

**As Introduced**

**134th General Assembly**

**Regular Session**

**2021-2022**

**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**

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**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 discomfort of a principal, but not to postpone death;	140 141
(2) Hydration when administered to diminish the pain or discomfort of a principal, but not to postpone death;	142 143
(3) Any other medical or nursing procedure, treatment, intervention, or other measure that is taken to diminish the pain or discomfort of a principal, but not to postpone death.	144 145 146
(D) "Consulting physician" means a physician who, in conjunction with the attending physician of a principal, makes one or more determinations that are required to be made by the attending physician, or to be made by the attending physician and one other physician, by an applicable provision of sections 1337.11 to 1337.17 of the Revised Code, to a reasonable degree of medical certainty and in accordance with reasonable medical standards.	147 148 149 150 151 152 153 154
(E) "Declaration for mental health treatment" has the same meaning as in section 2135.01 of the Revised Code.	155 156
(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.	157 158 159
(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.	160 161 162
(H) "Health care decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to health care.	163 164 165

(I) "Health care facility" means any of the following:	166
(1) A hospital;	167
(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;	168 169 170 171
(3) A nursing home;	172
(4) A home health agency;	173
(5) An intermediate care facility for individuals with intellectual disabilities;	174 175
(6) A regulated community mental health organization.	176
(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.	177 178 179 180 181 182
(K) "Home health agency" has the same meaning as in section 3701.881 of the Revised Code.	183 184
(L) "Hospice care program" and "pediatric respite care program" have the same meanings as in section 3712.01 of the Revised Code.	185 186 187
(M) "Hospital" has the same meanings as in sections 3701.01, 3727.01, and 5122.01 of the Revised Code.	188 189
(N) "Hydration" means fluids that are artificially or technologically administered.	190 191
(O) "Incompetent" has the same meaning as in section	192

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



(W) "Person" has the same meaning as in section 1.59 of the Revised Code and additionally includes political subdivisions and governmental agencies, boards, commissions, departments, institutions, offices, and other instrumentalities.	220 221 222 223
(X) "Physician" means a person who is authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.	224 225 226
(Y) "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.	227 228
(Z) "Professional disciplinary action" means action taken by the board or other entity that regulates the professional conduct of health care personnel, including the state medical board and the board of nursing.	229 230 231 232
(AA) "Regulated community mental health organization" means a residential facility as defined and licensed under section 5119.34 of the Revised Code or a community mental health services provider as defined in section 5122.01 of the Revised Code.	233 234 235 236 237
(BB) "Terminal condition" means an irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a principal's attending physician and one other physician who has examined the principal, both of the following apply:	238 239 240 241 242 243 244
(1) There can be no recovery.	245
(2) Death is likely to occur within a relatively short time if life-sustaining treatment is not administered.	246 247

(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," "sign," and "vulnerable adult" have the 253  
same meanings as in 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  
A witness for a durable power of attorney for health care that 331  
is executed electronically in the electronic presence of the 332  
principal shall be located within this state. A witness for a 333  
durable power of attorney for health care that is executed 334  
electronically by the principal who is a vulnerable adult shall 335  
sign the durable power of attorney for health care in the 336  
physical presence of the principal. Then, each witness shall 337  
subscribe the witness's signature after the signature of the 338

principal and, by doing so, attest to the witness's belief that 339  
the principal appears to be of sound mind and not under or 340  
subject to duress, fraud, or undue influence. The signatures of 341  
the principal and the witnesses under this division are not 342  
required to appear on the same page of the instrument. 343

(C) (1) If acknowledged for purposes of division (A) (1) (b) 344  
of this section, a durable power of attorney for health care 345  
shall be acknowledged before a notary public, ~~who~~. The notary 346  
public shall make the certification described in section 147.53 347  
of the Revised Code and also shall attest that the principal 348  
appears to be of sound mind and not under or subject to duress, 349  
fraud, or undue influence. 350

(2) If the durable power of attorney for health care is 351  
executed electronically, the notary public performing the 352  
certification and attestation described in division (C) (1) of 353  
this section shall do so through an electronic notarization, 354  
pursuant to section 147.591 of the Revised Code, or as an online 355  
notarization pursuant to sections 147.60 to 147.66 of the 356  
Revised Code. 357

(D) (1) If a principal has both a valid durable power of 358  
attorney for health care and a valid declaration, division (B) 359  
of section 2133.03 of the Revised Code applies. If a principal 360  
has both a valid durable power of attorney for health care and a 361  
DNR identification that is based upon a valid declaration and if 362  
the declaration supersedes the durable power of attorney for 363  
health care under division (B) of section 2133.03 of the Revised 364  
Code, the DNR identification supersedes the durable power of 365  
attorney for health care to the extent of any conflict between 366  
the two. A valid durable power of attorney for health care 367  
supersedes any DNR identification that is based upon a do-not- 368

resuscitate order that a physician issued for the principal 369  
which is inconsistent with the durable power of attorney for 370  
health care or a valid decision by the attorney in fact under a 371  
durable power of attorney. 372

(2) As used in division (D) of this section: 373

(a) "Declaration" has the same meaning as in section 374  
2133.01 of the Revised Code. 375

(b) "Do-not-resuscitate order" and "DNR identification" 376  
have the same meanings as in section 2133.21 of the Revised 377  
Code. 378

(E) (1) In a durable power of attorney for health care, a 379  
principal may nominate a guardian of the principal's person, 380  
estate, or both for consideration by a court if proceedings for 381  
the appointment of a guardian for the principal's person, 382  
estate, or both are commenced at a later time. The principal may 383  
authorize the person nominated as the guardian or the attorney 384  
in fact to nominate a successor guardian for consideration by 385  
the court. The principal's nomination of a guardian of the 386  
principal's person, estate, or both is revoked by the 387  
principal's subsequent nomination of a guardian of the 388  
principal's person, estate, or both, and, except for good cause 389  
shown or disqualification, the court shall make its appointment 390  
in accordance with the principal's most recent nomination. 391

(2) The principal may direct that bond be waived for a 392  
person nominated as guardian or successor guardian under 393  
division (E) (1) of this section. 394

(3) A durable power of attorney for health care that 395  
contains the nomination of a person to be the guardian of the 396  
person, estate, or both of the principal may be filed with the 397

probate court for safekeeping, and the probate court shall 398  
designate the nomination as the nomination of a standby 399  
guardian. 400

(4) If a guardian is appointed for the principal, a 401  
durable power of attorney for health care is not terminated, and 402  
the authority of the attorney in fact continues unless the 403  
court, pursuant to its authority under section 2111.50 of the 404  
Revised Code, limits, suspends, or terminates the power of 405  
attorney after notice to the attorney in fact and upon a finding 406  
that the limitation, suspension, or termination is in the best 407  
interest of the principal. 408

Sec. 1337.121. A durable power of attorney for health care 409  
executed electronically under section 1337.12 of the Revised 410  
Code may include some or all of the information specified in the 411  
printed form of the instrument in section 1337.17 of the Revised 412  
Code according to the intention of the principal. The record of 413  
an electronic durable power of attorney for health care may be 414  
retrieved and copied in readable text. 415

