

As Introduced

**134th General Assembly
Regular Session
2021-2022**

S. B. No. 230

Senator Roegner

A BILL

To amend sections 317.32, 1337.11, 1337.12, 1
1337.22, 1337.25, 2107.01, 2107.03, 2107.07, 2
2107.17, 2107.18, 2107.24, 2107.27, 2107.29, 3
2107.30, 2107.31, 2107.33, 2107.60, 2107.63, 4
2129.05, 2133.01, 2133.02, 5302.22, 5817.01, and 5
5817.05 and to enact sections 1337.121 and 6
2107.031 of the Revised Code to expand the laws 7
on wills, declarations or living wills, durable 8
powers of attorney for health care, and transfer 9
on death designation affidavits by providing for 10
their execution electronically. 11

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 317.32, 1337.11, 1337.12, 12
1337.22, 1337.25, 2107.01, 2107.03, 2107.07, 2107.17, 2107.18, 13
2107.24, 2107.27, 2107.29, 2107.30, 2107.31, 2107.33, 2107.60, 14
2107.63, 2129.05, 2133.01, 2133.02, 5302.22, 5817.01, and 15
5817.05 be amended and sections 1337.121 and 2107.031 of the 16
Revised Code be enacted to read as follows: 17

Sec. 317.32. The county recorder shall charge and collect 18
the following fees, to include, except as otherwise provided in 19

division (A) (2) of this section, base fees for the recorder's 20
services and housing trust fund fees collected pursuant to 21
section 317.36 of the Revised Code: 22

(A) (1) Except as otherwise provided in division (A) (2) of 23
this section, for recording and indexing an instrument if the 24
photocopy or any similar process is employed, a base fee of 25
seventeen dollars for the first two pages and a housing trust 26
fund fee of seventeen dollars, and a base fee of four dollars 27
and a housing trust fund fee of four dollars for each subsequent 28
page, size eight and one-half inches by fourteen inches, or 29
fraction of a page, including the caption page, of such 30
instrument; 31

(2) For recording and indexing an instrument described in 32
division (D) of section 317.08 of the Revised Code if the 33
photocopy or any similar process is employed, a fee of twenty- 34
eight dollars for the first two pages to be deposited as 35
specified elsewhere in this division, and a fee of eight dollars 36
to be deposited in the same manner for each subsequent page, 37
size eight and one-half inches by fourteen inches, or fraction 38
of a page, including the caption page, of that instrument. If 39
the county recorder's technology fund has been established under 40
section 317.321 of the Revised Code, of the twenty-eight 41
dollars, fourteen dollars shall be deposited into the county 42
treasury to the credit of the county recorder's technology fund 43
and fourteen dollars shall be deposited into the county treasury 44
to the credit of the county general fund. If the county 45
recorder's technology fund has not been established, the twenty- 46
eight dollars shall be deposited into the county treasury to the 47
credit of the county general fund. 48

(B) For certifying a photocopy from the record previously 49

recorded, a base fee of one dollar and a housing trust fund fee 50
of one dollar per page, size eight and one-half inches by 51
fourteen inches, or fraction of a page; for each certification 52
if the recorder's seal is required, except as to instruments 53
issued by the armed forces of the United States, a base fee of 54
fifty cents and a housing trust fund fee of fifty cents; 55

(C) For entering any marginal reference by separate 56
recorded instrument, a base fee of two dollars and a housing 57
trust fund fee of two dollars for each marginal reference set 58
out in that instrument, in addition to the fees set forth in 59
division (A) (1) of this section; 60

(D) For indexing in the real estate mortgage records, 61
pursuant to section 1309.519 of the Revised Code, financing 62
statements covering crops growing or to be grown, timber to be 63
cut, minerals or the like, including oil and gas, accounts 64
subject to section 1309.301 of the Revised Code, or fixture 65
filings made pursuant to section 1309.334 of the Revised Code, a 66
base fee of two dollars and a housing trust fund fee of two 67
dollars for each name indexed; 68

(E) For filing zoning resolutions, including text and 69
maps, in the office of the recorder as required under sections 70
303.11 and 519.11 of the Revised Code, a base fee of twenty-five 71
dollars and a housing trust fund fee of twenty-five dollars, 72
regardless of the size or length of the resolutions; 73

