

S. B. No. 237

As Passed by the Senate

_____ moved to amend as follows:

In line 1 of the title, delete "section" and insert "sections 1
147.591, 317.32, 1337.11, 1337.12, 1337.22, 1337.25, 1345.01, 2107.01, 2
2107.03, 2107.07, 2107.17, 2107.24, 2107.27, 2107.29, 2107.30, 2107.31, 3
2107.33, 2107.60, 2107.63, 2133.01, 2133.02,"; after "2505.02" insert ", 4
5302.22, 5817.01, and 5817.05"; after "sections" insert "147.67, 1337.121, 5
2107.031," 6

In line 5 of the title, after "speech" insert "and to expand the 7
laws on wills, declarations or living wills, durable powers of attorney 8
for health care, powers of attorney, and transfer on death designation 9
affidavits by providing for their execution electronically" 10

In line 6, delete "section" and insert "sections 147.591, 317.32, 11
1337.11, 1337.12, 1337.22, 1337.25, 1345.01, 2107.01, 2107.03, 2107.07, 12
2107.17, 2107.24, 2107.27, 2107.29, 2107.30, 2107.31, 2107.33, 2107.60, 13
2107.63, 2133.01, 2133.02,"; after "2505.02" insert ", 5302.22, 5817.01, 14
and 5817.05"; after "sections" insert "147.67, 1337.121, 2107.031," 15

After line 8, insert: 16

"Sec. 147.591. (A) As used in this section, "electronic 17

document," "electronic seal," "electronic signature," and 18
"online notarization" have the same meanings as in section 19
147.60 of the Revised Code. 20

(B) (1) An electronic document that is signed in the 21
physical presence of the notary public with an electronic 22
signature and notarized with an electronic seal shall be 23
considered an original document. 24

(2) Notwithstanding any other provision of the Revised 25
Code to the contrary, a digital copy of a document executed 26
electronically by the parties and acknowledged or sworn before a 27
notary acting pursuant to this section shall be accepted by 28
county auditors, engineers, and recorders for purposes of 29
approval, transfer, and recording to the same extent as any 30
other document that is submitted by an electronic recording 31
method and shall not be rejected solely by reason of containing 32
electronic signatures or an electronic notarization, including 33
an online notarization. 34

(3) A county auditor, engineer, and recorder shall accept 35
a printed document that was executed electronically for purposes 36
of approval, transfer, and recording if that document contains 37
an attached certificate in the following, or a substantially 38
similar, format: 39

"AUTHENTICATOR CERTIFICATE 40

I certify and warrant that the foregoing and annexed paper 41
document being presented for record, to which this certification 42
is attached, represents a true, exact, complete, and unaltered 43
copy of the original electronic document. The county offices of 44
the auditor, treasurer, recorder, and others necessary to 45
effectuate the transfer and recording of the instrument shall be 46

entitled to rely on such certification and warranty for all 47
purposes. 48

_____ [signature of authenticator] 49

_____ [printed name of authenticator] 50

_____ [street address of authenticator] 51

_____ [city, state, zip code of 52
authenticator] 53

_____ [telephone number of 54
authenticator] 55

56

1

2

A State of _____)

B _____) :ss

C County of _____)

The foregoing authenticator certificate was subscribed and 57
sworn to in my presence by _____ [printed 58
name of authenticator] on this ____ day of _____, 20__ 59

_____ 60

Notary Public" 61

(C) Any notary public may obtain an electronic seal and an 62
electronic signature for the purposes of notarizing documents 63
under this section. 64

(D) A notary public shall comply with the provisions of 65

section 147.66 of the Revised Code pertaining to the electronic 66
seal and electronic signature. 67

(E) A notary public shall not notarize an electronic 68
document that is a will, trust, power of attorney, durable power 69
of attorney for health care, declaration governing the use or 70
continuation, or the withholding or withdrawal, of life- 71
sustaining treatment, or transfer on death designation affidavit 72
unless the notary or the notary's employer has filed with the 73
office of the secretary of state evidence satisfactory to the 74
secretary of state that the notary or the notary's employer has 75
obtained either of the following: 76

(1) A bond that meets all of the following and the bond is 77
still in effect: 78

(a) The bond is in the amount of at least twenty-five 79
thousand dollars. 80

(b) The bond is payable to any individual harmed by a 81
breach of duty by the notary acting in the notary's official 82
capacity as a notary public. 83

(c) The bond is conditioned on the notary faithfully 84
discharging the duties of office of notary public. 85

(d) The bond is on such terms as are specified in rule by 86
the secretary of state as reasonably necessary to protect the 87
public. 88

(2) Errors and omissions insurance from an insurer 89
authorized to engage in the business of insurance in this state 90
that meets both of the following and the insurance is still in 91
effect: 92

(a) The insurance is in the amount of at least twenty-five 93

<u>thousand dollars.</u>	94
<u>(b) The insurance is on such terms and conditions as are</u>	95
<u>specified in rule by the secretary of state as reasonably</u>	96
<u>necessary to protect the public.</u>	97
 <u>Sec. 147.67.</u> A notary public who acknowledges an	98
<u>electronic will under section 2107.03 of the Revised Code shall</u>	99
<u>provide a warning on the notary's web site that states that any</u>	100
<u>person who intends to execute an electronic will is executing a</u>	101
<u>legal document and is strongly encouraged to seek the assistance</u>	102
<u>of an attorney.</u>	103
 Sec. 317.32. The county recorder shall charge and collect	104
the following fees, to include, except as otherwise provided in	105
division (A) (2) of this section, base fees for the recorder's	106
services and housing trust fund fees collected pursuant to	107
section 317.36 of the Revised Code:	108
 (A) (1) Except as otherwise provided in division (A) (2) of	109
this section, for recording and indexing an instrument if the	110
photocopy or any similar process is employed, a base fee of	111
seventeen dollars for the first two pages and a housing trust	112
fund fee of seventeen dollars, and a base fee of four dollars	113
and a housing trust fund fee of four dollars for each subsequent	114
page, size eight and one-half inches by fourteen inches, or	115
fraction of a page, including the caption page, of such	116
instrument;	117
 (2) For recording and indexing an instrument described in	118
division (D) of section 317.08 of the Revised Code if the	119
photocopy or any similar process is employed, a fee of twenty-	120
eight dollars for the first two pages to be deposited as	121
specified elsewhere in this division, and a fee of eight dollars	122

to be deposited in the same manner for each subsequent page, 123
size eight and one-half inches by fourteen inches, or fraction 124
of a page, including the caption page, of that instrument. If 125
the county recorder's technology fund has been established under 126
section 317.321 of the Revised Code, of the twenty-eight 127
dollars, fourteen dollars shall be deposited into the county 128
treasury to the credit of the county recorder's technology fund 129
and fourteen dollars shall be deposited into the county treasury 130
to the credit of the county general fund. If the county 131
recorder's technology fund has not been established, the twenty- 132
eight dollars shall be deposited into the county treasury to the 133
credit of the county general fund. 134

(B) For certifying a copy or electronic record from the 135
record previously recorded, a base fee of one dollar and a 136
housing trust fund fee of one dollar per page, size eight and 137
one-half inches by fourteen inches, or fraction of a page; for 138
each certification if the recorder's seal is required, except as 139
to instruments issued by the armed forces of the United States, 140
a base fee of fifty cents and a housing trust fund fee of fifty 141
cents; 142

(C) For entering or indexing any marginal reference, or 143
any reference previously accomplished as a marginal reference 144
now accomplished through electronic means, by separate recorded 145
instrument, a base fee of two dollars and a housing trust fund 146
fee of two dollars for each marginal reference, or reference 147
previously accomplished as a marginal reference now accomplished 148
through electronic means, set out in that instrument, in 149
addition to the fees set forth in division (A)(1) of this 150
section; 151

(D) For indexing in the real estate mortgage records, 152

pursuant to section 1309.519 of the Revised Code, financing 153
statements covering crops growing or to be grown, timber to be 154
cut, minerals or the like, including oil and gas, accounts 155
subject to section 1309.301 of the Revised Code, or fixture 156
filings made pursuant to section 1309.334 of the Revised Code, a 157
base fee of two dollars and a housing trust fund fee of two 158
dollars for each name indexed; 159

(E) For filing zoning resolutions, including text and 160
maps, in the office of the recorder as required under sections 161
303.11 and 519.11 of the Revised Code, a base fee of twenty-five 162
dollars and a housing trust fund fee of twenty-five dollars, 163
regardless of the size or length of the resolutions; 164

(F) For filing zoning amendments, including text and maps, 165
in the office of the recorder as required under sections 303.12 166
and 519.12 of the Revised Code, a base fee of ten dollars and a 167
housing trust fund fee of ten dollars regardless of the size or 168
length of the amendments; 169

(G) For photocopying a document, other than at the time of 170
recording and indexing as provided for in division (A)(1) or (2) 171
of this section, a base fee of one dollar and a housing trust 172
fund fee of one dollar per page, size eight and one-half inches 173
by fourteen inches, or fraction thereof; 174

(H) For local facsimile transmission of a document, a base 175
fee of one dollar and a housing trust fund fee of one dollar per 176
page, size eight and one-half inches by fourteen inches, or 177
fraction thereof; for long distance facsimile transmission of a 178
document, a base fee of two dollars and a housing trust fund fee 179
of two dollars per page, size eight and one-half inches by 180
fourteen inches, or fraction thereof; 181

(I) For recording a declaration executed pursuant to 182
section 2133.02 of the Revised Code or a durable power of 183
attorney for health care executed pursuant to section 1337.12 of 184
the Revised Code, or both a declaration and a durable power of 185
attorney for health care, a base fee of at least fourteen 186
dollars but not more than twenty dollars and a housing trust 187
fund fee of at least fourteen dollars but not more than twenty 188
dollars. The instrument, if electronically executed under either 189
of those sections, whichever is applicable, is recorded under 190
this division by presenting a copy of a declaration, as defined 191
in section 2133.01 of the Revised Code, or an electronic durable 192
power of attorney for health care retrieved and copied in 193
readable text as described in section 1337.121 of the Revised 194
Code. 195

In any county in which the recorder employs the 196
photostatic or any similar process for recording maps, plats, or 197
prints the recorder shall determine, charge, and collect for the 198
recording or rerecording of any map, plat, or print, a base fee 199
of five cents and a housing trust fund fee of five cents per 200
square inch, for each square inch of the map, plat, or print 201
filed for that recording or rerecording, with a minimum base fee 202
of twenty dollars and a minimum housing trust fund fee of twenty 203
dollars; for certifying a copy from the record, a base fee of 204
two cents and a housing trust fund fee of two cents per square 205
inch of the record, with a minimum base fee of two dollars and a 206
minimum housing trust fund fee of two dollars. 207