**Sec. 1337.22.** As used in sections 1337.21 to 1337.64 of 416  
the Revised Code: 417

(A) "Agent" means a person granted authority to act for a 418  
principal under a power of attorney, whether denominated an 419  
agent, attorney in fact, or otherwise. "Agent" includes an 420  
original agent, coagent, successor agent, and a person to which 421  
an agent's authority is delegated. 422

(B) "Durable," with respect to a power of attorney, means 423  
not terminated by the principal's incapacity. 424

(C) "Electronic" means relating to technology having 425  
electrical, digital, magnetic, wireless, optical, 426

electromagnetic, or similar capabilities.	427
(D) "Good faith" means honesty in fact.	428
(E) "Incapacity" means inability of an individual to	429
manage property or business affairs for either of the following	430
reasons:	431
(1) The individual has an impairment in the ability to	432
receive and evaluate information or make or communicate	433
decisions even with the use of technological assistance.	434
(2) The individual is any of the following:	435
(a) Missing;	436
(b) Detained, including incarcerated in a penal system;	437
(c) Outside the United States and unable to return.	438
(F) "Person" means an individual, corporation, business	439
trust, estate, trust, partnership, limited liability company,	440
association, joint venture, public corporation, government or	441
governmental subdivision, agency, or instrumentality, or any	442
other legal or commercial entity.	443
(G) "Power of attorney" means a writing or other record	444
that grants authority to an agent to act in the place of the	445
principal, whether or not the term power of attorney is used.	446
(H) "Presently exercisable general power of appointment,"	447
with respect to property or a property interest subject to a	448
power of appointment, means power exercisable at the time in	449
question to vest absolute ownership in the principal	450
individually, the principal's estate, the principal's creditors,	451
or the creditors of the principal's estate. The term includes a	452
power of appointment not exercisable until the occurrence of a	453



specified event, the satisfaction of an ascertainable standard, 454  
or the passage of a specified period only after the occurrence 455  
of the specified event, the satisfaction of the ascertainable 456  
standard, or the passage of the specified period. The term does 457  
not include a power exercisable in a fiduciary capacity or only 458  
by will. 459

(I) "Principal" means an individual who grants authority 460  
to an agent in a power of attorney. 461

(J) "Property" means anything that may be the subject of 462  
ownership, whether real or personal, or legal or equitable, or 463  
any interest or right therein. 464

(K) "Record" means information that is inscribed on a 465  
tangible medium or that is stored in an electronic or other 466  
medium and is retrievable in perceivable form. 467

(L) "Sign" means, with present intent to authenticate or 468  
adopt a record, to execute or adopt a tangible symbol or to 469  
attach to or logically associate with the record an electronic 470  
sound, symbol, or process. 471

(M) "State" means a state of the United States, the 472  
District of Columbia, Puerto Rico, the United States Virgin 473  
Islands, or any territory or insular possession subject to the 474  
jurisdiction of the United States. 475

(N) "Stocks and bonds" means stocks, bonds, mutual funds, 476  
and all other types of securities and financial instruments, 477  
whether held directly, indirectly, or in any other manner, but 478  
does not include commodity futures contracts or call or put 479  
options on stocks or stock indexes. 480

(O) "Conscious presence" means within the range of any of 481  
the principal's senses, excluding the sense of sight or sound 482

that is sensed by telephonic, electronic, or other distant 483  
communication. 484

(P) "Electronic presence" has the same meaning as in 485  
section 2107.01 of the Revised Code. 486

**Sec. 1337.25.** (A) A power of attorney ~~must~~ shall be signed 487  
by the principal or in the principal's conscious presence or 488  
electronic presence by another individual directed by the 489  
principal to sign the principal's name on the power of attorney. 490  
A signature on a power of attorney is presumed to be genuine if 491  
the principal or the principal and other individual directed by 492  
the principal to sign the principal's name acknowledges the 493  
signature before a notary public or other individual authorized 494  
by law to take acknowledgments. 495

(B) If a power of attorney is executed electronically, the 496  
principal's signature shall only be acknowledged before a notary 497  
public performing an electronic notarization, pursuant to 498  
section 147.591 of the Revised Code, or an online notarization 499  
pursuant to sections 147.60 to 147.66 of the Revised Code. 500

**Sec. 2107.01.** As ~~Unless~~ the context otherwise requires, as 501  
used in Chapters 2101. to 2131. of the Revised Code: 502

(A) (1) "Will" includes ~~codicils~~ the following: 503

(a) ~~Codicils~~ to wills admitted to probate, ~~lost~~; 504

(b) ~~Lost~~, spoliated, or destroyed wills, ~~and instruments~~; 505

(c) ~~Instruments~~ declared valid under division (A) (1) of 506  
section 5817.10 of the Revised Code, ~~but "will"~~; 507

(d) ~~Electronic wills and copies of electronic wills.~~ 508

(2) "Will" does not include inter vivos trusts or other 509

instruments that have not been admitted to probate.	510
(B) "Testator" means any person who makes a will.	511
<u>(C) "Copy of an electronic will" means a copy of the</u>	512
<u>record of an electronic will that is readable as text.</u>	513
<u>(D) "Electronic" or "electronically" means relating to</u>	514
<u>technology having electrical, digital, magnetic, wireless,</u>	515
<u>optical, electromagnetic, or similar capabilities.</u>	516
<u>(E) "Electronic presence" means the relationship of two or</u>	517
<u>more individuals in different locations communicating in real</u>	518
<u>time to the same extent as if the individuals were physically</u>	519
<u>present in the same location.</u>	520
<u>(F) "Electronic will" means a will that is executed</u>	521
<u>electronically pursuant to section 2107.03 of the Revised Code,</u>	522
<u>and includes a copy of an electronic will.</u>	523
<u>(G) "Original will" means the original will in writing or</u>	524
<u>the copy of an electronic will that is offered for or admitted</u>	525
<u>to probate.</u>	526
<u>(H) "Record" means information that is inscribed in a</u>	527
<u>tangible medium or that is stored in an electronic medium and is</u>	528
<u>retrievable in perceivable form.</u>	529
<u>(I) "Sign" means to do either of the following with the</u>	530
<u>present intent to authenticate or adopt a record:</u>	531
<u>(1) Execute or adopt a tangible symbol;</u>	532
<u>(2) Affix to or logically associate with a record an</u>	533
<u>electronic symbol or process.</u>	534
<u>(J) "Vulnerable adult" means a person who is eighteen</u>	535
<u>years of age or older and whose ability to perform the normal</u>	536

activities of daily living or to provide for the person's own 537  
care or protection is impaired due to a mental, emotional, 538  
sensory, or long-term physical or developmental, disability or 539  
dysfunction, or brain damage, or the debilitating infirmities of 540  
aging. 541

(K) "Will annexed" means the original will, a copy of the 542  
original will in writing, or a copy of the electronic will, 543  
whichever is applicable. 544

