

S. B. No. 199  
As Introduced

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, after "517.25" insert ", 2107.52" 1

In line 10, after "517.25" insert ", 2107.52" 2

After line 262, insert: 3

**"Sec. 2107.52.** (A) As used in this section: 4

(1) "Class member" means an individual who fails to 5  
survive the testator but who would have taken under a devise in 6  
the form of a class gift had the individual survived the 7  
testator. 8

(2) "Descendant of a grandparent" means an individual who 9  
qualifies as a descendant of a grandparent of the testator or of 10  
the donor of a power of appointment under either of the 11  
following: 12

(a) The rules of construction applicable to a class gift 13  
created in the testator's will if the devise or the exercise of 14  
the power of appointment is in the form of a class gift; 15

(b) The rules for intestate succession if the devise or 16



the exercise of the power of appointment is not in the form of a class gift. 17  
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(3) (a) "Devise" means an includes a primary devise, an 19  
alternative devise, a devise in the form of a class gift, ~~or~~ and 20  
an exercise of a power of appointment. 21

(b) Except as otherwise provided in this division, the 22  
amendment to division (A) (3) (a) of this section in this act 23  
shall be given retroactive effect to the fullest extent 24  
permitted under Ohio Constitution, Article II, Section 28. The 25  
amendment shall not be given retroactive effect in those 26  
instances where doing so would invalidate or supersede any 27  
instrument that conveys real property or any interest in the 28  
real property, recorded in the office of the county recorder in 29  
which that real property is situated. 30

(4) "Devisee" means any of the following: 31

(a) A class member if the devise is in the form of a class gift; 32  
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(b) An individual or class member who was deceased at the time the testator executed the testator's will or an individual or class member who was then living but who failed to survive the testator; 34  
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(c) An appointee under a power of appointment exercised by the testator's will. 38  
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(5) "Per stirpes" means that the shares of the descendants of a devisee who does not survive the testator are determined in the same way they would have been determined under division (A) of section 2105.06 of the Revised Code if the devisee had died intestate and unmarried on the date of the testator's death. 40  
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(6) "Stepchild" means a child of the surviving, deceased, 45  
or former spouse of the testator or of the donor of a power of 46  
appointment and not of the testator or donor. 47

(7) "Surviving devisee" or "surviving descendant" means a 48  
devisee or descendant, whichever is applicable, who survives the 49  
testator by at least one hundred twenty hours. 50

(8) "Testator" includes the donee of a power of 51  
appointment if the power is exercised in the testator's will. 52

(B) (1) As used in "surviving descendants" in divisions (B) 53  
(2) (a) and (b) of this section, "descendants" means the 54  
descendants of a deceased devisee or class member under the 55  
applicable division who would take under a class gift created in 56  
the testator's will. 57

(2) Unless a contrary intent appears in the will, if a 58  
devisee fails to survive the testator and is a grandparent, a 59  
descendant of a grandparent, or a stepchild of either the 60  
testator or the donor of a power of appointment exercised by the 61  
testator's will, either of the following applies: 62

(a) If the devise is not in the form of a class gift and 63  
the deceased devisee leaves surviving descendants, a substitute 64  
gift is created in the devisee's surviving descendants. The 65  
surviving descendants take, per stirpes, the property to which 66  
the devisee would have been entitled had the devisee survived 67  
the testator. 68

(b) If the devise is in the form of a class gift, other 69  
than a devise to "issue," "descendants," "heirs of the body," 70  
"heirs," "next of kin," "relatives," or "family," or a class 71  
described by language of similar import that includes more than 72  
one generation, a substitute gift is created in the surviving 73

descendants of any deceased devisee. The property to which the 74  
 devisees would have been entitled had all of them survived the 75  
 testator passes to the surviving devisees and the surviving 76  
 descendants of the deceased devisees. Each surviving devisee 77  
 takes the share to which the surviving devisee would have been 78  
 entitled had the deceased devisees survived the testator. Each 79  
 deceased devisee's surviving descendants who are substituted for 80  
 the deceased devisee take, per stirpes, the share to which the 81  
 deceased devisee would have been entitled had the deceased 82  
 devisee survived the testator. For purposes of division (B) (2) 83  
 (b) of this section, "deceased devisee" means a class member who 84  
 failed to survive the testator by at least one hundred twenty 85  
 hours and left one or more surviving descendants. 86

(C) For purposes of this section, each of the following 87  
 applies: 88

(1) Attaching the word "surviving" or "living" to a 89  
 devise, such as a gift "to my surviving (or living) children," 90  
 is not, in the absence of other language in the will or other 91  
 evidence to the contrary, a sufficient indication of an intent 92  
 to negate the application of division (B) of this section. 93

(2) Attaching other words of survivorship to a devise, 94  
 such as "to my child, if my child survives me," is, in the 95  
 absence of other language in the will or other evidence to the 96  
 contrary, a sufficient indication of an intent to negate the 97  
 application of division (B) of this section. 98

(3) A residuary clause is not a sufficient indication of 99  
 an intent to negate the application of division (B) of this 100  
 section unless the will specifically provides that upon lapse or 101  
 failure the nonresiduary devise, or nonresiduary devises in 102  
 general, pass under the residuary clause. 103

(4) Unless the language creating a power of appointment 104  
expressly excludes the substitution of the descendants of an 105  
appointee for the appointee, a surviving descendant of a 106  
deceased appointee of a power of appointment may be substituted 107  
for the appointee under this section, whether or not the 108  
descendant is an object of the power of appointment. 109

(D) Except as provided in division (A), (B), or (C) of 110  
this section, each of the following applies: 111

(1) A devise, other than a residuary devise, that fails 112  
for any reason becomes a part of the residue. 113

(2) If the residue is devised to two or more persons, the 114  
share of a residuary devisee that fails for any reason passes to 115  
the other residuary devisee, or to other residuary devisees in 116  
proportion to the interest of each in the remaining part of the 117  
residue. 118

(3) If a residuary devise fails for any reason in its 119  
entirety, the residue passes by intestate succession. 120

(E) This section applies only to outright devises and 121  
appointments. Devises and appointments in trust, including to a 122  
testamentary trust, are subject to section 5808.19 of the 123  
Revised Code. 124

(F) This section applies to wills of decedents who die on 125  
or after March 22, 2012." 126

In line 1237, after "517.25" insert ", 2107.52" 127

The motion was \_\_\_\_\_ agreed to.

SYNOPSIS

	128
<b>Devise definition</b>	129
<b>R.C. 2107.52</b>	130
Expands the definition of "devise" in the portions of	131
probate law relating to deceased devisees to include all forms	132
of a devise, as opposed to limiting the definition to an	133
alternative devise, a devise in the form of a class gift, or an	134
exercise of a power of appointment.	135
Specifies that the new definition is to be applied	136
retroactively to the fullest extent possible.	137