The fees provided in this section shall be paid upon the 208
presentation of the instruments for record or upon the 209
application for any certified copy of the record, except that 210
the payment of fees for providing copies of instruments 211
conveying or extinguishing agricultural easements to the office 212

of farmland preservation in the department of agriculture under 213
division (H) of section 5301.691 of the Revised Code shall be 214
governed by that division, and payment of fees for electronic 215
recording may be made by electronic funds transfer, automated 216
clearing house, or other electronic means after presentation. 217

The fees provided for in this section shall not apply to 218
the recording, indexing, or making of a certified copy or to the 219
filing of any instrument by a county land reutilization 220
corporation. 221

The fees provided for in this section shall not apply to 222
the recording, indexing, or making of a certified copy or to the 223
filing of any instrument by a county land reutilization 224
corporation's wholly owned subsidiary or any other electing 225
subdivision as defined in section 5722.01 of the Revised Code if 226
the wholly owned subsidiary or the electing subdivision is 227
acting in capacity consistent with the purpose of the land 228
reutilization program. 229

Sec. 1337.11. As used in sections 1337.11 to 1337.17 of 230
the Revised Code: 231

(A) "Adult" means a person who is eighteen years of age or 232
older. 233

(B) "Attending physician" means the physician to whom a 234
principal or the family of a principal has assigned primary 235
responsibility for the treatment or care of the principal or, if 236
the responsibility has not been assigned, the physician who has 237
accepted that responsibility. 238

(C) "Comfort care" means any of the following: 239

(1) Nutrition when administered to diminish the pain or 240

discomfort of a principal, but not to postpone death;	241
(2) Hydration when administered to diminish the pain or	242
discomfort of a principal, but not to postpone death;	243
(3) Any other medical or nursing procedure, treatment,	244
intervention, or other measure that is taken to diminish the	245
pain or discomfort of a principal, but not to postpone death.	246
(D) "Consulting physician" means a physician who, in	247
conjunction with the attending physician of a principal, makes	248
one or more determinations that are required to be made by the	249
attending physician, or to be made by the attending physician	250
and one other physician, by an applicable provision of sections	251
1337.11 to 1337.17 of the Revised Code, to a reasonable degree	252
of medical certainty and in accordance with reasonable medical	253
standards.	254
(E) "Declaration for mental health treatment" has the same	255
meaning as in section 2135.01 of the Revised Code.	256
(F) "Guardian" means a person appointed by a probate court	257
pursuant to Chapter 2111. of the Revised Code to have the care	258
and management of the person of an incompetent.	259
(G) "Health care" means any care, treatment, service, or	260
procedure to maintain, diagnose, or treat an individual's	261
physical or mental condition or physical or mental health.	262
(H) "Health care decision" means informed consent, refusal	263
to give informed consent, or withdrawal of informed consent to	264
health care.	265
(I) "Health care facility" means any of the following:	266
(1) A hospital;	267

(2) A hospice care program, pediatric respite care	268
program, or other institution that specializes in comfort care	269
of patients in a terminal condition or in a permanently	270
unconscious state;	271
(3) A nursing home;	272
(4) A home health agency;	273
(5) An intermediate care facility for individuals with	274
intellectual disabilities;	275
(6) A regulated community mental health organization.	276
(J) "Health care personnel" means physicians, nurses,	277
physician assistants, emergency medical technicians-basic,	278
emergency medical technicians-intermediate, emergency medical	279
technicians-paramedic, medical technicians, dietitians, other	280
authorized persons acting under the direction of an attending	281
physician, and administrators of health care facilities.	282
(K) "Home health agency" has the same meaning as in	283
section 3740.01 of the Revised Code.	284
(L) "Hospice care program" and "pediatric respite care	285
program" have the same meanings as in section 3712.01 of the	286
Revised Code.	287
(M) "Hospital" has the same meanings as in sections	288
3701.01, 3727.01, and 5122.01 of the Revised Code.	289
(N) "Hydration" means fluids that are artificially or	290
technologically administered.	291
(O) "Incompetent" has the same meaning as in section	292
2111.01 of the Revised Code.	293
(P) "Intermediate care facility for individuals with	294

intellectual disabilities" has the same meaning as in section 295
5124.01 of the Revised Code. 296

(Q) "Life-sustaining treatment" means any medical 297
procedure, treatment, intervention, or other measure that, when 298
administered to a principal, will serve principally to prolong 299
the process of dying. 300

(R) "Medical claim" has the same meaning as in section 301
2305.113 of the Revised Code. 302

(S) "Mental health treatment" has the same meaning as in 303
section 2135.01 of the Revised Code. 304

(T) "Nursing home" has the same meaning as in section 305
3721.01 of the Revised Code. 306

(U) "Nutrition" means sustenance that is artificially or 307
technologically administered. 308

(V) "Permanently unconscious state" means a state of 309
permanent unconsciousness in a principal that, to a reasonable 310
degree of medical certainty as determined in accordance with 311
reasonable medical standards by the principal's attending 312
physician and one other physician who has examined the 313
principal, is characterized by both of the following: 314

(1) Irreversible unawareness of one's being and 315
environment. 316

(2) Total loss of cerebral cortical functioning, resulting 317
in the principal having no capacity to experience pain or 318
suffering. 319

(W) "Person" has the same meaning as in section 1.59 of 320
the Revised Code and additionally includes political 321
subdivisions and governmental agencies, boards, commissions, 322

departments, institutions, offices, and other instrumentalities.	323
(X) "Physician" means a person who is authorized under	324
Chapter 4731. of the Revised Code to practice medicine and	325
surgery or osteopathic medicine and surgery.	326
(Y) "Political subdivision" and "state" have the same	327
meanings as in section 2744.01 of the Revised Code.	328
(Z) "Professional disciplinary action" means action taken	329
by the board or other entity that regulates the professional	330
conduct of health care personnel, including the state medical	331
board and the board of nursing.	332
(AA) "Regulated community mental health organization"	333
means a residential facility as defined and licensed under	334
section 5119.34 of the Revised Code or a community mental health	335
services provider as defined in section 5122.01 of the Revised	336
Code.	337
(BB) "Terminal condition" means an irreversible,	338
incurable, and untreatable condition caused by disease, illness,	339
or injury from which, to a reasonable degree of medical	340
certainty as determined in accordance with reasonable medical	341
standards by a principal's attending physician and one other	342
physician who has examined the principal, both of the following	343
apply:	344
(1) There can be no recovery.	345
(2) Death is likely to occur within a relatively short	346
time if life-sustaining treatment is not administered.	347
(CC) "Tort action" means a civil action for damages for	348
injury, death, or loss to person or property, other than a civil	349
action for damages for a breach of contract or another agreement	350

between persons. 351

(DD) "Electronic," "electronically," "electronic 352
presence," "record," and "sign" have the same meanings as in 353
section 2107.01 of the Revised Code. 354

(EE) "Conscious presence" has the same meaning as in 355
section 1337.22 of the Revised Code. 356

Sec. 1337.12. (A) (1) An adult who is of sound mind 357
voluntarily may create a valid durable power of attorney for 358
health care by executing a durable power of attorney, in 359
accordance with section 1337.24 of the Revised Code, that 360
authorizes an attorney in fact as described in division (A) (2) 361
of this section to make health care decisions for the principal 362
at any time that the attending physician of the principal 363
determines that the principal has lost the capacity to make 364
informed health care decisions for the principal. The durable 365
power of attorney for health care may authorize the attorney in 366
fact, commencing immediately upon the execution of the 367
instrument or at any subsequent time and regardless of whether 368
the principal has lost the capacity to make informed health care 369
decisions, to obtain information concerning the principal's 370
health, including protected health information as defined in 45 371
C.F.R. 160.103. Except as otherwise provided in divisions (B) to 372
(F) of section 1337.13 of the Revised Code, the authorization 373
may include the right to give informed consent, to refuse to 374
give informed consent, or to withdraw informed consent to any 375
health care that is being or could be provided to the principal. 376
Additionally, to be valid, a durable power of attorney for 377
health care shall satisfy both of the following: 378

(a) ~~It~~ If a durable power of attorney for health care is 379
in writing, it shall be signed at the end of the instrument by 380

the principal and shall state the date of its execution. If a 381
durable power of attorney for health care is executed 382
electronically, the principal shall sign the record associated 383
with, and at the end of, the instrument and shall state the date 384
of its execution. 385

(b) It shall be witnessed in accordance with division (B) 386
of this section or be acknowledged by the principal in 387
accordance with division (C) of this section. 388

(c) The electronic execution of a durable power of 389
attorney for health care under division (A) (1) (a) of this 390
section and the witnessing or acknowledgment of the electronic 391
execution of a durable power of attorney for health care under 392
division (B) or (C) of this section, whichever is applicable, 393
shall be recorded by electronic media containing both audio and 394
visual components. The recording shall be preserved and stored 395
in a safe, secure, and appropriate manner. The recording may be 396
cited as evidence of both of the following: 397

(i) That the principal executing the durable power of 398
attorney for health care is an adult of sound mind; 399

(ii) If the durable power of attorney for health care is 400
executed with witnesses, that the persons signing as witnesses 401
verbally acknowledge that they have signed the durable power of 402
attorney for health care and are not ineligible to be witnesses. 403

(2) Except as otherwise provided in this division, a 404
durable power of attorney for health care may designate any 405
competent adult as the attorney in fact. The attending physician 406
of the principal and an administrator of any nursing home in 407
which the principal is receiving care shall not be designated as 408
an attorney in fact in, or act as an attorney in fact pursuant 409

to, a durable power of attorney for health care. An employee or 410
agent of the attending physician of the principal and an 411
employee or agent of any health care facility in which the 412
principal is being treated shall not be designated as an 413
attorney in fact in, or act as an attorney in fact pursuant to, 414
a durable power of attorney for health care, except that these 415
limitations do not preclude a principal from designating either 416
type of employee or agent as the principal's attorney in fact if 417
the individual is a competent adult and related to the principal 418
by blood, marriage, or adoption, or if the individual is a 419
competent adult and the principal and the individual are members 420
of the same religious order. 421

(3) A durable power of attorney for health care shall not 422
expire, unless the principal specifies an expiration date in the 423
instrument. However, when a durable power of attorney contains 424
an expiration date, if the principal lacks the capacity to make 425
informed health care decisions for the principal on the 426
expiration date, the instrument shall continue in effect until 427
the principal regains the capacity to make informed health care 428
decisions for the principal. 429

(B) If witnessed for purposes of division (A) (1) (b) of 430
this section, a durable power of attorney for health care shall 431
be witnessed by at least two individuals who are adults and who 432
are not ineligible to be witnesses under this division. Any 433
person who is related to the principal by blood, marriage, or 434
adoption, any person who is designated as the attorney in fact 435
or alternate attorney in fact in the instrument, the attending 436
physician of the principal, and the administrator of any nursing 437
home in which the principal is receiving care are ineligible to 438
be witnesses. 439

The witnessing of a durable power of attorney for health care shall involve the principal signing the applicable instrument as described in division (A)(1)(a) of this section, or acknowledging the principal's signature, at the end of the instrument in the conscious presence or electronic presence, as applicable, of each witness. A witness for a durable power of attorney for health care that is electronically executed may be in either the conscious presence or electronic presence of the principal. A witness for a durable power of attorney for health care that is executed electronically in the electronic presence of the principal shall be located within this state. Then, each witness shall subscribe the witness's signature after the signature of the principal and, by doing so, attest to the witness's belief that the principal appears to be of sound mind and not under or subject to duress, fraud, or undue influence. The signatures of the principal and the witnesses under this division are not required to appear on the same page of the instrument.

