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**Written Testimony on House Bill 172
House Civil Justice Committee
November 8, 2023
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AARP Ohio**

Good afternoon, Chairman Hillyer, Vice Chair Mathews, Ranking Member Galonski and distinguished members of the House Civil Justice Committee.

My name is Amy Milam, and I serve as an Associate State Director for AARP Ohio. AARP, with 1.5 million members in Ohio, is a nonpartisan, nonprofit, nationwide organization that helps empower people to choose how they live as they age, strengthens communities, and fights for the issues that matter most to families, such as healthcare, employment and income security, retirement planning, affordable utilities, livable communities, and protection from financial abuse.

AARP is here today to support House Bill 172 (which would expand the laws on wills, declarations or living wills, durable powers of attorney for health care, powers of attorney, and transfer on death designation affidavits by providing for their execution electronically), while also offering targeted suggestions to amend a problematic definition proposed by the bill.

As a starting point, AARP's policy supports efforts to simplify estate planning. This includes allowing the use of electronic wills or trusts to govern the distribution of property at death. AARP's policy also encourages the use of technology to expand the availability and convenience of estate planning services. This should include electronic execution of wills and electronic and remote notarization of documents. AARP's policy further outlines that any legislation should include appropriate protections to prevent fraud, abuse, exploitation, and coercion.

We applaud the efforts in HB 172 that attempt to prevent fraud, abuse, exploitation, and coercion. However, we do have concerns with the current definition of "vulnerable adult" and the potential implications of that definition. Section 1337.12(B) of the bill adds language regarding witnessing the execution of a power of attorney by a "vulnerable adult." "Vulnerable Adult" is later defined as being very similar to incompetent. The proposed definition of "vulnerable adult" under Sec. 2107.01(J) in the bill is problematic as it automatically calls into question the vulnerable adult's capacity to sign the legal instrument at hand. While the proposed definition does not explicitly state that the vulnerable adult lacks capacity, labeling an individual

as a “vulnerable adult” certainly raises concerns as to that individual’s capacity to sign the document. Highlighting “vulnerability” is also not consistent with the Uniform Power of Attorney Act. Additionally, we have concerns about the language of “debilitating infirmities of aging.” The best way to deal with these concerns is to not differentiate “vulnerable adults” from other principals and executors, as there is no need to perpetuate a definition that seems designed to describe when someone may be eligible for protective services.

Further, if the goal behind the proposed language is that a vulnerable adult should be in the physical presence of a witness to protect against undue influence, there are no safeguards in the bill, currently, for a situation where the witness is the person who is unduly influencing the vulnerable adult.

Also, it is unclear who decides whether someone is a "vulnerable adult." If it is the duty of the notary, we question whether he or she is in the best position to make this determination. Ohio already allows notaries to make an undue influence, duress, fraud determination. However, it is not clear whether notaries are trained to determine if someone is a "vulnerable adult."

Overall, we would **recommend being consistent with the Uniform Power of Attorney Act** and requiring a notary component for verification of the document, but not for the determination of capacity. Additionally, the Uniform Power of Attorney Act does not single out "vulnerable adults," and doing so in this bill ultimately raises more issues than it solves. We recommend removing the references to “vulnerable adult” in this legislation.

I appreciate the opportunity to provide testimony on behalf of AARP. Thank you for your time, and please feel free to direct any questions to me at amilam@aarp.org.