(F) For filing zoning amendments, including text and maps, 74
in the office of the recorder as required under sections 303.12 75
and 519.12 of the Revised Code, a base fee of ten dollars and a 76
housing trust fund fee of ten dollars regardless of the size or 77
length of the amendments; 78

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

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

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

In any county in which the recorder employs the photostatic or any similar process for recording maps, plats, or prints the recorder shall determine, charge, and collect for the recording or rerecording of any map, plat, or print, a base fee

of five cents and a housing trust fund fee of five cents per 109
square inch, for each square inch of the map, plat, or print 110
filed for that recording or rerecording, with a minimum base fee 111
of twenty dollars and a minimum housing trust fund fee of twenty 112
dollars; for certifying a copy from the record, a base fee of 113
two cents and a housing trust fund fee of two cents per square 114
inch of the record, with a minimum base fee of two dollars and a 115
minimum housing trust fund fee of two dollars. 116

The fees provided in this section shall be paid upon the 117
presentation of the instruments for record or upon the 118
application for any certified copy of the record, except that 119
the payment of fees for providing copies of instruments 120
conveying or extinguishing agricultural easements to the office 121
of farmland preservation in the department of agriculture under 122
division (H) of section 5301.691 of the Revised Code shall be 123
governed by that division. 124

The fees provided for in this section shall not apply to 125
the recording, indexing, or making of a certified copy or to the 126
filing of any instrument by a county land reutilization 127
corporation, its wholly owned subsidiary, or any other electing 128
subdivision as defined in section 5722.01 of the Revised Code. 129

Sec. 1337.11. As used in sections 1337.11 to 1337.17 of 130
the Revised Code: 131

(A) "Adult" means a person who is eighteen years of age or 132
older. 133

(B) "Attending physician" means the physician to whom a 134
principal or the family of a principal has assigned primary 135
responsibility for the treatment or care of the principal or, if 136
the responsibility has not been assigned, the physician who has 137

accepted that responsibility.	138
(C) "Comfort care" means any of the following:	139
(1) Nutrition when administered to diminish the pain or discomfort of a principal, but not to postpone death;	140 141
(2) Hydration when administered to diminish the pain or discomfort of a principal, but not to postpone death;	142 143
(3) Any other medical or nursing procedure, treatment, intervention, or other measure that is taken to diminish the pain or discomfort of a principal, but not to postpone death.	144 145 146
(D) "Consulting physician" means a physician who, in conjunction with the attending physician of a principal, makes one or more determinations that are required to be made by the attending physician, or to be made by the attending physician and one other physician, by an applicable provision of sections 1337.11 to 1337.17 of the Revised Code, to a reasonable degree of medical certainty and in accordance with reasonable medical standards.	147 148 149 150 151 152 153 154
(E) "Declaration for mental health treatment" has the same meaning as in section 2135.01 of the Revised Code.	155 156
(F) "Guardian" means a person appointed by a probate court pursuant to Chapter 2111. of the Revised Code to have the care and management of the person of an incompetent.	157 158 159
(G) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition or physical or mental health.	160 161 162
(H) "Health care decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to health care.	163 164 165

(I) "Health care facility" means any of the following:	166
(1) A hospital;	167
(2) A hospice care program, pediatric respite care program, or other institution that specializes in comfort care of patients in a terminal condition or in a permanently unconscious state;	168 169 170 171
(3) A nursing home;	172
(4) A home health agency;	173
(5) An intermediate care facility for individuals with intellectual disabilities;	174 175
(6) A regulated community mental health organization.	176
(J) "Health care personnel" means physicians, nurses, physician assistants, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical technicians-paramedic, medical technicians, dietitians, other authorized persons acting under the direction of an attending physician, and administrators of health care facilities.	177 178 179 180 181 182
(K) "Home health agency" has the same meaning as in section 3740.01 of the Revised Code.	183 184
(L) "Hospice care program" and "pediatric respite care program" have the same meanings as in section 3712.01 of the Revised Code.	185 186 187
(M) "Hospital" has the same meanings as in sections 3701.01, 3727.01, and 5122.01 of the Revised Code.	188 189
(N) "Hydration" means fluids that are artificially or technologically administered.	190 191
(O) "Incompetent" has the same meaning as in section	192