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

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

Revised Code.

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

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

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

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

(E) (1) In a durable power of attorney for health care, a principal may nominate a guardian of the principal's person, estate, or both for consideration by a court if proceedings for the appointment of a guardian for the principal's person, estate, or both are commenced at a later time. The principal may authorize the person nominated as the guardian or the attorney in fact to nominate a successor guardian for consideration by

the court. The principal's nomination of a guardian of the 500
principal's person, estate, or both is revoked by the 501
principal's subsequent nomination of a guardian of the 502
principal's person, estate, or both, and, except for good cause 503
shown or disqualification, the court shall make its appointment 504
in accordance with the principal's most recent nomination. 505

(2) The principal may direct that bond be waived for a 506
person nominated as guardian or successor guardian under 507
division (E)(1) of this section. 508

(3) A durable power of attorney for health care that 509
contains the nomination of a person to be the guardian of the 510
person, estate, or both of the principal may be filed with the 511
probate court for safekeeping, and the probate court shall 512
designate the nomination as the nomination of a standby 513
guardian. 514

(4) If a guardian is appointed for the principal, a 515
durable power of attorney for health care is not terminated, and 516
the authority of the attorney in fact continues unless the 517
court, pursuant to its authority under section 2111.50 of the 518
Revised Code, limits, suspends, or terminates the power of 519
attorney after notice to the attorney in fact and upon a finding 520
that the limitation, suspension, or termination is in the best 521
interest of the principal. 522

Sec. 1337.121. A durable power of attorney for health care 523
executed electronically under section 1337.12 of the Revised 524
Code may include some or all of the information specified in the 525
printed form of the instrument in section 1337.17 of the Revised 526
Code according to the intention of the principal. The record of 527
an electronic durable power of attorney for health care may be 528
retrieved and copied in readable text. 529

Sec. 1337.22. As used in sections 1337.21 to 1337.64 of 530
the Revised Code: 531

(A) "Agent" means a person granted authority to act for a 532
principal under a power of attorney, whether denominated an 533
agent, attorney in fact, or otherwise. "Agent" includes an 534
original agent, coagent, successor agent, and a person to which 535
an agent's authority is delegated. 536

(B) "Durable," with respect to a power of attorney, means 537
not terminated by the principal's incapacity. 538

(C) "Electronic" means relating to technology having 539
electrical, digital, magnetic, wireless, optical, 540
electromagnetic, or similar capabilities. 541

(D) "Good faith" means honesty in fact. 542

(E) "Incapacity" means inability of an individual to 543
manage property or business affairs for either of the following 544
reasons: 545

(1) The individual has an impairment in the ability to 546
receive and evaluate information or make or communicate 547
decisions even with the use of technological assistance. 548

(2) The individual is any of the following: 549

(a) Missing; 550

(b) Detained, including incarcerated in a penal system; 551

(c) Outside the United States and unable to return. 552

(F) "Person" means an individual, corporation, business 553
trust, estate, trust, partnership, limited liability company, 554
association, joint venture, public corporation, government or 555
governmental subdivision, agency, or instrumentality, or any 556

other legal or commercial entity. 557

(G) "Power of attorney" means a writing or other record 558
that grants authority to an agent to act in the place of the 559
principal, whether or not the term power of attorney is used. 560

(H) "Presently exercisable general power of appointment," 561
with respect to property or a property interest subject to a 562
power of appointment, means power exercisable at the time in 563
question to vest absolute ownership in the principal 564
individually, the principal's estate, the principal's creditors, 565
or the creditors of the principal's estate. The term includes a 566
power of appointment not exercisable until the occurrence of a 567
specified event, the satisfaction of an ascertainable standard, 568
or the passage of a specified period only after the occurrence 569
of the specified event, the satisfaction of the ascertainable 570
standard, or the passage of the specified period. The term does 571
not include a power exercisable in a fiduciary capacity or only 572
by will. 573

(I) "Principal" means an individual who grants authority 574
to an agent in a power of attorney. 575

(J) "Property" means anything that may be the subject of 576
ownership, whether real or personal, or legal or equitable, or 577
any interest or right therein. 578

(K) "Record" means information that is inscribed on a 579
tangible medium or that is stored in an electronic or other 580
medium and is retrievable in perceivable form. 581

(L) "Sign" means, with present intent to authenticate or 582
adopt a record, to execute or adopt a tangible symbol or to 583
attach to or logically associate with the record an electronic 584
sound, symbol, or process. 585

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

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

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

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

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

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

(C) The electronic execution of a power of attorney under 615
division (A) of this section and the acknowledgment of the 616
electronic execution of a power of attorney under division (B) 617
of this section shall be recorded by electronic media containing 618
both audio and visual components. The recording shall be 619
preserved and stored in a safe, secure, and appropriate manner. 620

Sec. 1345.01. As used in sections 1345.01 to 1345.13 of 621
the Revised Code: 622

(A) "Consumer transaction" means a sale, lease, 623
assignment, award by chance, or other transfer of an item of 624
goods, a service, a franchise, or an intangible, to an 625
individual for purposes that are primarily personal, family, or 626
household, or solicitation to supply any of these things. 627
"Consumer transaction" also means services provided by a notary 628
public to a testator in the acknowledgment, certification, and 629
attestation pertaining to the testator's electronic will under 630
section 2107.03 of the Revised Code. "Consumer transaction" does 631
not include transactions between persons, defined in sections 632
4905.03 and 5725.01 of the Revised Code, and their customers, 633
except for transactions involving a loan made pursuant to 634
sections 1321.35 to 1321.48 of the Revised Code and transactions 635
in connection with residential mortgages between loan officers, 636
mortgage brokers, or nonbank mortgage lenders and their 637
customers; transactions involving a home construction service 638
contract as defined in section 4722.01 of the Revised Code; 639
transactions between certified public accountants or public 640
accountants and their clients; transactions between attorneys, 641
physicians, or dentists and their clients or patients; and 642
transactions between veterinarians and their patients that 643
pertain to medical treatment but not ancillary services. 644

(B) "Person" includes an individual, corporation, 645
government, governmental subdivision or agency, business trust, 646
estate, trust, partnership, association, cooperative, or other 647
legal entity. 648

(C) "Supplier" means a seller, lessor, assignor, 649
franchisor, or other person engaged in the business of effecting 650
or soliciting consumer transactions, whether or not the person 651
deals directly with the consumer. If the consumer transaction is 652
in connection with a residential mortgage, "supplier" does not 653
include an assignee or purchaser of the loan for value, except 654
as otherwise provided in section 1345.091 of the Revised Code. 655
For purposes of this division, in a consumer transaction in 656
connection with a residential mortgage, "seller" means a loan 657
officer, mortgage broker, or nonbank mortgage lender. 658

(D) "Consumer" means a person who engages in a consumer 659
transaction with a supplier. 660

(E) "Knowledge" means actual awareness, but such actual 661
awareness may be inferred where objective manifestations 662
indicate that the individual involved acted with such awareness. 663

(F) "Natural gas service" means the sale of natural gas, 664
exclusive of any distribution or ancillary service. 665

(G) "Public telecommunications service" means the 666
transmission by electromagnetic or other means, other than by a 667
telephone company as defined in section 4927.01 of the Revised 668
Code, of signs, signals, writings, images, sounds, messages, or 669
data originating in this state regardless of actual call 670
routing. "Public telecommunications service" excludes a system, 671
including its construction, maintenance, or operation, for the 672
provision of telecommunications service, or any portion of such 673

service, by any entity for the sole and exclusive use of that 674
entity, its parent, a subsidiary, or an affiliated entity, and 675
not for resale, directly or indirectly; the provision of 676
terminal equipment used to originate telecommunications service; 677
broadcast transmission by radio, television, or satellite 678
broadcast stations regulated by the federal government; or cable 679
television service. 680

(H) (1) "Loan officer" means an individual who for 681
compensation or gain, or in anticipation of compensation or 682
gain, takes or offers to take a residential mortgage loan 683
application; assists or offers to assist a buyer in obtaining or 684
applying to obtain a residential mortgage loan by, among other 685
things, advising on loan terms, including rates, fees, and other 686
costs; offers or negotiates terms of a residential mortgage 687
loan; or issues or offers to issue a commitment for a 688
residential mortgage loan. "Loan officer" also includes a 689
mortgage loan originator as defined in section 1322.01 of the 690
Revised Code. 691

(2) "Loan officer" does not include an employee of a bank, 692
savings bank, savings and loan association, credit union, or 693
credit union service organization organized under the laws of 694
this state, another state, or the United States; an employee of 695
a subsidiary of such a bank, savings bank, savings and loan 696
association, or credit union; or an employee of an affiliate 697
that (a) controls, is controlled by, or is under common control 698
with, such a bank, savings bank, savings and loan association, 699
or credit union and (b) is subject to examination, supervision, 700
and regulation, including with respect to the affiliate's 701
compliance with applicable consumer protection requirements, by 702
the board of governors of the federal reserve system, the 703
comptroller of the currency, the federal deposit insurance 704

corporation, or the national credit union administration. 705

(I) "Residential mortgage" or "mortgage" means an 706
obligation to pay a sum of money evidenced by a note and secured 707
by a lien upon real property located within this state 708
containing two or fewer residential units or on which two or 709
fewer residential units are to be constructed and includes such 710
an obligation on a residential condominium or cooperative unit. 711