**Sec. 2107.03.** (A) Except oral wills governed by section 545  
2107.60 of the Revised Code, every will shall be in writing, but 546  
may be including handwritten or typewritten, or be an electronic 547  
will. 548

(B) (1) Both of the following apply to a will in writing: 549

(a) The will shall be signed at the end by the testator or 550  
by some other person in the testator's conscious presence and at 551  
the testator's express direction. 552

(b) The will shall be attested and subscribed in the 553  
conscious presence of the testator, by two or more competent 554  
witnesses, who saw the testator subscribe, or heard the testator 555  
acknowledge the testator's signature. 556

(2) For purposes of division (B) (1) of this section, 557  
"conscious presence" means within the range of any of the 558  
testator's senses, excluding the sense of sight or sound that is 559  
sensed by telephonic, electronic, or other distant 560  
communication. 561

(C) All of the following apply to an electronic will: 562

(1) The will shall be a record that is readable as text at 563  
the time it is signed under divisions (C) (2) and (3) of this 564

section. 565

(2) The will shall be signed at the end by the testator or 566  
by another individual in the testator's name, in the testator's 567  
physical presence or electronic presence, and by the testator's 568  
direction. 569

(3) The will shall be signed in the physical presence or 570  
electronic presence of the testator by two or more competent 571  
witnesses and all of the following apply: 572

(a) If the witnesses sign the will in the electronic 573  
presence of the testator, they shall be located in this state. 574

(b) If the testator is a vulnerable adult, the witnesses 575  
shall sign the will in the physical presence of the testator. 576

(c) The witnesses shall sign the will within a reasonable 577  
time after witnessing the signing of the will under division (C) 578  
(2) of this section. 579

(d) The witnesses shall subscribe and attest their 580  
signatures to the will. 581

(D) (1) The procedures under divisions (C) (2) and (3) of 582  
this section shall be recorded by electronic media containing 583  
both audio and visual components. The format of the recording 584  
shall be preserved and stored in a safe, secure, and appropriate 585  
manner. 586

(2) The process of recording under division (D) (1) of this 587  
section shall ensure the following: 588

(a) That the person executing the electronic will is the 589  
testator of the will; 590

(b) That the persons signing the electronic will under 591

divisions (C) (2) and (3) of this section verbally acknowledge 592  
that they have signed the electronic will, that they recognize 593  
the consequences of their signing the electronic will, and that 594  
they understand the significance of the electronic will. 595

(E) A copy of the electronic will shall be provided to the 596  
testator of that electronic will. 597

(F) The intent of the testator that the record described 598  
in division (C) (1) of this section is the testator's electronic 599  
will may be established by extrinsic evidence. 600

**Sec. 2107.031.** (A) On and after the effective date of this 601  
section, the laws of this state that are applicable to wills 602  
apply to electronic wills unless it is clear from the context or 603  
meaning of a particular provision of the law that it applies 604  
only to a will in writing or a will other than an electronic 605  
will. 606

(B) The principles of equity apply to an electronic will. 607

**Sec. 2107.07.** (A) (1) A will in writing may be deposited by 608  
the testator, or by some person for the testator, in the office 609  
of the judge of the probate court in the county in which the 610  
testator lives, before or after the death of the testator, and 611  
if deposited after the death of the testator, with or without 612  
applying for its probate. 613

(2) A copy of an electronic will shall be deposited by the 614  
testator or by some other person for the testator, in the office 615  
of the judge of the probate court in the county in which the 616  
testator lives, before or after the death of the testator. A 617  
copy of an electronic will may be deposited after the death of 618  
the testator with or without applying for its probate. If a copy 619  
of an electronic will is deposited by some person for the 620

testator under this division, that person shall attach with that 621  
copy an affidavit attested to by the testator authorizing the 622  
person to deposit the copy of the electronic will under this 623  
division. 624

(B) Upon the payment of the fee of twenty-five dollars to 625  
the court, the judge shall receive, keep, and give a certificate 626  
of deposit for the will. That will shall be safely kept until 627  
delivered or disposed of as provided by section 2107.08 of the 628  
Revised Code. If the will is not delivered or disposed of as 629  
provided in that section within one hundred years after the date 630  
the will was deposited, the judge may dispose of the will in any 631  
manner the judge considers feasible. The judge shall retain an 632  
electronic copy of the will prior to its disposal after one 633  
hundred years under this section. 634

(C) Every will that is ~~so~~ deposited under division (A) (1) 635  
of this section shall be enclosed in a sealed envelope that 636  
shall be indorsed with the name of the testator. The judge shall 637  
indorse on the envelope the date of delivery and the person by 638  
whom the will was delivered. The envelope may be indorsed with 639  
the name of a person to whom it is to be delivered after the 640  
death of the testator. Every will deposited under division (A) 641  
(2) of this section shall be stored in a separate file in the 642  
court's records and contain information analogous to that 643  
required for wills in writing. The will shall not be opened or 644  
read until delivered to a person entitled to receive it, until 645  
the testator files a complaint in the probate court for a 646  
declaratory judgment of the validity of the will pursuant to 647  
section 5817.02 of the Revised Code, or until otherwise disposed 648  
of as provided in section 2107.08 of the Revised Code. Subject 649  
to section 2107.08 of the Revised Code, the deposited will shall 650  
not be a public record until the time that an application is 651

filed to probate it. 652

**Sec. 2107.17.** When a witness to a will, or other witness 653  
competent to testify at a probate or declaratory judgment 654  
proceeding, resides out of its jurisdiction, or resides within 655  
it but is infirm and unable to attend court, the probate court 656  
may issue a commission with the will annexed directed to any 657  
suitable person. In lieu of the original will, the probate 658  
court, in its discretion, may annex to the commission a 659  
photocopy of the original will or a copy of ~~the that~~ will made 660  
by any similar process. The person to whom the commission is 661  
directed shall take the deposition or authorize the taking of 662  
the deposition of the witness as provided by the Rules of Civil 663  
Procedure. The testimony, certified and returned, shall be 664  
admissible and have the same effect in the proceedings as if 665  
taken in open court. 666

**Sec. 2107.18.** The probate court shall admit a will to 667  
probate if it appears from the face of the will, or if the 668  
probate court requires, in its discretion, the testimony of the 669  
witnesses to a will and it appears from that testimony, that the 670  
execution of the will complies with the law in force at the time 671  
of the execution of the will in the jurisdiction in which ~~the~~ 672  
~~testator was physically present when~~ it was executed, with the 673  
law in force in this state at the time of the death of the 674  
testator, or with the law in force in the jurisdiction in which 675  
the testator was domiciled at the time of the testator's death. 676

The probate court shall admit a will to probate when there 677  
has been a prior judgment by a court declaring that the will is 678  
valid, rendered pursuant to division (A)(1) of section 5817.10 679  
of the Revised Code, if the will has not been revoked. 680

**Sec. 2107.24.** (A) If a document that is executed that 681



purports to be a will in writing is not executed in compliance 682  
with the requirements of division (B) of section 2107.03 of the 683  
Revised Code, that document shall be treated as if it had been 684  
executed as a will in writing in compliance with the 685  
requirements of that ~~section~~division if a probate court, after 686  
holding a hearing, finds that the proponent of the document as a 687  
purported will in writing has established, by clear and 688  
convincing evidence, all of the following: 689

