sound mind and not under or subject to duress, fraud, or 1111
undue influence. The signatures of the declarant or other 1112
individual at the direction of the declarant under division (A) 1113
of this section and of the witnesses under this division are not 1114
required to appear on the same page of the declaration. 1115

(2) (a) If acknowledged for purposes of division (A) of 1116
this section, a declaration shall be acknowledged before a 1117
notary public, who shall make the certification described in 1118
section 147.53 of the Revised Code and also shall attest that 1119

the declarant appears to be of sound mind and not under or 1120
subject to duress, fraud, or undue influence. 1121

(b) If a declaration is executed electronically, a notary 1122
public performing the certification and attestation described in 1123
division (B) (2) (a) of this section shall do so through an 1124
electronic notarization, pursuant to section 147.591 of the 1125
Revised Code, or as an online notarization pursuant to sections 1126
147.60 to 147.66 of the Revised Code. 1127

(C) An attending physician, or other health care personnel 1128
acting under the direction of an attending physician, who is 1129
furnished a copy of a declaration shall make it a part of the 1130
declarant's medical record and, when section 2133.05 of the 1131
Revised Code is applicable, also shall comply with that section. 1132

(D) (1) Subject to division (D) (2) of this section, an 1133
attending physician of a declarant or a health care facility in 1134
which a declarant is confined may refuse to comply or allow 1135
compliance with the declarant's declaration on the basis of a 1136
matter of conscience or on another basis. An employee or agent 1137
of an attending physician of a declarant or of a health care 1138
facility in which a declarant is confined may refuse to comply 1139
with the declarant's declaration on the basis of a matter of 1140
conscience. 1141

(2) If an attending physician of a declarant or a health 1142
care facility in which a declarant is confined is not willing or 1143
not able to comply or allow compliance with the declarant's 1144
declaration, the physician or facility promptly shall so advise 1145
the declarant and comply with the provisions of section 2133.10 1146
of the Revised Code, or, if the declaration has become operative 1147
as described in division (A) of section 2133.03 of the Revised 1148
Code, shall comply with the provisions of section 2133.10 of the 1149

Revised Code. 1150

(E) As used in this section, "CPR" has the same meaning as 1151
in section 2133.21 of the Revised Code. 1152

Sec. 5302.22. (A) ~~As~~ Unless the context otherwise 1153
requires, as used in sections 5302.22, 5302.222, 5302.23, and 1154
5302.24 of the Revised Code: 1155

(1) "Affidavit of confirmation" means an affidavit 1156
executed under division (A) of section 5302.222 of the Revised 1157
Code. 1158

(2) "Survivorship tenancy" means an ownership of real 1159
property or any interest in real property by two or more persons 1160
that is created by executing a deed pursuant to section 5302.17 1161
of the Revised Code. 1162

(3) "Survivorship tenant" means one of the owners of real 1163
property or any interest in real property in a survivorship 1164
tenancy. 1165

(4) "Tenants by the entirety" mean only those persons 1166
who are vested as tenants in an estate by the entirety with 1167
survivorship pursuant to any deed recorded between February 9, 1168
1972, and April 3, 1985, under section 5302.17 of the Revised 1169
Code as it existed during that period of time. Nothing in 1170
sections 5302.22, 5302.222, 5302.23, and 5302.24 of the Revised 1171
Code authorizes the creation of a tenancy by the entirety or 1172
recognizes a tenancy by the entirety created outside that 1173
period of time. 1174

(5) "Transfer on death designation affidavit" means an 1175
affidavit executed under this section. 1176

(6) "Transfer on death beneficiary or beneficiaries" means 1177

the beneficiary or beneficiaries designated in a transfer on 1178
death designation affidavit. 1179

(7) "Electronic" and "record" have the same meanings as in 1180
section 2107.01 of the Revised Code. 1181

(B) Any individual who, under the Revised Code or the 1182
common law of this state, owns real property or any interest in 1183
real property as a sole owner, as a tenant in common, or as a 1184
survivorship tenant, or together with the individual's spouse 1185
owns an indivisible interest in real property as tenants by the 1186
entireties, may designate the entire interest, or any specified 1187
part that is less than the entire interest, in that real 1188
property as transferable on death to a designated beneficiary or 1189
beneficiaries by executing, together with the individual's 1190
spouse, if any, a transfer on death designation affidavit as 1191
provided in this section. 1192

A transfer on death designation affidavit may be executed 1193
in writing or in an electronic manner. If executed in an 1194
electronic manner, a certified copy or a copy of the affidavit 1195
that is readable as text shall be considered to be a certified 1196
copy or a copy of the record of the affidavit. A copy of that 1197
affidavit shall be offered for recording with the county 1198
recorder as provided in this section. 1199