(J) (1) "Mortgage broker" means any of the following: 712

(a) A person that holds that person out as being able to 713
assist a buyer in obtaining a mortgage and charges or receives 714
from either the buyer or lender money or other valuable 715
consideration readily convertible into money for providing this 716
assistance; 717

(b) A person that solicits financial and mortgage 718
information from the public, provides that information to a 719
mortgage broker or a person that makes residential mortgage 720
loans, and charges or receives from either of them money or 721
other valuable consideration readily convertible into money for 722
providing the information; 723

(c) A person engaged in table-funding or warehouse-lending 724
mortgage loans that are residential mortgage loans. 725

(2) "Mortgage broker" does not include a bank, savings 726
bank, savings and loan association, credit union, or credit 727
union service organization organized under the laws of this 728
state, another state, or the United States; a subsidiary of such 729
a bank, savings bank, savings and loan association, or credit 730
union; an affiliate that (a) controls, is controlled by, or is 731
under common control with, such a bank, savings bank, savings 732
and loan association, or credit union and (b) is subject to 733

examination, supervision, and regulation, including with respect 734
to the affiliate's compliance with applicable consumer 735
protection requirements, by the board of governors of the 736
federal reserve system, the comptroller of the currency, the 737
federal deposit insurance corporation, or the national credit 738
union administration; or an employee of any such entity. 739

(K) "Nonbank mortgage lender" means any person that 740
engages in a consumer transaction in connection with a 741
residential mortgage, except for a bank, savings bank, savings 742
and loan association, credit union, or credit union service 743
organization organized under the laws of this state, another 744
state, or the United States; a subsidiary of such a bank, 745
savings bank, savings and loan association, or credit union; or 746
an affiliate that (1) controls, is controlled by, or is under 747
common control with, such a bank, savings bank, savings and loan 748
association, or credit union and (2) is subject to examination, 749
supervision, and regulation, including with respect to the 750
affiliate's compliance with applicable consumer protection 751
requirements, by the board of governors of the federal reserve 752
system, the comptroller of the currency, the federal deposit 753
insurance corporation, or the national credit union 754
administration. 755

(L) For purposes of divisions (H), (J), and (K) of this 756
section: 757

(1) "Control" of another entity means ownership, control, 758
or power to vote twenty-five per cent or more of the outstanding 759
shares of any class of voting securities of the other entity, 760
directly or indirectly or acting through one or more other 761
persons. 762

(2) "Credit union service organization" means a CUSO as 763

defined in 12 C.F.R. 702.2.

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

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

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

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

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

(d) Electronic wills and copies of electronic wills.

(2) "Will" does not include inter vivos trusts or other
instruments that have not been admitted to probate.

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

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

(D) "Electronic" or "electronically" means relating to
technology having electrical, digital, magnetic, wireless,
optical, electromagnetic, or similar capabilities.

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

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

(G) "Original will" means the original will in writing or
the copy of an electronic will that is offered for or admitted

to probate. 790

(H) "Record" means information that is inscribed in a 791
tangible medium or that is stored in an electronic medium and is 792
retrievable in perceivable form. 793

(I) "Sign" means to do either of the following with the 794
present intent to authenticate or adopt a record: 795

(1) Execute or adopt a tangible symbol; 796

(2) Affix to or logically associate with a record an 797
electronic symbol or process. 798

(J) "Will annexed" means the original will, a copy of the 799
original will in writing, or a copy of the electronic will, 800
whichever is applicable. 801

Sec. 2107.03. (A) Except oral wills governed by section 802
2107.60 of the Revised Code, every will shall be in writing, but 803
may be including handwritten or typewritten, or be an electronic 804
will. 805

(B) (1) Both of the following apply to a will in writing: 806

(a) The will shall be signed at the end by the testator or 807
by some other person in the testator's conscious presence and at 808
the testator's express direction. 809

(b) The will shall be attested and subscribed in the 810
conscious presence of the testator, by two or more competent 811
witnesses, who saw the testator subscribe, or heard the testator 812
acknowledge the testator's signature. 813

(2) For purposes of this section, "conscious presence" 814
means within the range of any of the testator's senses, 815
excluding the sense of sight or sound that is sensed by 816

telephonic, electronic, or other distant communication.	817
<u>(C) All of the following apply to an electronic will:</u>	818
<u>(1) (a) The will shall be a record that is readable as text</u>	819
<u>at the time it is signed under divisions (C) (2) and (3) of this</u>	820
<u>section.</u>	821
<u>(b) Prior to signing the will under divisions (C) (2) and</u>	822
<u>(3) of this section, the testator or the individual who will</u>	823
<u>sign the will in the testator's name, and the witnesses to the</u>	824
<u>will may review the contents of the will.</u>	825
<u>(2) The will shall be signed at the end by the testator or</u>	826
<u>by another individual in the testator's name, in the testator's</u>	827
<u>physical presence or electronic presence, and by the testator's</u>	828
<u>direction.</u>	829
<u>(3) The will shall be signed in the conscious presence or</u>	830
<u>electronic presence of the testator by two or more competent</u>	831
<u>witnesses and all of the following apply:</u>	832
<u>(a) If the witnesses sign the will in the electronic</u>	833
<u>presence of the testator, they shall be located in this state.</u>	834
<u>(b) The witnesses shall sign the will within a reasonable</u>	835
<u>time after witnessing the signing of the will under division (C)</u>	836
<u>(2) of this section.</u>	837
<u>(c) The witnesses shall subscribe and attest their</u>	838
<u>signatures to the will.</u>	839
<u>(4) (a) The will shall be acknowledged before a notary</u>	840
<u>public who shall make the certification described in section</u>	841
<u>147.53 of the Revised Code and also shall attest that the</u>	842
<u>testator appears to be of sound mind and not subject to duress,</u>	843
<u>fraud, or undue influence. The notary public performing the</u>	844

certification and attestation shall do so through an electronic 845
notarization, pursuant to section 147.591 of the Revised Code, 846
or as an online notarization pursuant to sections 147.60 to 847
147.66 of the Revised Code. 848

(b) If the notary public before whom the will is 849
acknowledged under division (C) (4) (a) of this section has 850
reasonable cause to believe during the course of the 851
certification proceedings that the testator does not appear to 852
be of sound mind or is subject to duress, fraud, or undue 853
influence, the notary public shall terminate the certification 854
proceedings. 855

(5) Prior to the acknowledgment of the will by the notary 856
public under division (C) (4) (a) of this section, the notary 857
public shall require the presentation of a government-issued 858
identification credential by the testator and the witnesses, and 859
shall perform the credential analysis and identity proofing of 860
the testator and the witnesses, to the extent required by 861
division (E) of section 147.64 of the Revised Code and the 862
standards adopted by the secretary of state to implement that 863
division. 864

(D) (1) The procedures under divisions (C) (2), (3), (4), 865
and (5) of this section shall be recorded by electronic media 866
containing both audio and visual components. The recording shall 867
be preserved and stored in a safe, secure, and appropriate 868
manner. 869

(2) The recording required under division (D) (1) of this 870
section may be cited as evidence of both of the following: 871

(a) That the person executing the electronic will is the 872
testator of the will; 873

(b) That the persons signing the electronic will under 874
divisions (C) (2) and (3) of this section verbally acknowledge 875
that they have signed the electronic will, that they recognize 876
the consequences of their signing the electronic will, and that 877
they understand the significance of the electronic will. 878

(E) (1) The notary public who acknowledged the electronic 879
will under this section shall send a copy of the electronic 880
will, certified as provided for in division (C) (4) (a) of this 881
section, to the testator in either of the following forms and 882
manners: 883

(a) In paper form, by certified mail, return receipt 884
requested, to the testator's residence address; 885

(b) In portable document format, by electronic mail, to 886
the testator's electronic mail address. 887

(2) The testator may send a copy of the electronic will, 888
certified as provided for in division (C) (4) (a) of this section, 889
to any person in either of the following forms and manners: 890

(a) In paper form, by certified mail, return receipt 891
requested, to the person's residence address; 892

(b) In portable document format, by electronic mail, to 893
the person's electronic mail address. 894

(F) The intent of the testator that the record described 895
in division (C) (1) of this section is the testator's electronic 896
will may be established by extrinsic evidence. 897

(G) Electronic wills are subject to Chapter 1345. of the 898
Revised Code. 899

Sec. 2107.031. (A) On and after the effective date of this 900
section, the laws of this state that are applicable to wills 901

apply to electronic wills unless it is clear from the context or 902
meaning of a particular provision of the law that it applies 903
only to a will in writing or a will other than an electronic 904
will. 905

(B) The principles of equity apply to an electronic will. 906

Sec. 2107.07. (A) A will may be deposited by the 907
testator, or by some person for the testator, in the office of 908
the judge of the probate court in the county in which the 909
testator lives, before or after the death of the testator, and 910
if deposited after the death of the testator, with or without 911
applying for its probate. If a copy of an electronic will is 912
deposited under this division by some person for the testator, 913
that person shall attach with the copy of the electronic will an 914
affidavit attested to by the testator authorizing the person to 915
deposit the copy of the electronic will. 916

Upon the payment of the fee of twenty-five dollars to the 917
court, the judge shall receive, keep, and give a certificate of 918
deposit for the will. That will shall be safely kept until 919
delivered or disposed of as provided by section 2107.08 of the 920
Revised Code. If the will is not delivered or disposed of as 921
provided in that section within one hundred years after the date 922
the will was deposited, the judge may dispose of the will in any 923
manner the judge considers feasible. The judge shall retain an 924
electronic copy of the will prior to its disposal after one 925
hundred years under this section. 926

(B) Every will, including a copy of an electronic will 927
with the attached affidavit as provided in division (A) of this 928
section, that is so deposited shall be enclosed in a sealed 929
envelope that shall be indorsed with the name of the testator. 930
The judge shall indorse on the envelope the date of delivery and 931

the person by whom the will was delivered. The envelope may be 932
indorsed with the name of a person to whom it is to be delivered 933
after the death of the testator. The will shall not be opened or 934
read until delivered to a person entitled to receive it, until 935
the testator files a complaint in the probate court for a 936
declaratory judgment of the validity of the will pursuant to 937
section 5817.02 of the Revised Code, or until otherwise disposed 938
of as provided in section 2107.08 of the Revised Code. Subject 939
to section 2107.08 of the Revised Code, the deposited will shall 940
not be a public record until the time that an application is 941
filed to probate it. 942