(1) The decedent prepared the document or caused the 690  
document to be prepared. 691

(2) The decedent signed the document and intended the 692  
document to constitute the decedent's will. 693

(3) The decedent signed the document under division (A) (2) 694  
of this section in the conscious presence of two or more 695  
witnesses. As used in division (A) (3) of this section, 696  
"conscious presence" means within the range of any of the 697  
witnesses' senses, excluding the sense of sight or sound that is 698  
sensed by telephonic, electronic, or other distant 699  
communication. 700

~~(B) If the~~ If a document that is executed that purports to 701  
be an electronic will is not executed in compliance with the 702  
requirements of division (C) of section 2107.03 of the Revised 703  
Code, that document shall be treated as if it had been executed 704  
as an electronic will in compliance with the requirements of 705  
that division if a probate court, after holding a hearing, finds 706  
that the proponent of the document as a purported electronic 707  
will has established, by clear and convincing evidence, all of 708  
the following: 709

(1) The decedent prepared the document or caused the 710

document to be prepared. 711

(2) The decedent signed the document and intended the 712  
document to constitute the decedent's will. 713

(3) The requirements of division (C) of section 2107.03 of 714  
the Revised Code were complied with. 715

(C) The executor may file an action in the probate court 716  
to recover court costs and attorney's fees from the attorney, if 717  
any, responsible for the execution of the document if either of 718  
the following applies: 719

(1) The probate court holds a hearing pursuant to division 720  
(A) of this section and finds that the proponent of the document 721  
as a purported will in writing has established by clear and 722  
convincing evidence the requirements under divisions (A) (1), 723  
(2), and (3) of this section, ~~the executor may file an action in~~ 724  
~~the probate court to recover court costs and attorney's fees~~ 725  
~~from the attorney, if any, responsible for the execution of the~~ 726  
~~document.~~ 727

(2) The probate court holds a hearing pursuant to division 728  
(B) of this section and finds that the proponent of the document 729  
as a purported electronic will has established by clear and 730  
convincing evidence the requirements under divisions (B) (1), 731  
(2), and (3) of this section. 732

**Sec. 2107.27.** (A) When application is made to the probate 733  
court to admit to probate a will that has been lost, spoliated, 734  
or destroyed as provided in section 2107.26 of the Revised Code 735  
or a document that is treated as a will as provided in section 736  
2107.24 of the Revised Code, the party seeking to prove the will 737  
shall give a written notice by certified mail to the surviving 738  
spouse of the testator, to all persons who would be entitled to 739

inherit from the testator under Chapter 2105. of the Revised 740  
Code if the testator had died intestate, to all legatees and 741  
devisees that are named in the will, and to all legatees and 742  
devisees that are named in the most recent will prior to the 743  
lost, spoliated, or destroyed will that is known to the 744  
applicant or in the most recent will prior to the document that 745  
is treated as a will if the most recent will is known to the 746  
applicant. 747

(B) In the cases described in division (A) of this 748  
section, the proponents and opponents of the will shall cause 749  
the witnesses to the will, and any other witnesses that have 750  
relevant and material knowledge about the will, to appear before 751  
the court to testify. If any witnesses reside out of its 752  
jurisdiction, or reside within its jurisdiction but are infirm 753  
or unable to attend, the probate court may order their testimony 754  
to be taken and reduced to writing by some competent person. The 755  
testimony shall be filed in the records of the probate court 756  
pertaining to the testator's estate. 757

(C) If upon such proof the court finds that the 758  
requirements of section 2107.24 or 2107.26 of the Revised Code, 759  
whichever is applicable, have been met, the probate court shall 760  
find and establish the contents of the will as near as can be 761  
ascertained. The contents of the will established under section 762  
2107.26 of the Revised Code shall be as effectual for all 763  
purposes as if the original will had been admitted to probate 764  
and record. The contents of the will established under section 765  
2107.24 of the Revised Code shall be as effectual for all 766  
purposes as if the document treated as a will had satisfied all 767  
of the requirements of division (B) or (C) of section 2107.03 of 768  
the Revised Code, whichever is applicable, and had been admitted 769  
to probate and record. 770

**Sec. 2107.29.** When the court record of a will is 771  
destroyed, a copy of the will or a copy of the will and its 772  
probate may be recorded by the probate court if it appears to 773  
the court's satisfaction that the court record has been 774  
destroyed and if it appears, by reason of a certificate signed 775  
and sealed by the probate judge, that the copy is a true copy of 776  
the original will or a true copy of the original will and its 777  
probate. 778

**Sec. 2107.30.** When the court record of a will has been 779  
destroyed, the original will may again be admitted to probate 780  
and record. 781

**Sec. 2107.31.** Sections 2107.29 and 2107.30 of the Revised 782  
Code do not affect the proceedings or extend the time for 783  
contesting the validity of any will or for asserting rights 784  
~~thereunder under the will~~. The court record provided for in ~~such~~ 785  
~~those sections must~~ shall show that the original court record 786  
was destroyed, and the time, as near as may be, when the will 787  
was originally admitted to probate and record. 788

**Sec. 2107.33.** (A) A will in writing shall be revoked in 789  
any of the following manners: 790

(1) By the testator by tearing, canceling, obliterating, 791  
or destroying it with the intention of revoking it; 792

(2) By some person, at the request of the testator and in 793  
the testator's physical presence, by tearing, canceling, 794  
obliterating, or destroying it with the intention of revoking 795  
it; 796

(3) By some person tearing, canceling, obliterating, or 797  
destroying it pursuant to the testator's express written 798  
direction; 799

(4) By some other written will or codicil or by an 800  
electronic will, executed as prescribed by this chapter; 801

(5) By some other writing that is signed, attested, and 802  
subscribed in the manner provided by this chapter. 803

(B) (1) An electronic will shall be revoked in either of 804  
the following manners: 805

(a) By the testator's subsequent will that revokes all or 806  
part of the electronic will expressly or by inconsistency; 807

(b) By a physical act, if it is established by a 808  
preponderance of the evidence that the testator, with the intent 809  
of revoking all or part of the will, performed the act or 810  
directed another individual who performed the act in the 811  
physical presence of the testator. 812

(2) As used in division (B) (1) (b) of this section, 813  
"physical act" includes, but is not limited to, using a delete 814  
or trash function on the computer pertaining to the electronic 815  
will or typing or writing "revoked" on an electronic or printed 816  
copy of the electronic will. 817

(C) If after executing a will, a testator is divorced, 818  
obtains a dissolution of marriage, has the testator's marriage 819  
annulled, or, upon actual separation from the testator's spouse, 820  
enters into a separation agreement pursuant to which the parties 821  
intend to fully and finally settle their prospective property 822  
rights in the property of the other, whether by expected 823  
inheritance or otherwise, any disposition or appointment of 824  
property made by the will to the former spouse or to a trust 825  
with powers created by or available to the former spouse, any 826  
provision in the will conferring a general or special power of 827  
appointment on the former spouse, and any nomination in the will 828

of the former spouse as executor, trustee, or guardian shall be 829  
revoked unless the will expressly provides otherwise. 830

