

**As Introduced**

**135th General Assembly  
Regular Session  
2023-2024**

**S. B. No. 46**

**Senator Roegner**

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**A BILL**

To amend sections 147.051, 147.591, 317.32, 1  
1337.11, 1337.12, 1337.22, 1337.25, 1345.01, 2  
2107.01, 2107.03, 2107.07, 2107.17, 2107.24, 3  
2107.27, 2107.29, 2107.30, 2107.31, 2107.33, 4  
2107.60, 2107.63, 2129.05, 2133.01, 2133.02, 5  
5302.22, 5817.01, and 5817.05 and to enact 6  
sections 1337.121 and 2107.031 of the Revised 7  
Code to expand the laws on wills, declarations 8  
or living wills, durable powers of attorney for 9  
health care, powers of attorney, and transfer on 10  
death designation affidavits by providing for 11  
their execution electronically. 12

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

**Section 1.** That sections 147.051, 147.591, 317.32, 13  
1337.11, 1337.12, 1337.22, 1337.25, 1345.01, 2107.01, 2107.03, 14  
2107.07, 2107.17, 2107.24, 2107.27, 2107.29, 2107.30, 2107.31, 15  
2107.33, 2107.60, 2107.63, 2129.05, 2133.01, 2133.02, 5302.22, 16  
5817.01, and 5817.05 be amended and sections 1337.121 and 17  
2107.031 of the Revised Code be enacted to read as follows: 18

**Sec. 147.051.** The secretary of state shall maintain a 19

database of notaries public on a publicly accessible web site. 20  
The web site shall provide all of the following information in 21  
relation to each notary public: 22

(A) A verification of the authority and good standing of 23  
the individual to perform notarial acts; 24

(B) Whether the notary is registered to perform online 25  
notarizations, as defined in section 147.60 of the Revised Code; 26

(C) A description of any administrative or disciplinary 27  
action taken against the notary; 28

(D) Whether the notary has filed evidence satisfactory to 29  
the secretary of state that the notary has obtained the 30  
necessary bond and errors and omissions insurance to notarize 31  
electronic estate planning documents pursuant to section 147.591 32  
of the Revised Code. 33

**Sec. 147.591.** (A) As used in this section, "electronic 34  
document," "electronic seal," "electronic signature," and 35  
"online notarization" have the same meanings as in section 36  
147.60 of the Revised Code. 37

(B) (1) An electronic document that is signed in the 38  
physical presence of the notary public with an electronic 39  
signature and notarized with an electronic seal shall be 40  
considered an original document. 41

(2) Notwithstanding any other provision of the Revised 42  
Code to the contrary, a digital copy of a document executed 43  
electronically by the parties and acknowledged or sworn before a 44  
notary acting pursuant to this section shall be accepted by 45  
county auditors, engineers, and recorders for purposes of 46  
approval, transfer, and recording to the same extent as any 47  
other document that is submitted by an electronic recording 48

method and shall not be rejected solely by reason of containing 49  
electronic signatures or an electronic notarization, including 50  
an online notarization. 51

(3) A county auditor, engineer, and recorder shall accept 52  
a printed document that was executed electronically for purposes 53  
of approval, transfer, and recording if that document contains 54  
an attached certificate in the following, or a substantially 55  
similar, format: 56

"AUTHENTICATOR CERTIFICATE 57

I certify and warrant that the foregoing and annexed paper 58  
document being presented for record, to which this certification 59  
is attached, represents a true, exact, complete, and unaltered 60  
copy of the original electronic document. The county offices of 61  
the auditor, treasurer, recorder, and others necessary to 62  
effectuate the transfer and recording of the instrument shall be 63  
entitled to rely on such certification and warranty for all 64  
purposes. 65

\_\_\_\_\_ [signature of authenticator] 66

\_\_\_\_\_ [printed name of authenticator] 67

\_\_\_\_\_ [street address of authenticator] 68

\_\_\_\_\_ [city, state, zip code of 69  
authenticator] 70

\_\_\_\_\_ [telephone number of 71  
authenticator] 72

73

A State of \_\_\_\_\_ )

B \_\_\_\_\_ ):ss

C County of \_\_\_\_\_ )

The foregoing authenticator certificate was subscribed and 74  
sworn to in my presence by \_\_\_\_\_ [printed 75  
name of authenticator] on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ 76