Sec. 2107.17. When a witness to a will, or other witness 943
competent to testify at a probate or declaratory judgment 944
proceeding, resides out of its jurisdiction, or resides within 945
it but is infirm and unable to attend court, the probate court 946
may issue a commission with the will annexed directed to any 947
suitable person. In lieu of the original will, the probate 948
court, in its discretion, may annex to the commission a 949
photocopy of the original will or a copy of ~~the that~~ will made 950
by any similar process. The person to whom the commission is 951
directed shall take the deposition or authorize the taking of 952
the deposition of the witness as provided by the Rules of Civil 953
Procedure. The testimony, certified and returned, shall be 954
admissible and have the same effect in the proceedings as if 955
taken in open court. 956

Sec. 2107.24. (A) If a document that is executed that 957
purports to be a will in writing is not executed in compliance 958
with the requirements of division (B) of section 2107.03 of the 959
Revised Code, that document shall be treated as if it had been 960
executed as a will in writing in compliance with the 961
requirements of that ~~section~~ division if a probate court, after 962

holding a hearing, finds that the proponent of the document as a
purported will in writing has established, by clear and
convincing evidence, all of the following:

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

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

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

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

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

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

(3) The requirements of division (C) of section 2107.03 of

the Revised Code were complied with. 991

(C) The executor may file an action in the probate court 992
to recover court costs and attorney's fees from the attorney, if 993
any, responsible for the execution of the document if either of 994
the following applies: 995

(1) The probate court holds a hearing pursuant to division 996
(A) of this section and finds that the proponent of the document 997
as a purported will in writing has established by clear and 998
convincing evidence the requirements under divisions (A) (1), 999
(2), and (3) of this section, ~~the executor may file an action in 1000~~
~~the probate court to recover court costs and attorney's fees 1001~~
~~from the attorney, if any, responsible for the execution of the 1002~~
~~document.~~ 1003

(2) The probate court holds a hearing pursuant to division 1004
(B) of this section and finds that the proponent of the document 1005
as a purported electronic will has established by clear and 1006
convincing evidence the requirements under divisions (B) (1), 1007
(2), and (3) of this section. 1008

Sec. 2107.27. (A) When application is made to the probate 1009
court to admit to probate a will that has been lost, spoliated, 1010
or destroyed as provided in section 2107.26 of the Revised Code 1011
or a document that is treated as a will as provided in section 1012
2107.24 of the Revised Code, the party seeking to prove the will 1013
shall give a written notice by certified mail to the surviving 1014
spouse of the testator, to all persons who would be entitled to 1015
inherit from the testator under Chapter 2105. of the Revised 1016
Code if the testator had died intestate, to all legatees and 1017
devisees that are named in the will, and to all legatees and 1018
devisees that are named in the most recent will prior to the 1019
lost, spoliated, or destroyed will that is known to the 1020

applicant or in the most recent will prior to the document that 1021
is treated as a will if the most recent will is known to the 1022
applicant. 1023

(B) In the cases described in division (A) of this 1024
section, the proponents and opponents of the will shall cause 1025
the witnesses to the will, and any other witnesses that have 1026
relevant and material knowledge about the will, to appear before 1027
the court to testify. If any witnesses reside out of its 1028
jurisdiction, or reside within its jurisdiction but are infirm 1029
or unable to attend, the probate court may order their testimony 1030
to be taken and reduced to writing by some competent person. The 1031
testimony shall be filed in the records of the probate court 1032
pertaining to the testator's estate. 1033

(C) If upon such proof the court finds that the 1034
requirements of section 2107.24 or 2107.26 of the Revised Code, 1035
whichever is applicable, have been met, the probate court shall 1036
find and establish the contents of the will as near as can be 1037
ascertained. The contents of the will established under section 1038
2107.26 of the Revised Code shall be as effectual for all 1039
purposes as if the original will had been admitted to probate 1040
and record. The contents of the will established under section 1041
2107.24 of the Revised Code shall be as effectual for all 1042
purposes as if the document treated as a will had satisfied all 1043
of the requirements of division (B) or (C) of section 2107.03 of 1044
the Revised Code, whichever is applicable, and had been admitted 1045
to probate and record. 1046

Sec. 2107.29. When the court record of a will is 1047
destroyed, a copy of the will or a copy of the will and its 1048
probate may be recorded by the probate court if it appears to 1049
the court's satisfaction that the court record has been 1050

destroyed and if it appears, by reason of a certificate signed 1051
and sealed by the probate judge, that the copy is a true copy of 1052
the original will or a true copy of the original will and its 1053
probate. 1054

Sec. 2107.30. When the court record of a will has been 1055
destroyed, the original will may again be admitted to probate 1056
and record. 1057

Sec. 2107.31. Sections 2107.29 and 2107.30 of the Revised 1058
Code do not affect the proceedings or extend the time for 1059
contesting the validity of any will or for asserting rights 1060
~~thereunder~~ under the will. The court record provided for in ~~such~~ 1061
those sections ~~must~~ shall show that the original court record 1062
was destroyed, and the time, as near as may be, when the will 1063
was originally admitted to probate and record. 1064

Sec. 2107.33. (A) A will in writing shall be revoked in_ 1065
any of the following manners: 1066

(1) By the testator by tearing, canceling, obliterating, 1067
or destroying it with the intention of revoking it; 1068

(2) By some person, at the request of the testator and in 1069
the testator's physical presence, by tearing, canceling, 1070
obliterating, or destroying it with the intention of revoking 1071
it; 1072

(3) By some person tearing, canceling, obliterating, or 1073
destroying it pursuant to the testator's express written 1074
direction; 1075

(4) By some other written will or codicil or by an 1076
electronic will, executed as prescribed by this chapter; 1077

(5) By some other writing that is signed, attested, and 1078

subscribed in the manner provided by this chapter. 1079

~~(B)~~ (1) An electronic will shall be revoked in either of 1080
the following manners: 1081

(a) By the testator's subsequent will that revokes all or 1082
part of the electronic will expressly or by inconsistency; 1083

(b) By a physical act, if it is established by a 1084
preponderance of the evidence that the testator, with the intent 1085
of revoking all or part of the will, performed the act or 1086
directed another individual who performed the act in the 1087
physical presence of the testator. 1088

(2) As used in division (B) (1) (b) of this section, 1089
"physical act" includes, but is not limited to, using a delete 1090
or trash function on the computer pertaining to the electronic 1091
will or typing or writing "revoked" on an electronic or printed 1092
copy of the electronic will. 1093

(C) If after executing a will, a testator is divorced, 1094
obtains a dissolution of marriage, has the testator's marriage 1095
annulled, or, upon actual separation from the testator's spouse, 1096
enters into a separation agreement pursuant to which the parties 1097
intend to fully and finally settle their prospective property 1098
rights in the property of the other, whether by expected 1099
inheritance or otherwise, any disposition or appointment of 1100
property made by the will to the former spouse or to a trust 1101
with powers created by or available to the former spouse, any 1102
provision in the will conferring a general or special power of 1103
appointment on the former spouse, and any nomination in the will 1104
of the former spouse as executor, trustee, or guardian shall be 1105
revoked unless the will expressly provides otherwise. 1106

~~(C)~~ (D) Property prevented from passing to a former spouse 1107

or to a trust with powers created by or available to the former spouse because of revocation by this section shall pass as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse shall be interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they shall be deemed to be revived by the testator's remarriage with the former spouse or upon the termination of a separation agreement executed by them.

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

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

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

(1) "Trust with powers created by or available to the former spouse" means a trust that is revocable by the former spouse, with respect to which the former spouse has a power of withdrawal, or with respect to which the former spouse may take a distribution that is not subject to an ascertainable standard but does not mean a trust in which those powers of the former spouse are revoked by section 5815.31 of the Revised Code or similar provisions in the law of another state.

(2) "Ascertainable standard" means a standard that is 1138
related to a trust beneficiary's health, maintenance, support, 1139
or education. 1140

Sec. 2107.60. (A) An oral will, made in the last 1141
sickness, shall be valid in respect to personal property if the 1142
oral will is reduced to writing or transcribed electronically 1143
and subscribed ~~by two competent disinterested witnesses~~ within 1144
ten days after the speaking of the testamentary words by two 1145
competent disinterested witnesses who were, at the time the 1146
testamentary words were spoken, in the physical presence or 1147
electronic presence of the testator. The witnesses who were, at 1148
the time the testamentary words were spoken, in the electronic 1149
presence of the testator shall be located within this state. The 1150
witnesses shall prove that the testator was of sound mind and 1151
memory, not under restraint, and that the testator called upon 1152
some person physically or electronically present at the time the 1153
testamentary words were spoken to bear testimony to the 1154
disposition as the testator's will. 1155

(B) No oral will shall be admitted to record unless it is 1156
offered for probate within three months after the death of the 1157
testator. 1158

Sec. 2107.63. A testator may by will devise, bequeath, or 1159
appoint real or personal property or any interest in real or 1160
personal property to a trustee of a trust that is evidenced by a 1161
written or electronic instrument signed by the testator or any 1162
other settlor either before or on the same date of the execution 1163
of the will of the testator, that is identified in the will, and 1164
that has been signed, or is signed at any time after the 1165
execution of the testator's will, by the trustee or trustees 1166
identified in the will or their successors or by any other 1167

person lawfully serving, by court appointment or otherwise, as a trustee. 1168
1169

The property or interest so devised, bequeathed, or 1170
appointed to the trustee shall become a part of the trust 1171
estate, shall be subject to the jurisdiction of the court having 1172
jurisdiction of the trust, and shall be administered in 1173
accordance with the terms and provisions of the instrument 1174
creating the trust, including, unless the will specifically 1175
provides otherwise, any amendments or modifications of the trust 1176
made in writing or electronically before, concurrently with, or 1177
after the making of the will and prior to the death of the 1178
testator. The termination of the trust, or its entire revocation 1179
prior to the testator's death, shall invalidate the devise, 1180
bequest, or appointment to the trustee. 1181

This section shall not affect any of the rights accorded 1182
to a surviving spouse under section 2106.01 of the Revised Code. 1183
This section applies, and shall be construed as applying, to the 1184
wills of decedents who die on or after the effective date of 1185
this amendment, regardless of the date of the execution of their 1186
wills. 1187

Sec. 2133.01. Unless the context otherwise requires, as 1188
used in sections 2133.01 to 2133.15 of the Revised Code: 1189