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

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

(CC) "Tort action" means a civil action for damages for 248
injury, death, or loss to person or property, other than a civil 249
action for damages for a breach of contract or another agreement 250
between persons. 251

(DD) "Electronic," "electronically," "electronic 252
presence," "record," "sign," and "vulnerable adult" have the 253
same meanings as in section 2107.01 of the Revised Code. 254

Sec. 1337.12. (A) (1) An adult who is of sound mind 255
voluntarily may create a valid durable power of attorney for 256
health care by executing a durable power of attorney, in 257
accordance with section 1337.24 of the Revised Code, that 258
authorizes an attorney in fact as described in division (A) (2) 259
of this section to make health care decisions for the principal 260
at any time that the attending physician of the principal 261
determines that the principal has lost the capacity to make 262
informed health care decisions for the principal. The durable 263
power of attorney for health care may authorize the attorney in 264
fact, commencing immediately upon the execution of the 265
instrument or at any subsequent time and regardless of whether 266
the principal has lost the capacity to make informed health care 267
decisions, to obtain information concerning the principal's 268
health, including protected health information as defined in 45 269
C.F.R. 160.103. Except as otherwise provided in divisions (B) to 270
(F) of section 1337.13 of the Revised Code, the authorization 271
may include the right to give informed consent, to refuse to 272
give informed consent, or to withdraw informed consent to any 273
health care that is being or could be provided to the principal. 274
Additionally, to be valid, a durable power of attorney for 275
health care shall satisfy both of the following: 276

(a) ~~If~~ If a durable power of attorney for health care is 277

in writing, it shall be signed at the end of the instrument by 278
the principal and shall state the date of its execution. If a 279
 durable power of attorney for health care is executed 280
 electronically, the principal shall sign the record associated 281
 with, and at the end of, the instrument and shall state the date 282
 of its execution. 283

(b) It shall be witnessed in accordance with division (B) 284
of this section or be acknowledged by the principal in 285
accordance with division (C) of this section. 286

(2) Except as otherwise provided in this division, a 287
durable power of attorney for health care may designate any 288
competent adult as the attorney in fact. The attending physician 289
of the principal and an administrator of any nursing home in 290
which the principal is receiving care shall not be designated as 291
an attorney in fact in, or act as an attorney in fact pursuant 292
to, a durable power of attorney for health care. An employee or 293
agent of the attending physician of the principal and an 294
employee or agent of any health care facility in which the 295
principal is being treated shall not be designated as an 296
attorney in fact in, or act as an attorney in fact pursuant to, 297
a durable power of attorney for health care, except that these 298
limitations do not preclude a principal from designating either 299
type of employee or agent as the principal's attorney in fact if 300
the individual is a competent adult and related to the principal 301
by blood, marriage, or adoption, or if the individual is a 302
competent adult and the principal and the individual are members 303
of the same religious order. 304

(3) A durable power of attorney for health care shall not 305
expire, unless the principal specifies an expiration date in the 306
instrument. However, when a durable power of attorney contains 307

an expiration date, if the principal lacks the capacity to make 308
informed health care decisions for the principal on the 309
expiration date, the instrument shall continue in effect until 310
the principal regains the capacity to make informed health care 311
decisions for the principal. 312

(B) If witnessed for purposes of division (A) (1) (b) of 313
this section, a durable power of attorney for health care shall 314
be witnessed by at least two individuals who are adults and who 315
are not ineligible to be witnesses under this division. Any 316
person who is related to the principal by blood, marriage, or 317
adoption, any person who is designated as the attorney in fact 318
or alternate attorney in fact in the instrument, the attending 319
physician of the principal, and the administrator of any nursing 320
home in which the principal is receiving care are ineligible to 321
be witnesses. 322

The witnessing of a durable power of attorney for health 323
care shall involve the principal signing the applicable 324
instrument as described in division (A) (1) (a) of this section, 325
or acknowledging the principal's signature, at the end of the 326
instrument in the physical presence or electronic presence, as 327
applicable, of each witness. A witness for a durable power of 328
attorney for health care that is electronically executed may be 329
in either the physical or electronic presence of the principal. 330
A witness for a durable power of attorney for health care that 331
is executed electronically in the electronic presence of the 332
principal shall be located within this state. A witness for a 333
durable power of attorney for health care that is executed 334
electronically by the principal who is a vulnerable adult shall 335
sign the durable power of attorney for health care in the 336
physical presence of the principal. Then, each witness shall 337
subscribe the witness's signature after the signature of the 338