\_\_\_\_\_ 77

Notary Public" 78

(C) Any notary public may obtain an electronic seal and an 79  
electronic signature for the purposes of notarizing documents 80  
under this section. 81

(D) A notary public shall comply with the provisions of 82  
section 147.66 of the Revised Code pertaining to the electronic 83  
seal and electronic signature. 84

(E) A notary public shall not notarize an electronic 85  
document that is a will, trust, power of attorney, or other 86  
estate planning document identified in rule by the secretary of 87  
state unless the notary has filed with the office of the 88  
secretary of state evidence satisfactory to the secretary of 89  
state that the notary has obtained a bond that meets all of the 90  
following and the bond is still in effect: 91

(1) The bond is in the amount of at least twenty-five 92  
thousand dollars. 93

(2) The bond is payable to any individual harmed by a 94  
breach of duty by the notary acting in the notary's official 95  
capacity as a notary public. 96

<u>(3) The bond is conditioned on the notary faithfully</u>	97
<u>discharging the duties of office of notary public.</u>	98
<u>(4) The bond is on such terms as are specified in rule by</u>	99
<u>the secretary of state as reasonably necessary to protect the</u>	100
<u>public.</u>	101
<u>(F) A notary public shall not notarize an electronic</u>	102
<u>document that is a will, trust, power of attorney, or other</u>	103
<u>estate planning document identified in rule by the secretary of</u>	104
<u>state unless the notary has filed with the office of the</u>	105
<u>secretary of state evidence satisfactory to the secretary of</u>	106
<u>state that the notary has obtained errors and omissions</u>	107
<u>insurance from an insurer authorized to engage in the business</u>	108
<u>of insurance in this state that meets both of the following and</u>	109
<u>the insurance is still in effect:</u>	110
<u>(1) The insurance is in the amount of at least twenty-five</u>	111
<u>thousand dollars.</u>	112
<u>(2) The insurance is on such terms and conditions as are</u>	113
<u>specified in rule by the secretary of state as reasonably</u>	114
<u>necessary to protect the public.</u>	115
<u>(G) The secretary of state shall adopt rules specifying</u>	116
<u>the types of electronic estate-related documents that require a</u>	117
<u>bond and errors and omissions insurance and specifying other</u>	118
<u>terms and conditions the secretary of state considers reasonably</u>	119
<u>necessary to protect the public.</u>	120
<b>Sec. 317.32.</b> The county recorder shall charge and collect	121
the following fees, to include, except as otherwise provided in	122
division (A) (2) of this section, base fees for the recorder's	123
services and housing trust fund fees collected pursuant to	124
section 317.36 of the Revised Code:	125

(A) (1) Except as otherwise provided in division (A) (2) of 126  
this section, for recording and indexing an instrument if the 127  
photocopy or any similar process is employed, a base fee of 128  
seventeen dollars for the first two pages and a housing trust 129  
fund fee of seventeen dollars, and a base fee of four dollars 130  
and a housing trust fund fee of four dollars for each subsequent 131  
page, size eight and one-half inches by fourteen inches, or 132  
fraction of a page, including the caption page, of such 133  
instrument; 134

(2) For recording and indexing an instrument described in 135  
division (D) of section 317.08 of the Revised Code if the 136  
photocopy or any similar process is employed, a fee of twenty- 137  
eight dollars for the first two pages to be deposited as 138  
specified elsewhere in this division, and a fee of eight dollars 139  
to be deposited in the same manner for each subsequent page, 140  
size eight and one-half inches by fourteen inches, or fraction 141  
of a page, including the caption page, of that instrument. If 142  
the county recorder's technology fund has been established under 143  
section 317.321 of the Revised Code, of the twenty-eight 144  
dollars, fourteen dollars shall be deposited into the county 145  
treasury to the credit of the county recorder's technology fund 146  
and fourteen dollars shall be deposited into the county treasury 147  
to the credit of the county general fund. If the county 148  
recorder's technology fund has not been established, the twenty- 149  
eight dollars shall be deposited into the county treasury to the 150  
credit of the county general fund. 151

(B) For certifying a copy or electronic record from the 152  
record previously recorded, a base fee of one dollar and a 153  
housing trust fund fee of one dollar per page, size eight and 154  
one-half inches by fourteen inches, or fraction of a page; for 155  
each certification if the recorder's seal is required, except as 156

to instruments issued by the armed forces of the United States, 157  
a base fee of fifty cents and a housing trust fund fee of fifty 158  
cents; 159