(A) "Adult" means an individual who is eighteen years of 1190
age or older. 1191

(B) "Attending physician" means the physician to whom a 1192
declarant or other patient, or the family of a declarant or 1193
other patient, has assigned primary responsibility for the 1194
treatment or care of the declarant or other patient, or, if the 1195
responsibility has not been assigned, the physician who has 1196

accepted that responsibility. 1197

(C) "Comfort care" means any of the following: 1198

(1) Nutrition when administered to diminish the pain or 1199
discomfort of a declarant or other patient, but not to postpone 1200
the declarant's or other patient's death; 1201

(2) Hydration when administered to diminish the pain or 1202
discomfort of a declarant or other patient, but not to postpone 1203
the declarant's or other patient's death; 1204

(3) Any other medical or nursing procedure, treatment, 1205
intervention, or other measure that is taken to diminish the 1206
pain or discomfort of a declarant or other patient, but not to 1207
postpone the declarant's or other patient's death. 1208

(D) "Consulting physician" means a physician who, in 1209
conjunction with the attending physician of a declarant or other 1210
patient, makes one or more determinations that are required to 1211
be made by the attending physician, or to be made by the 1212
attending physician and one other physician, by an applicable 1213
provision of this chapter, to a reasonable degree of medical 1214
certainty and in accordance with reasonable medical standards. 1215

(E) "Declarant" means any adult who has executed a 1216
declaration in accordance with section 2133.02 of the Revised 1217
Code. 1218

(F) "Declaration" means a written or an electronic 1219
document executed in accordance with section 2133.02 of the 1220
Revised Code. 1221

(G) "Durable power of attorney for health care" means a 1222
document created pursuant to sections 1337.11 to 1337.17 of the 1223
Revised Code. 1224

(H) "Guardian" means a person appointed by a probate court	1225
pursuant to Chapter 2111. of the Revised Code to have the care	1226
and management of the person of an incompetent.	1227
(I) "Health care facility" means any of the following:	1228
(1) A hospital;	1229
(2) A hospice care program, pediatric respite care	1230
program, or other institution that specializes in comfort care	1231
of patients in a terminal condition or in a permanently	1232
unconscious state;	1233
(3) A nursing home or residential care facility, as	1234
defined in section 3721.01 of the Revised Code;	1235
(4) A home health agency and any residential facility	1236
where a person is receiving care under the direction of a home	1237
health agency;	1238
(5) An intermediate care facility for individuals with	1239
intellectual disabilities.	1240
(J) "Health care personnel" means physicians, nurses,	1241
physician assistants, emergency medical technicians-basic,	1242
emergency medical technicians-intermediate, emergency medical	1243
technicians-paramedic, medical technicians, dietitians, other	1244
authorized persons acting under the direction of an attending	1245
physician, and administrators of health care facilities.	1246
(K) "Home health agency" has the same meaning as in	1247
section 3740.01 of the Revised Code.	1248
(L) "Hospice care program" and "pediatric respite care	1249
program" have the same meanings as in section 3712.01 of the	1250
Revised Code.	1251

(M) "Hospital" has the same meanings as in sections	1252
3701.01, 3727.01, and 5122.01 of the Revised Code.	1253
(N) "Hydration" means fluids that are artificially or	1254
technologically administered.	1255
(O) "Incompetent" has the same meaning as in section	1256
2111.01 of the Revised Code.	1257
(P) "Intermediate care facility for the individuals with	1258
intellectual disabilities" has the same meaning as in section	1259
5124.01 of the Revised Code.	1260
(Q) "Life-sustaining treatment" means any medical	1261
procedure, treatment, intervention, or other measure that, when	1262
administered to a qualified patient or other patient, will serve	1263
principally to prolong the process of dying.	1264
(R) "Nurse" means a person who is licensed to practice	1265
nursing as a registered nurse or to practice practical nursing	1266
as a licensed practical nurse pursuant to Chapter 4723. of the	1267
Revised Code.	1268
(S) "Nursing home" has the same meaning as in section	1269
3721.01 of the Revised Code.	1270
(T) "Nutrition" means sustenance that is artificially or	1271
technologically administered.	1272
(U) "Permanently unconscious state" means a state of	1273
permanent unconsciousness in a declarant or other patient that,	1274
to a reasonable degree of medical certainty as determined in	1275
accordance with reasonable medical standards by the declarant's	1276
or other patient's attending physician and one other physician	1277
who has examined the declarant or other patient, is	1278
characterized by both of the following:	1279

(1) Irreversible unawareness of one's being and environment.	1280 1281
(2) Total loss of cerebral cortical functioning, resulting in the declarant or other patient having no capacity to experience pain or suffering.	1282 1283 1284
(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.	1285 1286 1287 1288
(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.	1289 1290 1291
(X) "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.	1292 1293
(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.	1294 1295 1296 1297
(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.	1298 1299 1300
(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:	1301 1302 1303 1304 1305 1306 1307

(1) There can be no recovery. 1308

(2) Death is likely to occur within a relatively short 1309
time if life-sustaining treatment is not administered. 1310

(BB) "Tort action" means a civil action for damages for 1311
injury, death, or loss to person or property, other than a civil 1312
action for damages for breach of a contract or another agreement 1313
between persons. 1314

(CC) "Copy of a declaration" means a printed or electronic 1315
copy of a declaration in writing, a copy of the record of a 1316
declaration executed electronically that is readable as text, or 1317
an electronic copy of the record of a declaration executed 1318
electronically. 1319

(DD) "Electronic," "electronically," "electronic 1320
presence," "record," and "sign" have the same meanings as in 1321
section 2107.01 of the Revised Code. 1322

(EE) "Conscious presence" means within the range of any of 1323
the principal's senses, excluding the sense of sight or sound 1324
that is sensed by telephonic, electronic, or other distant 1325
communication. 1326

Sec. 2133.02. (A) (1) An adult who is of sound mind 1327
voluntarily may execute at any time a declaration governing the 1328
use or continuation, or the withholding or withdrawal, of life- 1329
sustaining treatment. ~~The~~ If the declaration is in writing, it 1330
shall be signed at the end by the declarant or by another 1331
individual at the direction of the declarant, and shall state 1332
the date of its execution, ~~and either.~~ If the declaration is 1333
executed electronically, the declarant or another individual at 1334
the direction of the declarant shall sign the record associated 1335
with, and at the end of, the declaration, and shall state the 1336

date of its execution. The declaration shall be witnessed as 1337
described in division (B) (1) of this section or be acknowledged 1338
by the declarant in accordance with division (B) (2) of this 1339
section. The declaration may include a designation by the 1340
declarant of one or more persons who are to be notified by the 1341
declarant's attending physician at any time that life-sustaining 1342
treatment would be withheld or withdrawn pursuant to the 1343
declaration. The declaration may include a specific 1344
authorization for the use or continuation or the withholding or 1345
withdrawal of CPR, but the failure to include a specific 1346
authorization for the withholding or withdrawal of CPR does not 1347
preclude the withholding or withdrawal of CPR in accordance with 1348
sections 2133.01 to 2133.15 or sections 2133.21 to 2133.26 of 1349
the Revised Code. 1350

(2) Depending upon whether the declarant intends the 1351
declaration to apply when the declarant is in a terminal 1352
condition, in a permanently unconscious state, or in either a 1353
terminal condition or a permanently unconscious state, the 1354
declarant's declaration shall use either or both of the terms 1355
"terminal condition" and "permanently unconscious state" and 1356
shall define or otherwise explain those terms in a manner that 1357
is substantially consistent with the provisions of section 1358
2133.01 of the Revised Code. 1359

(3) (a) If a declarant who has authorized the withholding 1360
or withdrawal of life-sustaining treatment intends that the 1361
declarant's attending physician withhold or withdraw nutrition 1362
or hydration when the declarant is in a permanently unconscious 1363
state and when the nutrition and hydration will not or no longer 1364
will serve to provide comfort to the declarant or alleviate the 1365
declarant's pain, then the declarant shall authorize the 1366
declarant's attending physician to withhold or withdraw 1367

nutrition or hydration when the declarant is in the permanently 1368
unconscious state by doing both of the following in the 1369
declaration: 1370

(i) Including a statement in capital letters or other 1371
conspicuous type, including, but not limited to, a different 1372
font, bigger type, or boldface type, that the declarant's 1373
attending physician may withhold or withdraw nutrition and 1374
hydration if the declarant is in a permanently unconscious state 1375
and if the declarant's attending physician and at least one 1376
other physician who has examined the declarant determine, to a 1377
reasonable degree of medical certainty and in accordance with 1378
reasonable medical standards, that nutrition or hydration will 1379
not or no longer will serve to provide comfort to the declarant 1380
or alleviate the declarant's pain, or checking or otherwise 1381
marking a box or line that is adjacent to a similar statement on 1382
a printed form of a declaration; 1383

(ii) Placing the declarant's initials or ~~signature~~ signing 1384
underneath or adjacent to the statement, check, or other mark 1385
described in division (A) (3) (a) (i) of this section. 1386

(b) Division (A) (3) (a) of this section does not apply to 1387
the extent that a declaration authorizes the withholding or 1388
withdrawal of life-sustaining treatment when a declarant is in a 1389
terminal condition. The provisions of division (E) of section 1390
2133.12 of the Revised Code pertaining to comfort care shall 1391
apply to a declarant in a terminal condition. 1392

(B) (1) If witnessed for purposes of division (A) of this 1393
section, a declaration shall be witnessed by two individuals as 1394
described in this division in whose conscious presence, if the 1395
declaration is in writing, or conscious presence or electronic 1396
presence, if the declaration is executed electronically, the 1397

declarant, or another individual at the direction of the 1398
declarant, signed the declaration. The witnesses to a 1399
declaration that is executed electronically in the electronic 1400
presence of the declarant or another individual at the direction 1401
of the declarant shall be located within this state. The 1402
witnesses to a declaration shall be adults who are not related 1403
to the declarant by blood, marriage, or adoption, who are not 1404
the attending physician of the declarant, and who are not the 1405
administrator of any nursing home in which the declarant is 1406
receiving care. Each witness shall subscribe the witness' 1407
signature after the signature of the declarant or other 1408
individual at the direction of the declarant and, by doing so, 1409
attest to the witness' belief that the declarant appears to be 1410
of sound mind and not under or subject to duress, fraud, or 1411
undue influence. The signatures of the declarant or other 1412
individual at the direction of the declarant under division (A) 1413
of this section and of the witnesses under this division are not 1414
required to appear on the same page of the declaration. 1415

~~(2)~~ (2) (a) If acknowledged for purposes of division (A) of 1416
this section, a declaration shall be acknowledged before a 1417
notary public, who shall make the certification described in 1418
section 147.53 of the Revised Code and also shall attest that 1419
the declarant appears to be of sound mind and not under or 1420
subject to duress, fraud, or undue influence. 1421

(b) If a declaration is executed electronically, a notary 1422
public performing the certification and attestation described in 1423
division (B) (2) (a) of this section shall do so through an 1424
electronic notarization, pursuant to section 147.591 of the 1425
Revised Code, or as an online notarization pursuant to sections 1426
147.60 to 147.66 of the Revised Code. 1427

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

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

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

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

After line 229, insert:

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

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

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

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

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

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

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

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

(B) Any individual who, under the Revised Code or the
common law of this state, owns real property or any interest in

real property as a sole owner, as a tenant in common, or as a
survivorship tenant, or together with the individual's spouse
owns an indivisible interest in real property as tenants by the
entireties, may designate the entire interest, or any specified
part that is less than the entire interest, in that real
property as transferable on death to a designated beneficiary or
beneficiaries by executing, together with the individual's
spouse, if any, a transfer on death designation affidavit as
provided in this section.