If the affidavit is executed by an individual together 1200
with the individual's spouse, if any, the dower rights of the 1201
spouse are subordinate to the vesting of title to the interest 1202
in the real property in the transfer on death beneficiary or 1203
beneficiaries designated under this section. The affidavit shall 1204
be recorded in the office of the county recorder in the county 1205
in which the real property is located, and, when so recorded, 1206
the affidavit or a certified copy of the affidavit shall be 1207

evidence of the transfer on death beneficiary or beneficiaries 1208
so designated in the affidavit insofar as the affidavit affects 1209
title to the real property. 1210

(C) (1) If an individual who owns real property or an 1211
interest in real property as a sole owner or as a tenant in 1212
common executes a transfer on death designation affidavit, upon 1213
the death of that individual, title to the real property or 1214
interest in the real property specified in the affidavit vests 1215
in the transfer on death beneficiary or beneficiaries designated 1216
in the affidavit. 1217

(2) If an individual who owns real property or an interest 1218
in real property as a survivorship tenant executes a transfer on 1219
death designation affidavit, upon the death of that individual 1220
or of one but not all of the surviving survivorship tenants, 1221
title to the real property or interest in the real property 1222
specified in the affidavit vests in the surviving survivorship 1223
tenant or tenants. Upon the death of the last surviving 1224
survivorship tenant, title to the real property or interest in 1225
the real property vests in the transfer on death beneficiary or 1226
beneficiaries designated in the affidavit, subject to division 1227
(B) (7) of section 5302.23 of the Revised Code. 1228

(3) If an individual who together with the individual's 1229
spouse owns an indivisible interest in real property as tenants 1230
by the entirety executes a transfer on death designation 1231
affidavit, upon the death of that individual, title to the real 1232
property or interest in the real property vests in the remaining 1233
tenant by the entirety. Upon the death of the remaining tenant 1234
by the entirety, title to the real property or interest in the 1235
real property vests in the transfer on death beneficiary or 1236
beneficiaries designated in the affidavit, subject to division 1237

(B) (7) of section 5302.23 of the Revised Code. 1238

(D) A transfer on death designation affidavit shall be 1239
verified before any person authorized to administer oaths and 1240
shall include all of the following: 1241

(1) A description of the real property the title to which 1242
is affected by the affidavit and a reference to an instrument of 1243
record containing that description; 1244

(2) If less than the entire interest in the real property 1245
is to be transferred on death under the affidavit, a statement 1246
of the specific interest or part of the interest in the real 1247
property that is to be so transferred; 1248

(3) A statement by the individual executing the affidavit 1249
that the individual is the person appearing on the record of the 1250
real property as the owner of the real property or interest in 1251
the real property at the time of the recording of the affidavit 1252
and the marital status of that owner. If the owner is married, 1253
the affidavit shall include a statement by the owner's spouse 1254
stating that the spouse's dower rights are subordinate to the 1255
vesting of title to the real property or interest in the real 1256
property in the transfer on death beneficiary or beneficiaries 1257
designated in the affidavit. 1258

(4) A statement designating one or more persons, 1259
identified by name, as transfer on death beneficiary or 1260
beneficiaries. 1261

(E) The county recorder of the county in which a transfer 1262
on death designation affidavit is offered for recording shall 1263
receive the affidavit and cause it to be recorded in the same 1264
manner as deeds are recorded. The county recorder shall collect 1265
a fee for recording the affidavit in the same amount as the fee 1266

for recording deeds. The county recorder shall index the 1267
affidavit in the name of the owner of record of the real 1268
property or interest in the real property who executed the 1269
affidavit. 1270

(F) A transfer on death designation affidavit need not be 1271
supported by consideration and need not be delivered to the 1272
transfer on death beneficiary or beneficiaries designated in the 1273
affidavit to be effective. However, in order to be effective, 1274
that affidavit shall be recorded with the county recorder as 1275
described in this section prior to the death of the individual 1276
who executed the affidavit. 1277

(G) Subject to division (C) of this section, upon the 1278
death of any individual who owns real property or an interest in 1279
real property that is subject to a transfer on death beneficiary 1280
designation made under a transfer on death designation affidavit 1281
as provided in this section, that real property or interest in 1282
real property of the deceased owner shall be transferred only to 1283
the transfer on death beneficiary or beneficiaries who are 1284
identified in the affidavit by name and who survive the deceased 1285
owner or that are in existence on the date of death of the 1286
deceased owner. 1287

For purposes of this division, if a natural or legal 1288
person designated by name in the affidavit as a transfer on 1289
death beneficiary or as a contingent transfer on death 1290
beneficiary as provided in division (B) (2) of section 5302.23 of 1291
the Revised Code solely in that person's capacity as a trustee 1292
of a trust has died, has resigned, or otherwise has been 1293
replaced by a successor trustee of the trust on the date of 1294
death of the deceased owner, the successor trustee of the trust 1295
shall be considered the transfer on death beneficiary or 1296

contingent transfer on death beneficiary in existence on the 1297
date of death of the deceased owner in full compliance with this 1298
division, notwithstanding that the successor trustee is not 1299
named as a transfer on death beneficiary or contingent transfer 1300
on death beneficiary in the affidavit. 1301