(C) For entering or indexing any marginal reference, or 160  
any reference previously accomplished as a marginal reference 161  
now accomplished through electronic means, by separate recorded 162  
instrument, a base fee of two dollars and a housing trust fund 163  
fee of two dollars for each marginal reference, or reference 164  
previously accomplished as a marginal reference now accomplished 165  
through electronic means, set out in that instrument, in 166  
addition to the fees set forth in division (A)(1) of this 167  
section; 168

(D) For indexing in the real estate mortgage records, 169  
pursuant to section 1309.519 of the Revised Code, financing 170  
statements covering crops growing or to be grown, timber to be 171  
cut, minerals or the like, including oil and gas, accounts 172  
subject to section 1309.301 of the Revised Code, or fixture 173  
filings made pursuant to section 1309.334 of the Revised Code, a 174  
base fee of two dollars and a housing trust fund fee of two 175  
dollars for each name indexed; 176

(E) For filing zoning resolutions, including text and 177  
maps, in the office of the recorder as required under sections 178  
303.11 and 519.11 of the Revised Code, a base fee of twenty-five 179  
dollars and a housing trust fund fee of twenty-five dollars, 180  
regardless of the size or length of the resolutions; 181

(F) For filing zoning amendments, including text and maps, 182  
in the office of the recorder as required under sections 303.12 183  
and 519.12 of the Revised Code, a base fee of ten dollars and a 184  
housing trust fund fee of ten dollars regardless of the size or 185  
length of the amendments; 186

(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 217  
square inch, for each square inch of the map, plat, or print 218  
filed for that recording or rerecording, with a minimum base fee 219  
of twenty dollars and a minimum housing trust fund fee of twenty 220  
dollars; for certifying a copy from the record, a base fee of 221  
two cents and a housing trust fund fee of two cents per square 222  
inch of the record, with a minimum base fee of two dollars and a 223  
minimum housing trust fund fee of two dollars. 224

The fees provided in this section shall be paid upon the 225  
presentation of the instruments for record or upon the 226  
application for any certified copy of the record, except that 227  
the payment of fees for providing copies of instruments 228  
conveying or extinguishing agricultural easements to the office 229  
of farmland preservation in the department of agriculture under 230  
division (H) of section 5301.691 of the Revised Code shall be 231  
governed by that division, and payment of fees for electronic 232  
recording may be made by electronic funds transfer, automated 233  
clearing house, or other electronic means after presentation. 234

The fees provided for in this section shall not apply to 235  
the recording, indexing, or making of a certified copy or to the 236  
filing of any instrument by a county land reutilization 237  
corporation. 238

The fees provided for in this section shall not apply to 239  
the recording, indexing, or making of a certified copy or to the 240  
filing of any instrument by a county land reutilization 241  
corporation's wholly owned subsidiary or any other electing 242  
subdivision as defined in section 5722.01 of the Revised Code if 243  
the wholly owned subsidiary or the electing subdivision is 244  
acting in capacity consistent with the purpose of the land 245  
reutilization program. 246

<b>Sec. 1337.11.</b> As used in sections 1337.11 to 1337.17 of	247
the Revised Code:	248
(A) "Adult" means a person who is eighteen years of age or	249
older.	250
(B) "Attending physician" means the physician to whom a	251
principal or the family of a principal has assigned primary	252
responsibility for the treatment or care of the principal or, if	253
the responsibility has not been assigned, the physician who has	254
accepted that responsibility.	255
(C) "Comfort care" means any of the following:	256
(1) Nutrition when administered to diminish the pain or	257
discomfort of a principal, but not to postpone death;	258
(2) Hydration when administered to diminish the pain or	259
discomfort of a principal, but not to postpone death;	260
(3) Any other medical or nursing procedure, treatment,	261
intervention, or other measure that is taken to diminish the	262
pain or discomfort of a principal, but not to postpone death.	263
(D) "Consulting physician" means a physician who, in	264
conjunction with the attending physician of a principal, makes	265
one or more determinations that are required to be made by the	266
attending physician, or to be made by the attending physician	267
and one other physician, by an applicable provision of sections	268
1337.11 to 1337.17 of the Revised Code, to a reasonable degree	269
of medical certainty and in accordance with reasonable medical	270
standards.	271
(E) "Declaration for mental health treatment" has the same	272
meaning as in section 2135.01 of the Revised Code.	273
(F) "Guardian" means a person appointed by a probate court	274