~~(C)~~ (D) Property prevented from passing to a former spouse 831  
or to a trust with powers created by or available to the former 832  
spouse because of revocation by this section shall pass as if 833  
the former spouse failed to survive the decedent, and other 834  
provisions conferring some power or office on the former spouse 835  
shall be interpreted as if the spouse failed to survive the 836  
decedent. If provisions are revoked solely by this section, they 837  
shall be deemed to be revived by the testator's remarriage with 838  
the former spouse or upon the termination of a separation 839  
agreement executed by them. 840

~~(D)~~ (E) A bond, agreement, or covenant made by a testator, 841  
for a valuable consideration, to convey property previously 842  
devised or bequeathed in a will does not revoke the devise or 843  
bequest. The property passes by the devise or bequest, subject 844  
to the remedies on the bond, agreement, or covenant, for a 845  
specific performance or otherwise, against the devisees or 846  
legatees, that might be had by law against the heirs of the 847  
testator, or the testator's next of kin, if the property had 848  
descended to them. 849

~~(E)~~ (F) A testator's revocation of a will shall be valid 850  
only if the testator, at the time of the revocation, has the 851  
same capacity as the law requires for the execution of a will. 852

~~(F)~~ (G) As used in this section: 853

(1) "Trust with powers created by or available to the 854  
former spouse" means a trust that is revocable by the former 855  
spouse, with respect to which the former spouse has a power of 856  
withdrawal, or with respect to which the former spouse may take 857

a distribution that is not subject to an ascertainable standard 858  
but does not mean a trust in which those powers of the former 859  
spouse are revoked by section 5815.31 of the Revised Code or 860  
similar provisions in the law of another state. 861

(2) "Ascertainable standard" means a standard that is 862  
related to a trust beneficiary's health, maintenance, support, 863  
or education. 864

**Sec. 2107.60.** (A) An oral will, made in the last sickness, 865  
shall be valid in respect to personal property if the oral will 866  
is reduced to writing or transcribed electronically and 867  
~~subscribed by two competent disinterested witnesses~~ within ten 868  
days after the speaking of the testamentary words by two 869  
competent disinterested witnesses who were, at the time the 870  
testamentary words were spoken, in the physical presence or 871  
electronic presence of the testator. The witnesses who were, at 872  
the time the testamentary words were spoken, in the electronic 873  
presence of the testator shall be located within this state. The 874  
witnesses shall prove that the testator was of sound mind and 875  
memory, not under restraint, and that the testator called upon 876  
some person physically or electronically present at the time the 877  
testamentary words were spoken to bear testimony to the 878  
disposition as the testator's will. 879

(B) No oral will shall be admitted to record unless it is 880  
offered for probate within three months after the death of the 881  
testator. 882

**Sec. 2107.63.** A testator may by will devise, bequeath, or 883  
appoint real or personal property or any interest in real or 884  
personal property to a trustee of a trust that is evidenced by a 885  
written or electronic instrument signed by the testator or any 886  
other settlor either before or on the same date of the execution 887

of the will of the testator, that is identified in the will, and 888  
that has been signed, or is signed at any time after the 889  
execution of the testator's will, by the trustee or trustees 890  
identified in the will or their successors or by any other 891  
person lawfully serving, by court appointment or otherwise, as a 892  
trustee. 893

The property or interest so devised, bequeathed, or 894  
appointed to the trustee shall become a part of the trust 895  
estate, shall be subject to the jurisdiction of the court having 896  
jurisdiction of the trust, and shall be administered in 897  
accordance with the terms and provisions of the instrument 898  
creating the trust, including, unless the will specifically 899  
provides otherwise, any amendments or modifications of the trust 900  
made in writing or electronically before, concurrently with, or 901  
after the making of the will and prior to the death of the 902  
testator. The termination of the trust, or its entire revocation 903  
prior to the testator's death, shall invalidate the devise, 904  
bequest, or appointment to the trustee. 905

This section shall not affect any of the rights accorded 906  
to a surviving spouse under section 2106.01 of the Revised Code. 907  
This section applies, and shall be construed as applying, to the 908  
wills of decedents who die on or after the effective date of 909  
this amendment, regardless of the date of the execution of their 910  
wills. 911

**Sec. 2129.05.** Authenticated copies of wills of persons ~~not~~ 912  
~~domiciled in this state,~~ executed and proved according to the 913  
laws of any state or territory of the United States, relative to 914  
property in this state, may be admitted to record in the probate 915  
court of a county where a part of that property is situated. The 916  
authenticated copies, so recorded, shall be as valid as wills 917



made in this state. 918

When such a will, or authenticated copy, is admitted to 919  
record, a copy of the will or of the authenticated copy, with 920  
the copy of the order to record it annexed to that copy, 921  
certified by the probate judge under the seal of the probate 922  
court, may be filed and recorded in the office of the probate 923  
judge of any other county where a part of the property is 924  
situated, and it shall be as effectual as the authenticated copy 925  
of the will would be if approved and admitted to record by the 926  
court. 927

**Sec. 2133.01.** Unless the context otherwise requires, as 928  
used in sections 2133.01 to 2133.15 of the Revised Code: 929

(A) "Adult" means an individual who is eighteen years of 930  
age or older. 931

(B) "Attending physician" means the physician to whom a 932  
declarant or other patient, or the family of a declarant or 933  
other patient, has assigned primary responsibility for the 934  
treatment or care of the declarant or other patient, or, if the 935  
responsibility has not been assigned, the physician who has 936  
accepted that responsibility. 937

(C) "Comfort care" means any of the following: 938

(1) Nutrition when administered to diminish the pain or 939  
discomfort of a declarant or other patient, but not to postpone 940  
the declarant's or other patient's death; 941

(2) Hydration when administered to diminish the pain or 942  
discomfort of a declarant or other patient, but not to postpone 943  
the declarant's or other patient's death; 944

(3) Any other medical or nursing procedure, treatment, 945

intervention, or other measure that is taken to diminish the 946  
pain or discomfort of a declarant or other patient, but not to 947  
postpone the declarant's or other patient's death. 948

(D) "Consulting physician" means a physician who, in 949  
conjunction with the attending physician of a declarant or other 950  
patient, makes one or more determinations that are required to 951  
be made by the attending physician, or to be made by the 952  
attending physician and one other physician, by an applicable 953  
provision of this chapter, to a reasonable degree of medical 954  
certainty and in accordance with reasonable medical standards. 955

(E) "Declarant" means any adult who has executed a 956  
declaration in accordance with section 2133.02 of the Revised 957  
Code. 958

(F) "Declaration" means a written or an electronic 959  
document executed in accordance with section 2133.02 of the 960  
Revised Code. 961

(G) "Durable power of attorney for health care" means a 962  
document created pursuant to sections 1337.11 to 1337.17 of the 963  
Revised Code. 964