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

section. 565

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

filed to probate it. 652

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

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

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

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

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

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

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

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

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

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

document to be prepared. 711

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

made in this state. 918

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A hospital; 969

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

(3) A nursing home or residential care facility, as defined in section 3721.01 of the Revised Code;	974 975
(4) A home health agency and any residential facility where a person is receiving care under the direction of a home health agency;	976 977 978
(5) An intermediate care facility for individuals with intellectual disabilities.	979 980
(J) "Health care personnel" means physicians, nurses, physician assistants, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical technicians-paramedic, medical technicians, dietitians, other authorized persons acting under the direction of an attending physician, and administrators of health care facilities.	981 982 983 984 985 986
(K) "Home health agency" has the same meaning as in section 3740.01 of the Revised Code.	987 988
(L) "Hospice care program" and "pediatric respite care program" have the same meanings as in section 3712.01 of the Revised Code.	989 990 991
(M) "Hospital" has the same meanings as in sections 3701.01, 3727.01, and 5122.01 of the Revised Code.	992 993
(N) "Hydration" means fluids that are artificially or technologically administered.	994 995
(O) "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.	996 997
(P) "Intermediate care facility for the individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.	998 999 1000

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) There can be no recovery.

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

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

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

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

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

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

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

(3) (a) If a declarant who has authorized the withholding
or withdrawal of life-sustaining treatment intends that the
declarant's attending physician withhold or withdraw nutrition
or hydration when the declarant is in a permanently unconscious
state and when the nutrition and hydration will not or no longer
will serve to provide comfort to the declarant or alleviate the
declarant's pain, then the declarant shall authorize the
declarant's attending physician to withhold or withdraw
nutrition or hydration when the declarant is in the permanently
unconscious state by doing both of the following in the
declaration:

(i) Including a statement in capital letters or other
conspicuous type, including, but not limited to, a different
font, bigger type, or boldface type, that the declarant's
attending physician may withhold or withdraw nutrition and
hydration if the declarant is in a permanently unconscious state
and if the declarant's attending physician and at least one
other physician who has examined the declarant determine, to a
reasonable degree of medical certainty and in accordance with
reasonable medical standards, that nutrition or hydration will
not or no longer will serve to provide comfort to the declarant
or alleviate the declarant's pain, or checking or otherwise

marking a box or line that is adjacent to a similar statement on 1118
a printed form of a declaration; 1119

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 5817.01. As used in this chapter: 1346

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

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

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

the power holder may appoint. 1354

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

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

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

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

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

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

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

(1) The testator is the settlor of the trust.	1382
(2) The trust is named as a beneficiary in the will in accordance with section 2107.63 of the Revised Code.	1383 1384
(E) "Related will" means a will for which both of the following apply:	1385 1386
(1) The testator is the settlor of a trust.	1387
(2) The will names the trust as a beneficiary in accordance with section 2107.63 of the Revised Code.	1388 1389
(F) "Trust" means an inter vivos revocable or irrevocable trust instrument to which, at the time the complaint for declaration of validity is filed under section 5817.03 of the Revised Code, either of the following applies:	1390 1391 1392 1393
(1) The settlor resides in, or is domiciled in, this state.	1394 1395
(2) The trust's principal place of administration is in this state.	1396 1397
<u>(G) "Will" includes an electronic will.</u>	1398
<u>(H) "Copy of an electronic will," "electronic presence," "electronic will," and "sign" have the same meanings as in section 2107.01 of the Revised Code.</u>	1399 1400 1401
Sec. 5817.05. (A) A complaint under section 5817.02 of the Revised Code shall name as party defendants all of the following, as applicable:	1402 1403 1404
(1) The testator's spouse;	1405
(2) The testator's children;	1406
(3) The testator's heirs who would take property pursuant	1407

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

executed wills, declarations or living wills, and powers of	1464
attorney.	1465