pursuant to Chapter 2111. of the Revised Code to have the care	275
and management of the person of an incompetent.	276
(G) "Health care" means any care, treatment, service, or	277
procedure to maintain, diagnose, or treat an individual's	278
physical or mental condition or physical or mental health.	279
(H) "Health care decision" means informed consent, refusal	280
to give informed consent, or withdrawal of informed consent to	281
health care.	282
(I) "Health care facility" means any of the following:	283
(1) A hospital;	284
(2) A hospice care program, pediatric respite care	285
program, or other institution that specializes in comfort care	286
of patients in a terminal condition or in a permanently	287
unconscious state;	288
(3) A nursing home;	289
(4) A home health agency;	290
(5) An intermediate care facility for individuals with	291
intellectual disabilities;	292
(6) A regulated community mental health organization.	293
(J) "Health care personnel" means physicians, nurses,	294
physician assistants, emergency medical technicians-basic,	295
emergency medical technicians-intermediate, emergency medical	296
technicians-paramedic, medical technicians, dietitians, other	297
authorized persons acting under the direction of an attending	298
physician, and administrators of health care facilities.	299
(K) "Home health agency" has the same meaning as in	300
section 3740.01 of the Revised Code.	301

(L) "Hospice care program" and "pediatric respite care program" have the same meanings as in section 3712.01 of the Revised Code.	302 303 304
(M) "Hospital" has the same meanings as in sections 3701.01, 3727.01, and 5122.01 of the Revised Code.	305 306
(N) "Hydration" means fluids that are artificially or technologically administered.	307 308
(O) "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.	309 310
(P) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.	311 312 313
(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.	314 315 316 317
(R) "Medical claim" has the same meaning as in section 2305.113 of the Revised Code.	318 319
(S) "Mental health treatment" has the same meaning as in section 2135.01 of the Revised Code.	320 321
(T) "Nursing home" has the same meaning as in section 3721.01 of the Revised Code.	322 323
(U) "Nutrition" means sustenance that is artificially or technologically administered.	324 325
(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	326 327 328

reasonable medical standards by the principal's attending 329  
physician and one other physician who has examined the 330  
principal, is characterized by both of the following: 331

(1) Irreversible unawareness of one's being and 332  
environment. 333

(2) Total loss of cerebral cortical functioning, resulting 334  
in the principal having no capacity to experience pain or 335  
suffering. 336

(W) "Person" has the same meaning as in section 1.59 of 337  
the Revised Code and additionally includes political 338  
subdivisions and governmental agencies, boards, commissions, 339  
departments, institutions, offices, and other instrumentalities. 340

(X) "Physician" means a person who is authorized under 341  
Chapter 4731. of the Revised Code to practice medicine and 342  
surgery or osteopathic medicine and surgery. 343

(Y) "Political subdivision" and "state" have the same 344  
meanings as in section 2744.01 of the Revised Code. 345

(Z) "Professional disciplinary action" means action taken 346  
by the board or other entity that regulates the professional 347  
conduct of health care personnel, including the state medical 348  
board and the board of nursing. 349

(AA) "Regulated community mental health organization" 350  
means a residential facility as defined and licensed under 351  
section 5119.34 of the Revised Code or a community mental health 352  
services provider as defined in section 5122.01 of the Revised 353  
Code. 354

(BB) "Terminal condition" means an irreversible, 355  
incurable, and untreatable condition caused by disease, illness, 356

or injury from which, to a reasonable degree of medical 357  
certainty as determined in accordance with reasonable medical 358  
standards by a principal's attending physician and one other 359  
physician who has examined the principal, both of the following 360  
apply: 361

(1) There can be no recovery. 362

(2) Death is likely to occur within a relatively short 363  
time if life-sustaining treatment is not administered. 364

(CC) "Tort action" means a civil action for damages for 365  
injury, death, or loss to person or property, other than a civil 366  
action for damages for a breach of contract or another agreement 367  
between persons. 368

(DD) "Electronic," "electronically," "electronic 369  
presence," "record," "sign," and "vulnerable adult" have the 370  
same meanings as in section 2107.01 of the Revised Code. 371