(H) "Guardian" means a person appointed by a probate court 965  
pursuant to Chapter 2111. of the Revised Code to have the care 966  
and management of the person of an incompetent. 967

(I) "Health care facility" means any of the following: 968

(1) A hospital; 969

(2) A hospice care program, pediatric respite care 970  
program, or other institution that specializes in comfort care 971  
of patients in a terminal condition or in a permanently 972  
unconscious state; 973

(3) A nursing home or residential care facility, as defined in section 3721.01 of the Revised Code;	974 975
(4) A home health agency and any residential facility where a person is receiving care under the direction of a home health agency;	976 977 978
(5) An intermediate care facility for individuals with intellectual disabilities.	979 980
(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.	981 982 983 984 985 986
(K) "Home health agency" has the same meaning as in section 3701.881 of the Revised Code.	987 988
(L) "Hospice care program" and "pediatric respite care program" have the same meanings as in section 3712.01 of the Revised Code.	989 990 991
(M) "Hospital" has the same meanings as in sections 3701.01, 3727.01, and 5122.01 of the Revised Code.	992 993
(N) "Hydration" means fluids that are artificially or technologically administered.	994 995
(O) "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.	996 997
(P) "Intermediate care facility for the individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.	998 999 1000

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) There can be no recovery.

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

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

(CC) "Copy of a declaration" means a printed or electronic copy of a declaration in writing, a copy of the record of a

declaration executed electronically that is readable as text, or 1057  
an electronic copy of the record of a declaration executed 1058  
electronically. 1059

(DD) "Electronic," "electronically," "electronic 1060  
presence," "record," "sign," and "vulnerable adult" have the 1061  
same meanings as in section 2107.01 of the Revised Code. 1062

**Sec. 2133.02.** (A) (1) An adult who is of sound mind 1063  
voluntarily may execute at any time a declaration governing the 1064  
use or continuation, or the withholding or withdrawal, of life- 1065  
sustaining treatment. ~~The~~ If the declaration is in writing, it 1066  
shall be signed at the end by the declarant or by another 1067  
individual at the direction of the declarant, and shall state 1068  
the date of its execution, and either. If the declaration is 1069  
executed electronically, the declarant or another individual at 1070  
the direction of the declarant shall sign the record associated 1071  
with, and at the end of, the declaration, and shall state the 1072  
date of its execution. The declaration shall be witnessed as 1073  
described in division (B) (1) of this section or be acknowledged 1074  
by the declarant in accordance with division (B) (2) of this 1075  
section. The declaration may include a designation by the 1076  
declarant of one or more persons who are to be notified by the 1077  
declarant's attending physician at any time that life-sustaining 1078  
treatment would be withheld or withdrawn pursuant to the 1079  
declaration. The declaration may include a specific 1080  
authorization for the use or continuation or the withholding or 1081  
withdrawal of CPR, but the failure to include a specific 1082  
authorization for the withholding or withdrawal of CPR does not 1083  
preclude the withholding or withdrawal of CPR in accordance with 1084  
sections 2133.01 to 2133.15 or sections 2133.21 to 2133.26 of 1085  
the Revised Code. 1086

(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 1118  
a printed form of a declaration; 1119

(ii) Placing the declarant's initials or ~~signature~~ signing 1120  
underneath or adjacent to the statement, check, or other mark 1121  
described in division (A) (3) (a) (i) of this section. 1122

(b) Division (A) (3) (a) of this section does not apply to 1123  
the extent that a declaration authorizes the withholding or 1124  
withdrawal of life-sustaining treatment when a declarant is in a 1125  
terminal condition. The provisions of division (E) of section 1126  
2133.12 of the Revised Code pertaining to comfort care shall 1127  
apply to a declarant in a terminal condition. 1128

(B) (1) If witnessed for purposes of division (A) of this 1129  
section, a declaration shall be witnessed by two individuals as 1130  
described in this division in whose physical presence, if the 1131  
declaration is in writing, or physical or electronic presence, 1132  
if the declaration is executed electronically, the declarant, or 1133  
another individual at the direction of the declarant, signed the 1134  
declaration. The witnesses to a declaration that is executed 1135  
electronically in the electronic presence of the declarant or 1136  
another individual at the direction of the declarant shall be 1137  
located within this state. The witnesses to a declaration that 1138  
is executed electronically by a declarant who is a vulnerable 1139  
adult or by another individual at the direction of a declarant 1140  
who is a vulnerable adult shall sign the declaration in the 1141  
physical presence of the declarant. The witnesses to a 1142  
declaration shall be adults who are not related to the declarant 1143  
by blood, marriage, or adoption, who are not the attending 1144  
physician of the declarant, and who are not the administrator of 1145  
any nursing home in which the declarant is receiving care. Each 1146  
witness shall subscribe the witness' signature after the 1147



signature of the declarant or other individual at the direction 1148  
of the declarant and, by doing so, attest to the witness' belief 1149  
that the declarant appears to be of sound mind and not under or 1150  
subject to duress, fraud, or undue influence. The signatures of 1151  
the declarant or other individual at the direction of the 1152  
declarant under division (A) of this section and of the 1153  
witnesses under this division are not required to appear on the 1154  
same page of the declaration. 1155

(2)(a) If acknowledged for purposes of division (A) of 1156  
this section, a declaration shall be acknowledged before a 1157  
notary public, who shall make the certification described in 1158  
section 147.53 of the Revised Code and also shall attest that 1159  
the declarant appears to be of sound mind and not under or 1160  
subject to duress, fraud, or undue influence. 1161

(b) If a declaration is executed electronically, a notary 1162  
public performing the certification and attestation described in 1163  
division (B)(2)(a) of this section shall do so through an 1164  
electronic notarization, pursuant to section 147.591 of the 1165  
Revised Code, or as an online notarization pursuant to sections 1166  
147.60 to 147.66 of the Revised Code. 1167

(C) An attending physician, or other health care personnel 1168  
acting under the direction of an attending physician, who is 1169  
furnished a copy of a declaration shall make it a part of the 1170  
declarant's medical record and, when section 2133.05 of the 1171  
Revised Code is applicable, also shall comply with that section. 1172

(D) (1) Subject to division (D) (2) of this section, an 1173  
attending physician of a declarant or a health care facility in 1174  
which a declarant is confined may refuse to comply or allow 1175  
compliance with the declarant's declaration on the basis of a 1176  
matter of conscience or on another basis. An employee or agent 1177

of an attending physician of a declarant or of a health care 1178  
facility in which a declarant is confined may refuse to comply 1179  
with the declarant's declaration on the basis of a matter of 1180  
conscience. 1181

(2) If an attending physician of a declarant or a health 1182  
care facility in which a declarant is confined is not willing or 1183  
not able to comply or allow compliance with the declarant's 1184  
declaration, the physician or facility promptly shall so advise 1185  
the declarant and comply with the provisions of section 2133.10 1186  
of the Revised Code, or, if the declaration has become operative 1187  
as described in division (A) of section 2133.03 of the Revised 1188  
Code, shall comply with the provisions of section 2133.10 of the 1189  
Revised Code. 1190

