

AN ACT

To amend section 2107.27 and to enact section 2107.24 of the Revised Code to provide a procedure for a probate court to treat a document as a will notwithstanding its noncompliance with the statutory formalities for executing wills.

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

SECTION 1. That section 2107.27 be amended and section 2107.24 of the Revised Code be enacted to read as follows:

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

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

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

(3) Two or more witnesses saw the decedent sign the document under division (A)(2) of this section.

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

Sec. 2107.27. (A) When application is made to the probate court to admit to probate a will that has been lost, spoliated, or destroyed as provided in section 2107.26 of the Revised Code or a document that is treated as a will as provided in section 2107.24 of the Revised Code, the party seeking to prove the will shall give a written notice by certified mail to the surviving

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

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

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

SECTION 2. That existing section 2107.27 of the Revised Code is hereby repealed.

SECTION 3. Section 2107.27 of the Revised Code, as amended by this act, and section 2107.24 of the Revised Code, as enacted by this act, apply to estates of decedents who die on or after the effective date of this act.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

Am. H. B. No. 265

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____