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

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

(C) (1) If an individual who owns real property or an
interest in real property as a sole owner or as a tenant in
common executes a transfer on death designation affidavit, upon

the death of that individual, title to the real property or 1515
interest in the real property specified in the affidavit vests 1516
in the transfer on death beneficiary or beneficiaries designated 1517
in the affidavit. 1518

(2) If an individual who owns real property or an interest 1519
in real property as a survivorship tenant executes a transfer on 1520
death designation affidavit, upon the death of that individual 1521
or of one but not all of the surviving survivorship tenants, 1522
title to the real property or interest in the real property 1523
specified in the affidavit vests in the surviving survivorship 1524
tenant or tenants. Upon the death of the last surviving 1525
survivorship tenant, title to the real property or interest in 1526
the real property vests in the transfer on death beneficiary or 1527
beneficiaries designated in the affidavit, subject to division 1528
(B) (7) of section 5302.23 of the Revised Code. 1529

(3) If an individual who together with the individual's 1530
spouse owns an indivisible interest in real property as tenants 1531
by the entirety executes a transfer on death designation 1532
affidavit, upon the death of that individual, title to the real 1533
property or interest in the real property vests in the remaining 1534
tenant by the entirety. Upon the death of the remaining tenant 1535
by the entirety, title to the real property or interest in the 1536
real property vests in the transfer on death beneficiary or 1537
beneficiaries designated in the affidavit, subject to division 1538
(B) (7) of section 5302.23 of the Revised Code. 1539

(D) A transfer on death designation affidavit shall be 1540
verified before any person authorized to administer oaths and 1541
shall include all of the following: 1542

(1) A description of the real property the title to which 1543
is affected by the affidavit and a reference to an instrument of 1544

record containing that description; 1545

(2) If less than the entire interest in the real property 1546
is to be transferred on death under the affidavit, a statement 1547
of the specific interest or part of the interest in the real 1548
property that is to be so transferred; 1549

(3) A statement by the individual executing the affidavit 1550
that the individual is the person appearing on the record of the 1551
real property as the owner of the real property or interest in 1552
the real property at the time of the recording of the affidavit 1553
and the marital status of that owner. If the owner is married, 1554
the affidavit shall include a statement by the owner's spouse 1555
stating that the spouse's dower rights are subordinate to the 1556
vesting of title to the real property or interest in the real 1557
property in the transfer on death beneficiary or beneficiaries 1558
designated in the affidavit. 1559

(4) A statement designating one or more persons, 1560
identified by name, as transfer on death beneficiary or 1561
beneficiaries. 1562

(E) The county recorder of the county in which a transfer 1563
on death designation affidavit is offered for recording shall 1564
receive the affidavit and cause it to be recorded in the same 1565
manner as deeds are recorded. The county recorder shall collect 1566
a fee for recording the affidavit in the same amount as the fee 1567
for recording deeds. The county recorder shall index the 1568
affidavit in the name of the owner of record of the real 1569
property or interest in the real property who executed the 1570
affidavit. 1571

(F) A transfer on death designation affidavit need not be 1572
supported by consideration and need not be delivered to the 1573

transfer on death beneficiary or beneficiaries designated in the 1574
affidavit to be effective. However, in order to be effective, 1575
that affidavit shall be recorded with the county recorder as 1576
described in this section prior to the death of the individual 1577
who executed the affidavit. 1578

(G) Subject to division (C) of this section, upon the 1579
death of any individual who owns real property or an interest in 1580
real property that is subject to a transfer on death beneficiary 1581
designation made under a transfer on death designation affidavit 1582
as provided in this section, that real property or interest in 1583
real property of the deceased owner shall be transferred only to 1584
the transfer on death beneficiary or beneficiaries who are 1585
identified in the affidavit by name and who survive the deceased 1586
owner or that are in existence on the date of death of the 1587
deceased owner. 1588

For purposes of this division, if a natural or legal 1589
person designated by name in the affidavit as a transfer on 1590
death beneficiary or as a contingent transfer on death 1591
beneficiary as provided in division (B) (2) of section 5302.23 of 1592
the Revised Code solely in that person's capacity as a trustee 1593
of a trust has died, has resigned, or otherwise has been 1594
replaced by a successor trustee of the trust on the date of 1595
death of the deceased owner, the successor trustee of the trust 1596
shall be considered the transfer on death beneficiary or 1597
contingent transfer on death beneficiary in existence on the 1598
date of death of the deceased owner in full compliance with this 1599
division, notwithstanding that the successor trustee is not 1600
named as a transfer on death beneficiary or contingent transfer 1601
on death beneficiary in the affidavit. 1602

(H) Any person who knowingly makes any false statement in 1603

a transfer on death designation affidavit is guilty of 1604
falsification under division (A) (6) of section 2921.13 of the 1605
Revised Code. 1606

Sec. 5817.01. As used in this chapter: 1607

(A) (1) "Beneficiary under a trust" means either of the 1608
following: 1609

(a) Any person that has a present or future beneficial 1610
interest in a trust, whether vested or contingent; 1611

(b) Any person that, in a capacity other than that of 1612
trustee, holds a power of appointment over trust property, but 1613
does not include the class of permitted appointees among whom 1614
the power holder may appoint. 1615

(2) "Beneficiary under a trust" includes a charitable 1616
organization that is expressly designated in the terms of the 1617
trust to receive distributions, but does not include any 1618
charitable organization that is not expressly designated in the 1619
terms of the trust to receive distributions, but to whom the 1620
trustee may in its discretion make distributions. 1621

(B) (1) "Beneficiary under a will" means either of the 1622
following: 1623

(a) Any person designated in a will to receive a 1624
testamentary disposition of real or personal property; 1625

(b) Any person that, in a capacity other than that of 1626
executor, holds a power of appointment over estate assets, but 1627
does not include the class of permitted appointees among whom 1628
the power holder may appoint. 1629

(2) "Beneficiary under a will" includes a charitable 1630
organization that is expressly designated in the terms of the 1631

will to receive testamentary distributions, but does not include 1632
any charitable organization that is not expressly designated in 1633
the terms of the will to receive distributions, but to whom the 1634
executor may in its discretion make distributions. 1635

(C) "Court" means the probate court of the county in which 1636
the complaint under section 5817.02 or 5817.03 of the Revised 1637
Code is filed or the general division of the court of common 1638
pleas to which the probate court transfers the proceeding under 1639
division (A) of section 5817.04 of the Revised Code. 1640

(D) "Related trust" means a trust for which both of the 1641
following apply: 1642

(1) The testator is the settlor of the trust. 1643

(2) The trust is named as a beneficiary in the will in 1644
accordance with section 2107.63 of the Revised Code. 1645

(E) "Related will" means a will for which both of the 1646
following apply: 1647

(1) The testator is the settlor of a trust. 1648

(2) The will names the trust as a beneficiary in 1649
accordance with section 2107.63 of the Revised Code. 1650

(F) "Trust" means an inter vivos revocable or irrevocable 1651
trust instrument to which, at the time the complaint for 1652
declaration of validity is filed under section 5817.03 of the 1653
Revised Code, either of the following applies: 1654

(1) The settlor resides in, or is domiciled in, this 1655
state. 1656

(2) The trust's principal place of administration is in 1657
this state. 1658

<u>(G) "Will" includes an electronic will.</u>	1659
<u>(H) "Copy of an electronic will," "electronic presence,"</u>	1660
<u>"electronic will," and "sign" have the same meanings as in</u>	1661
<u>section 2107.01 of the Revised Code.</u>	1662
Sec. 5817.05. (A) A complaint under section 5817.02 of	1663
the Revised Code shall name as party defendants all of the	1664
following, as applicable:	1665
(1) The testator's spouse;	1666
(2) The testator's children;	1667
(3) The testator's heirs who would take property pursuant	1668
to section 2105.06 of the Revised Code had the testator died	1669
intestate at the time the complaint is filed;	1670
(4) The testator's beneficiaries under the will;	1671
(5) Any beneficiary under the testator's most recent prior	1672
will.	1673
(B) A complaint under section 5817.02 of the Revised Code	1674
may name as a party defendant any other person that the testator	1675
believes may have a pecuniary interest in the determination of	1676
the validity of the testator's will.	1677
(C) A complaint under section 5817.02 of the Revised Code	1678
may contain all or any of the following:	1679
(1) A statement that a copy of the <u>written or electronic</u>	1680
will has been filed with the court;	1681
(2) A statement that the will is in writing <u>or is an</u>	1682
<u>electronic will</u> ;	1683
(3) A statement that the will, <u>if in writing</u> , was signed	1684

by the testator, or was signed in the testator's name by another 1685
person in the testator's conscious presence and at the 1686
testator's express direction; or a statement that the will, if 1687
an electronic will, was signed at the end by the testator or by 1688
another individual in the testator's name, in the testator's 1689
physical presence or electronic presence, and at the testator's 1690
express direction; 1691

(4) A statement that the will, if in writing, was signed 1692
in the conscious presence of the testator by two or more 1693
competent individuals, each of whom either witnessed the 1694
testator sign the will, or heard the testator acknowledge 1695
signing the will; or a statement that the will, if an electronic 1696
will, was signed in the physical presence or electronic presence 1697
of the testator by two or more competent individuals and that 1698
all of the applicable requirements specified in divisions (C) (3) 1699
(a), (b), (c), and (d) of section 2107.03 of the Revised Code 1700
were complied with; 1701