(H) Any person who knowingly makes any false statement in 1302
a transfer on death designation affidavit is guilty of 1303
falsification under division (A) (6) of section 2921.13 of the 1304
Revised Code. 1305

Sec. 5817.01. As used in this chapter: 1306

(A) (1) "Beneficiary under a trust" means either of the 1307
following: 1308

(a) Any person that has a present or future beneficial 1309
interest in a trust, whether vested or contingent; 1310

(b) Any person that, in a capacity other than that of 1311
trustee, holds a power of appointment over trust property, but 1312
does not include the class of permitted appointees among whom 1313
the power holder may appoint. 1314

(2) "Beneficiary under a trust" includes a charitable 1315
organization that is expressly designated in the terms of the 1316
trust to receive distributions, but does not include any 1317
charitable organization that is not expressly designated in the 1318
terms of the trust to receive distributions, but to whom the 1319
trustee may in its discretion make distributions. 1320

(B) (1) "Beneficiary under a will" means either of the 1321
following: 1322

(a) Any person designated in a will to receive a 1323
testamentary disposition of real or personal property; 1324

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

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

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

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

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

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

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

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

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

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

Revised Code, either of the following applies: 1353

(1) The settlor resides in, or is domiciled in, this 1354
state. 1355

(2) The trust's principal place of administration is in 1356
this state. 1357

(G) "Will" includes an electronic will. 1358

(H) "Copy of an electronic will," "electronic presence," 1359
"electronic will," and "sign" have the same meanings as in 1360
section 2107.01 of the Revised Code. 1361

Sec. 5817.05. (A) A complaint under section 5817.02 of the 1362
Revised Code shall name as party defendants all of the 1363
following, as applicable: 1364

(1) The testator's spouse; 1365

(2) The testator's children; 1366

(3) The testator's heirs who would take property pursuant 1367
to section 2105.06 of the Revised Code had the testator died 1368
intestate at the time the complaint is filed; 1369

(4) The testator's beneficiaries under the will; 1370

(5) Any beneficiary under the testator's most recent prior 1371
will. 1372

(B) A complaint under section 5817.02 of the Revised Code 1373
may name as a party defendant any other person that the testator 1374
believes may have a pecuniary interest in the determination of 1375
the validity of the testator's will. 1376

(C) A complaint under section 5817.02 of the Revised Code 1377
may contain all or any of the following: 1378

(1) A statement that a copy of the written or electronic 1379
will has been filed with the court; 1380

(2) A statement that the will is in writing or is an 1381
electronic will; 1382

(3) A statement that the will, if in writing, was signed 1383
by the testator, or was signed in the testator's name by another 1384
person in the testator's conscious presence and at the 1385
testator's express direction; or a statement that the will, if 1386
an electronic will, was signed at the end by the testator or by 1387
another individual in the testator's name, in the testator's 1388
physical presence or electronic presence, and at the testator's 1389
express direction; 1390

(4) A statement that the will, if in writing, was signed 1391
in the conscious presence of the testator by two or more 1392
competent individuals, each of whom either witnessed the 1393
testator sign the will, or heard the testator acknowledge 1394
signing the will; or a statement that the will, if an electronic 1395
will, was signed in the physical presence or electronic presence 1396
of the testator by two or more competent individuals and that 1397
all of the requirements specified in divisions (C) (3) (a), (b), 1398
and (c) of section 2107.03 of the Revised Code were complied 1399
with; 1400

(5) A statement that the will was executed with the 1401
testator's testamentary intent; 1402

(6) A statement that the testator had testamentary 1403
capacity; 1404

(7) A statement that the testator executed the will free 1405
from undue influence, not under restraint or duress, and in the 1406
exercise of the testator's free will; 1407

(8) A statement that the execution of the will was not the 1408
result of fraud or mistake; 1409

(9) The names and addresses of the testator and all of the 1410
defendants and, if any of the defendants are minors, their ages; 1411

(10) A statement that the will has not been revoked or 1412
modified; 1413

(11) A statement that the testator is familiar with the 1414
contents of the will. 1415

Section 2. That existing sections 317.32, 1337.11, 1416
1337.12, 1337.22, 1337.25, 2107.01, 2107.03, 2107.07, 2107.17, 1417
2107.18, 2107.24, 2107.27, 2107.29, 2107.30, 2107.31, 2107.33, 1418
2107.60, 2107.63, 2129.05, 2133.01, 2133.02, 5302.22, 5817.01, 1419
and 5817.05 of the Revised Code are hereby repealed. 1420

Section 3. The General Assembly respectfully requests that 1421
the Supreme Court amend its rules and procedures to further 1422
implement the purposes of this act in relation to electronically 1423
executed wills, declarations or living wills, and powers of 1424
attorney. 1425