(E) As used in this section, "CPR" has the same meaning as 1191  
in section 2133.21 of the Revised Code. 1192

**Sec. 5302.22.** (A) ~~As~~ Unless the context otherwise 1193  
requires, as used in sections 5302.22, 5302.222, 5302.23, and 1194  
5302.24 of the Revised Code: 1195

(1) "Affidavit of confirmation" means an affidavit 1196  
executed under division (A) of section 5302.222 of the Revised 1197  
Code. 1198

(2) "Survivorship tenancy" means an ownership of real 1199  
property or any interest in real property by two or more persons 1200  
that is created by executing a deed pursuant to section 5302.17 1201  
of the Revised Code. 1202

(3) "Survivorship tenant" means one of the owners of real 1203  
property or any interest in real property in a survivorship 1204  
tenancy. 1205

(4) "Tenants by the entireties" mean only those persons 1206

who are vested as tenants in an estate by the entireties with 1207  
survivorship pursuant to any deed recorded between February 9, 1208  
1972, and April 3, 1985, under section 5302.17 of the Revised 1209  
Code as it existed during that period of time. Nothing in 1210  
sections 5302.22, 5302.222, 5302.23, and 5302.24 of the Revised 1211  
Code authorizes the creation of a tenancy by the entireties or 1212  
recognizes a tenancy by the entireties created outside that 1213  
period of time. 1214

(5) "Transfer on death designation affidavit" means an 1215  
affidavit executed under this section. 1216

(6) "Transfer on death beneficiary or beneficiaries" means 1217  
the beneficiary or beneficiaries designated in a transfer on 1218  
death designation affidavit. 1219

(7) "Electronic" and "record" have the same meanings as in 1220  
section 2107.01 of the Revised Code. 1221

(B) Any individual who, under the Revised Code or the 1222  
common law of this state, owns real property or any interest in 1223  
real property as a sole owner, as a tenant in common, or as a 1224  
survivorship tenant, or together with the individual's spouse 1225  
owns an indivisible interest in real property as tenants by the 1226  
entireties, may designate the entire interest, or any specified 1227  
part that is less than the entire interest, in that real 1228  
property as transferable on death to a designated beneficiary or 1229  
beneficiaries by executing, together with the individual's 1230  
spouse, if any, a transfer on death designation affidavit as 1231  
provided in this section. 1232

A transfer on death designation affidavit may be executed 1233  
in writing or in an electronic manner. If executed in an 1234  
electronic manner, a certified copy or a copy of the affidavit 1235

that is readable as text shall be considered to be a certified 1236  
copy or a copy of the record of the affidavit. A copy of that 1237  
affidavit shall be offered for recording with the county 1238  
recorder as provided in this section. 1239

If the affidavit is executed by an individual together 1240  
with the individual's spouse, if any, the dower rights of the 1241  
spouse are subordinate to the vesting of title to the interest 1242  
in the real property in the transfer on death beneficiary or 1243  
beneficiaries designated under this section. The affidavit shall 1244  
be recorded in the office of the county recorder in the county 1245  
in which the real property is located, and, when so recorded, 1246  
the affidavit or a certified copy of the affidavit shall be 1247  
evidence of the transfer on death beneficiary or beneficiaries 1248  
so designated in the affidavit insofar as the affidavit affects 1249  
title to the real property. 1250

(C) (1) If an individual who owns real property or an 1251  
interest in real property as a sole owner or as a tenant in 1252  
common executes a transfer on death designation affidavit, upon 1253  
the death of that individual, title to the real property or 1254  
interest in the real property specified in the affidavit vests 1255  
in the transfer on death beneficiary or beneficiaries designated 1256  
in the affidavit. 1257

(2) If an individual who owns real property or an interest 1258  
in real property as a survivorship tenant executes a transfer on 1259  
death designation affidavit, upon the death of that individual 1260  
or of one but not all of the surviving survivorship tenants, 1261  
title to the real property or interest in the real property 1262  
specified in the affidavit vests in the surviving survivorship 1263  
tenant or tenants. Upon the death of the last surviving 1264  
survivorship tenant, title to the real property or interest in 1265

the real property vests in the transfer on death beneficiary or 1266  
beneficiaries designated in the affidavit, subject to division 1267  
(B) (7) of section 5302.23 of the Revised Code. 1268

(3) If an individual who together with the individual's 1269  
spouse owns an indivisible interest in real property as tenants 1270  
by the entirety executes a transfer on death designation 1271  
affidavit, upon the death of that individual, title to the real 1272  
property or interest in the real property vests in the remaining 1273  
tenant by the entirety. Upon the death of the remaining tenant 1274  
by the entirety, title to the real property or interest in the 1275  
real property vests in the transfer on death beneficiary or 1276  
beneficiaries designated in the affidavit, subject to division 1277  
(B) (7) of section 5302.23 of the Revised Code. 1278

(D) A transfer on death designation affidavit shall be 1279  
verified before any person authorized to administer oaths and 1280  
shall include all of the following: 1281

(1) A description of the real property the title to which 1282  
is affected by the affidavit and a reference to an instrument of 1283  
record containing that description; 1284

(2) If less than the entire interest in the real property 1285  
is to be transferred on death under the affidavit, a statement 1286  
of the specific interest or part of the interest in the real 1287  
property that is to be so transferred; 1288

(3) A statement by the individual executing the affidavit 1289  
that the individual is the person appearing on the record of the 1290  
real property as the owner of the real property or interest in 1291  
the real property at the time of the recording of the affidavit 1292  
and the marital status of that owner. If the owner is married, 1293  
the affidavit shall include a statement by the owner's spouse 1294

stating that the spouse's dower rights are subordinate to the 1295  
vesting of title to the real property or interest in the real 1296  
property in the transfer on death beneficiary or beneficiaries 1297  
designated in the affidavit. 1298

(4) A statement designating one or more persons, 1299  
identified by name, as transfer on death beneficiary or 1300  
beneficiaries. 1301

(E) The county recorder of the county in which a transfer 1302  
on death designation affidavit is offered for recording shall 1303  
receive the affidavit and cause it to be recorded in the same 1304  
manner as deeds are recorded. The county recorder shall collect 1305  
a fee for recording the affidavit in the same amount as the fee 1306  
for recording deeds. The county recorder shall index the 1307  
affidavit in the name of the owner of record of the real 1308  
property or interest in the real property who executed the 1309  
affidavit. 1310

(F) A transfer on death designation affidavit need not be 1311  
supported by consideration and need not be delivered to the 1312  
transfer on death beneficiary or beneficiaries designated in the 1313  
affidavit to be effective. However, in order to be effective, 1314  
that affidavit shall be recorded with the county recorder as 1315  
described in this section prior to the death of the individual 1316  
who executed the affidavit. 1317