(5) A statement that the will was executed with the 1702
testator's testamentary intent; 1703

(6) A statement that the testator had testamentary 1704
capacity; 1705

(7) A statement that the testator executed the will free 1706
from undue influence, not under restraint or duress, and in the 1707
exercise of the testator's free will; 1708

(8) A statement that the execution of the will was not the 1709
result of fraud or mistake; 1710

(9) The names and addresses of the testator and all of the 1711
defendants and, if any of the defendants are minors, their ages; 1712

(10) A statement that the will has not been revoked or	1713
modified;	1714
(11) A statement that the testator is familiar with the	1715
contents of the will."	1716
In line 230, delete "section" and insert "sections 147.591, 317.32,	1717
1337.11, 1337.12, 1337.22, 1337.25, 1345.01, 2107.01, 2107.03, 2107.07,	1718
2107.17, 2107.24, 2107.27, 2107.29, 2107.30, 2107.31, 2107.33, 2107.60,	1719
2107.63, 2133.01, 2133.02,"; after "2505.02" insert ", 5302.22, 5817.01,	1720
and 5817.05"	1721
In line 231, delete "is" and insert "are"	1722
In line 232, delete "This" and insert "Section 2505.02 of the	1723
Revised Code, as amended by this"; after "act" insert ", and sections	1724
2747.01, 2747.02, 2747.03, 2747.04, 2747.05, and 2747.06 of the Revised	1725
Code, as enacted by this act,"	1726
After line 233, insert:	1727
"Section 4. The General Assembly respectfully requests	1728
that the Supreme Court amend its rules and procedures to further	1729
implement the purposes of this act in relation to electronically	1730
executed wills, declarations or living wills, and powers of	1731
attorney.	1732
Section 5. Sections 147.591, 317.32, 1337.11, 1337.12,	1733
1337.22, 1337.25, 1345.01, 2107.01, 2107.03, 2107.07, 2107.17,	1734
2107.24, 2107.27, 2107.29, 2107.30, 2107.31, 2107.33, 2107.60,	1735
2107.63, 2133.01, 2133.02, 5302.22, 5817.01, and 5817.05, as	1736
amended by this act, sections 147.67, 1337.121, and 2107.031 of	1737
the Revised Code, as enacted by this act, and Section 4 of this	1738
act take effect one hundred twenty days after the effective date	1739
of this section."	1740

The motion was _____ agreed to.

SYNOPSIS

Electronic execution of wills	1741
R.C. 1345.01, 2107.01, 2107.03, 2107.031, 2107.07,	1742
2107.17, 2107.24, 2107.27, 2107.29, 2107.30, 2107.31, 2107.33,	1743
2107.60, 2107.63, 5817.01, and 5817.05	1744
Permits a will to be executed electronically in addition	1745
to current law's requirement that a will must be in writing.	1746
Provides the following, regarding an electronic will:	1747
-- It must be a "record" that is readable as text at the	1748
time it is "signed";	1749
-- It must be signed at the end by the testator or by	1750
another individual in the testator's name, in the testator's	1751
physical or "electronic presence," and by the testator's	1752
direction;	1753
-- It must be signed in the conscious or electronic	1754
presence of the testator by two or more competent witnesses	1755
located in this state, who must sign the will within a	1756
reasonable time after witnessing the testator's signing and must	1757
subscribe and attest their signatures;	1758
-- The testator or the individual who will sign the will	1759
in the testator's name and the witnesses may review the contents	1760
of the will prior to signing it;	1761
-- It must be acknowledged before a notary public who must	1762
make the certification by taking an acknowledgment under the	1763
Notaries Public Law and must attest that the testator appears to	1764
	1765

be of sound mind and not subject to duress, fraud, or undue 1766
influence; 1767

-- Prior to the acknowledgment of the will, the notary 1768
public must require the presentation of a government-issued 1769
identification credential by, and perform the credential 1770
analysis and identity proofing of, the testator and the 1771
witnesses, to the extent required by the procedures under the 1772
Notary Public Modernization Act; 1773

-- The notary public must terminate the certification 1774
proceedings if the notary public has reasonable cause to believe 1775
during the course of such proceedings that the testator does not 1776
appear to be of sound mind or is subject to duress, fraud, or 1777
undue influence; 1778

-- The procedures for executing an electronic will must be 1779
recorded by electronic media containing both audio and visual 1780
components, the process for such recording must be followed, and 1781
the recording must be preserved and stored in a safe, secure, 1782
and appropriate manner. 1783

-- Requires the notary public who acknowledged the 1784
electronic will to send a copy of the certified electronic will 1785
to the testator in specified forms and manners. 1786

-- Permits the testator to send a copy of the certified 1787
electronic will to any person in specified forms and manners. 1788

Expands the definition of "consumer transaction" for 1789
purposes of the Consumer Sales Practices Law, to also mean 1790
services provided by a notary public to a testator in the 1791
acknowledgement, certification, and attestation pertaining to 1792
the testator's electronic will. 1793

Provides that on and after the bill's effective date, Ohio 1794
laws applicable to wills apply to electronic wills unless it is 1795
clear from the context or meaning of the provision of the law 1796
that it applies only to a will in writing or a will other than 1797
an electronic will. 1798

Requires that if a copy of an electronic will is deposited 1799
in the office of the judge of the probate court by some person 1800
for the testator, that person must attach with the copy of the 1801
electronic will an affidavit attested to by the testator 1802
authorizing the person to deposit that copy. 1803

Provides that a document is to be treated as an electronic 1804
will if a probate court finds that the proponent of the document 1805
as a purported electronic will has established, by clear and 1806
convincing evidence, that the decedent prepared the document or 1807
caused it to be prepared, signed the document and intended it to 1808
constitute the decedent's will, and the above requirements for 1809
making an electronic will are complied with. 1810

Permits an executor to file an action in the probate court 1811
to recover court costs and attorney's fees from the attorney, if 1812
any, responsible for the execution of the document as a 1813
purported will upon a finding by the court under the preceding 1814
dot point. 1815

Specifies that an electronic will may be revoked by the 1816
testator's subsequent will revoking all or part of the will 1817
expressly or by inconsistency, or by a "physical act" that the 1818
testator, with the intent of revoking all or part of the will, 1819
performed the act or directed another individual who performed 1820
the act in the testator's physical presence. 1821

Provides that an oral will, made in the last sickness, is 1822

valid in respect to personal property if it is transcribed 1823
electronically and subscribed by two competent disinterested 1824
witnesses within ten days after the speaking of the testamentary 1825
words and who were in the physical or electronic presence of the 1826
testator. 1827

Requires that the witnesses to an oral will who were, at 1828
the time the testamentary words were spoken, in the testator's 1829
electronic presence be located within this state. 1830

**Declaration governing the use or continuation, or the 1831
withholding or withdrawal, of life-sustaining treatment (living 1832
will) 1833**

R.C. 2133.01 and 2133.02 1834

Permits a declaration governing the use or continuation, 1835
or the withholding or withdrawal, of life-sustaining treatment 1836
(living will) to be executed electronically by the declarant or 1837
another individual at the declarant's direction by signing the 1838
"record" at the end of the declaration, stating the date of its 1839
execution, and having it witnessed or acknowledged as follows: 1840

-- The electronic declaration must be witnessed by two 1841
individuals with qualifications specified in continuing law and 1842
in whose conscious or electronic presence the declarant, or 1843
another individual at the declarant's direction, signed the 1844
declaration; 1845

-- The electronic declaration must be certified and 1846
attested by a notary public through an electronic notarization 1847
or as an online notarization under the Ohio Notary Law. 1848

Transfer on death designation affidavit 1849

R.C. 5302.22 1850

Allows a transfer on death designation affidavit to be 1851
executed in an electronic manner; provides that a certified copy 1852
or a copy of the affidavit that is readable as text must be 1853
considered to be a certified copy or a copy of the record of the 1854
affidavit; and requires a copy of that affidavit to be offered 1855
for recording with the county recorder. 1856

Durable power of attorney for health care 1857

R.C. 317.32, 1337.11, 1337.12, and 1337.121 1858

Permits a durable power of attorney for health care to be 1859
executed electronically by which the principal must sign the 1860
record associated with, and at the end of, the instrument and 1861
state the date of its execution; and requires the instrument to 1862
be witnessed by at least two individuals who have the 1863
qualifications under continuing law, or are certified and 1864
attested by a notary public as follows: 1865

-- If the electronic durable power of attorney for health 1866
care is witnessed, requires the principal to sign the instrument 1867
and acknowledge the signature at the end of the instrument in 1868
the conscious or electronic presence of each witness; 1869

-- If the electronic durable power of attorney is 1870
certified and attested, requires a notary public to certify and 1871
attest the instrument through an electronic notarization or as 1872
an online notarization under the Ohio Notary Law. 1873

Requires that the electronic execution of a durable power 1874
of attorney for health care and its witnessing or 1875
acknowledgment, whichever is applicable, be recorded by 1876
electronic media containing both audio and visual components; 1877
and requires the recording to be preserved and stored in a safe, 1878
secure, and appropriate manner. 1879

Power of attorney	1880
R.C. 317.32, 1337.22, and 1337.25	1881
Allows a power of attorney to be executed electronically	1882
by the principal signing the instrument or by another individual	1883
directed by the principal to sign the principal's name on the	1884
instrument in the electronic presence of the principal.	1885
Provides that a signature on an electronic power of	1886
attorney is presumed to be genuine if the principal or the	1887
principal and other individual directed by the principal to sign	1888
the principal's name acknowledges the signature before a notary	1889
public performing an electronic notarization or an online	1890
notarization pursuant to the Ohio Notary Law.	1891
Requires the electronic execution of a power of attorney	1892
and the acknowledgment of the electronic execution of a power of	1893
attorney to be recorded by electronic media containing both	1894
audio and visual components; and requires the recording to be	1895
preserved and stored in a safe, secure, and appropriate manner.	1896
Requirements for notary public	1897
R.C. 147.591 and 147.67	1898
Prohibits a notary public from notarizing an electronic	1899
document that is specified in the amendment unless the notary or	1900
the notary's employer has filed with the Secretary of State's	1901
office satisfactory evidence that the notary or the notary's	1902
employer has obtained a bond or an errors and omissions	1903
insurance.	1904
Requires a notary public who acknowledges an electronic	1905
will to provide a warning on the notary's website that any	1906
person who intends to execute an electronic will is executing a	1907

legal document and is strongly encouraged to seek the assistance
of an attorney.

1908

1909