(G) Subject to division (C) of this section, upon the 1318  
death of any individual who owns real property or an interest in 1319  
real property that is subject to a transfer on death beneficiary 1320  
designation made under a transfer on death designation affidavit 1321  
as provided in this section, that real property or interest in 1322  
real property of the deceased owner shall be transferred only to 1323  
the transfer on death beneficiary or beneficiaries who are 1324

identified in the affidavit by name and who survive the deceased 1325  
owner or that are in existence on the date of death of the 1326  
deceased owner. 1327

For purposes of this division, if a natural or legal 1328  
person designated by name in the affidavit as a transfer on 1329  
death beneficiary or as a contingent transfer on death 1330  
beneficiary as provided in division (B) (2) of section 5302.23 of 1331  
the Revised Code solely in that person's capacity as a trustee 1332  
of a trust has died, has resigned, or otherwise has been 1333  
replaced by a successor trustee of the trust on the date of 1334  
death of the deceased owner, the successor trustee of the trust 1335  
shall be considered the transfer on death beneficiary or 1336  
contingent transfer on death beneficiary in existence on the 1337  
date of death of the deceased owner in full compliance with this 1338  
division, notwithstanding that the successor trustee is not 1339  
named as a transfer on death beneficiary or contingent transfer 1340  
on death beneficiary in the affidavit. 1341

(H) Any person who knowingly makes any false statement in 1342  
a transfer on death designation affidavit is guilty of 1343  
falsification under division (A) (6) of section 2921.13 of the 1344  
Revised Code. 1345

**Sec. 5817.01.** As used in this chapter: 1346

(A) (1) "Beneficiary under a trust" means either of the 1347  
following: 1348

(a) Any person that has a present or future beneficial 1349  
interest in a trust, whether vested or contingent; 1350

(b) Any person that, in a capacity other than that of 1351  
trustee, holds a power of appointment over trust property, but 1352  
does not include the class of permitted appointees among whom 1353

the power holder may appoint. 1354

(2) "Beneficiary under a trust" includes a charitable 1355  
organization that is expressly designated in the terms of the 1356  
trust to receive distributions, but does not include any 1357  
charitable organization that is not expressly designated in the 1358  
terms of the trust to receive distributions, but to whom the 1359  
trustee may in its discretion make distributions. 1360

(B) (1) "Beneficiary under a will" means either of the 1361  
following: 1362

(a) Any person designated in a will to receive a 1363  
testamentary disposition of real or personal property; 1364

(b) Any person that, in a capacity other than that of 1365  
executor, holds a power of appointment over estate assets, but 1366  
does not include the class of permitted appointees among whom 1367  
the power holder may appoint. 1368

(2) "Beneficiary under a will" includes a charitable 1369  
organization that is expressly designated in the terms of the 1370  
will to receive testamentary distributions, but does not include 1371  
any charitable organization that is not expressly designated in 1372  
the terms of the will to receive distributions, but to whom the 1373  
executor may in its discretion make distributions. 1374

(C) "Court" means the probate court of the county in which 1375  
the complaint under section 5817.02 or 5817.03 of the Revised 1376  
Code is filed or the general division of the court of common 1377  
pleas to which the probate court transfers the proceeding under 1378  
division (A) of section 5817.04 of the Revised Code. 1379

(D) "Related trust" means a trust for which both of the 1380  
following apply: 1381



(1) The testator is the settlor of the trust.	1382
(2) The trust is named as a beneficiary in the will in accordance with section 2107.63 of the Revised Code.	1383 1384
(E) "Related will" means a will for which both of the following apply:	1385 1386
(1) The testator is the settlor of a trust.	1387
(2) The will names the trust as a beneficiary in accordance with section 2107.63 of the Revised Code.	1388 1389
(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:	1390 1391 1392 1393
(1) The settlor resides in, or is domiciled in, this state.	1394 1395
(2) The trust's principal place of administration is in this state.	1396 1397
<u>(G) "Will" includes an electronic will.</u>	1398
<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>	1399 1400 1401
<b>Sec. 5817.05.</b> (A) A complaint under section 5817.02 of the Revised Code shall name as party defendants all of the following, as applicable:	1402 1403 1404
(1) The testator's spouse;	1405
(2) The testator's children;	1406
(3) The testator's heirs who would take property pursuant	1407

to section 2105.06 of the Revised Code had the testator died 1408  
intestate at the time the complaint is filed; 1409

(4) The testator's beneficiaries under the will; 1410

(5) Any beneficiary under the testator's most recent prior 1411  
will. 1412

(B) A complaint under section 5817.02 of the Revised Code 1413  
may name as a party defendant any other person that the testator 1414  
believes may have a pecuniary interest in the determination of 1415  
the validity of the testator's will. 1416

(C) A complaint under section 5817.02 of the Revised Code 1417  
may contain all or any of the following: 1418

(1) A statement that a copy of the written or electronic 1419  
will has been filed with the court; 1420

(2) A statement that the will is in writing or is an 1421  
electronic will; 1422

(3) A statement that the will, if in writing, was signed 1423  
by the testator, or was signed in the testator's name by another 1424  
person in the testator's conscious presence and at the 1425  
testator's express direction; or a statement that the will, if 1426  
an electronic will, was signed at the end by the testator or by 1427  
another individual in the testator's name, in the testator's 1428  
physical presence or electronic presence, and at the testator's 1429  
express direction; 1430

(4) A statement that the will, if in writing, was signed 1431  
in the conscious presence of the testator by two or more 1432  
competent individuals, each of whom either witnessed the 1433  
testator sign the will, or heard the testator acknowledge 1434  
signing the will; or a statement that the will, if an electronic 1435

will, was signed in the physical presence or electronic presence 1436  
of the testator by two or more competent individuals and that 1437  
all of the applicable requirements specified in divisions (C) (3) 1438  
(a), (b), (c), and (d) of section 2107.03 of the Revised Code 1439  
were complied with; 1440

(5) A statement that the will was executed with the 1441  
testator's testamentary intent; 1442

(6) A statement that the testator had testamentary 1443  
capacity; 1444

(7) A statement that the testator executed the will free 1445  
from undue influence, not under restraint or duress, and in the 1446  
exercise of the testator's free will; 1447

(8) A statement that the execution of the will was not the 1448  
result of fraud or mistake; 1449

(9) The names and addresses of the testator and all of the 1450  
defendants and, if any of the defendants are minors, their ages; 1451

(10) A statement that the will has not been revoked or 1452  
modified; 1453

(11) A statement that the testator is familiar with the 1454  
contents of the will. 1455

**Section 2.** That existing sections 317.32, 1337.11, 1456  
1337.12, 1337.22, 1337.25, 2107.01, 2107.03, 2107.07, 2107.17, 1457  
2107.18, 2107.24, 2107.27, 2107.29, 2107.30, 2107.31, 2107.33, 1458  
2107.60, 2107.63, 2129.05, 2133.01, 2133.02, 5302.22, 5817.01, 1459  
and 5817.05 of the Revised Code are hereby repealed. 1460

**Section 3.** The General Assembly respectfully requests that 1461  
the Supreme Court amend its rules and procedures to further 1462  
implement the purposes of this act in relation to electronically 1463

executed wills, declarations or living wills, and powers of  
attorney.

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