**Sec. 1337.12.** (A) (1) An adult who is of sound mind 372  
voluntarily may create a valid durable power of attorney for 373  
health care by executing a durable power of attorney, in 374  
accordance with section 1337.24 of the Revised Code, that 375  
authorizes an attorney in fact as described in division (A) (2) 376  
of this section to make health care decisions for the principal 377  
at any time that the attending physician of the principal 378  
determines that the principal has lost the capacity to make 379  
informed health care decisions for the principal. The durable 380  
power of attorney for health care may authorize the attorney in 381  
fact, commencing immediately upon the execution of the 382  
instrument or at any subsequent time and regardless of whether 383  
the principal has lost the capacity to make informed health care 384  
decisions, to obtain information concerning the principal's 385

health, including protected health information as defined in 45 386  
C.F.R. 160.103. Except as otherwise provided in divisions (B) to 387  
(F) of section 1337.13 of the Revised Code, the authorization 388  
may include the right to give informed consent, to refuse to 389  
give informed consent, or to withdraw informed consent to any 390  
health care that is being or could be provided to the principal. 391  
Additionally, to be valid, a durable power of attorney for 392  
health care shall satisfy both of the following: 393

(a) ~~If a durable power of attorney for health care is~~ 394  
in writing, it shall be signed at the end of the instrument by 395  
the principal and shall state the date of its execution. If a 396  
durable power of attorney for health care is executed 397  
electronically, the principal shall sign the record associated 398  
with, and at the end of, the instrument and shall state the date 399  
of its execution. 400

(b) It shall be witnessed in accordance with division (B) 401  
of this section or be acknowledged by the principal in 402  
accordance with division (C) of this section. 403

(c) The electronic execution of a durable power of 404  
attorney for health care under division (A) (1) (a) of this 405  
section and the witnessing or acknowledgment of the electronic 406  
execution of a durable power of attorney for health care under 407  
division (B) or (C) of this section, whichever is applicable, 408  
shall be recorded by electronic media containing both audio and 409  
visual components. The format of the recording shall be 410  
preserved and stored in a safe, secure, and appropriate manner. 411  
The recording may be cited as evidence of both of the following: 412

(i) That the principal executing the durable power of 413  
attorney for health care is an adult of sound mind; 414

(ii) If the durable power of attorney for health care is 415  
executed with witnesses, that the persons signing as witnesses 416  
verbally acknowledge that they have signed the durable power of 417  
attorney for health care and are not ineligible to be witnesses. 418

(2) Except as otherwise provided in this division, a 419  
durable power of attorney for health care may designate any 420  
competent adult as the attorney in fact. The attending physician 421  
of the principal and an administrator of any nursing home in 422  
which the principal is receiving care shall not be designated as 423  
an attorney in fact in, or act as an attorney in fact pursuant 424  
to, a durable power of attorney for health care. An employee or 425  
agent of the attending physician of the principal and an 426  
employee or agent of any health care facility in which the 427  
principal is being treated shall not be designated as an 428  
attorney in fact in, or act as an attorney in fact pursuant to, 429  
a durable power of attorney for health care, except that these 430  
limitations do not preclude a principal from designating either 431  
type of employee or agent as the principal's attorney in fact if 432  
the individual is a competent adult and related to the principal 433  
by blood, marriage, or adoption, or if the individual is a 434  
competent adult and the principal and the individual are members 435  
of the same religious order. 436

(3) A durable power of attorney for health care shall not 437  
expire, unless the principal specifies an expiration date in the 438  
instrument. However, when a durable power of attorney contains 439  
an expiration date, if the principal lacks the capacity to make 440  
informed health care decisions for the principal on the 441  
expiration date, the instrument shall continue in effect until 442  
the principal regains the capacity to make informed health care 443  
decisions for the principal. 444

(B) If witnessed for purposes of division (A) (1) (b) of 445  
this section, a durable power of attorney for health care shall 446  
be witnessed by at least two individuals who are adults and who 447  
are not ineligible to be witnesses under this division. Any 448  
person who is related to the principal by blood, marriage, or 449  
adoption, any person who is designated as the attorney in fact 450  
or alternate attorney in fact in the instrument, the attending 451  
physician of the principal, and the administrator of any nursing 452  
home in which the principal is receiving care are ineligible to 453  
be witnesses. 454

The witnessing of a durable power of attorney for health 455  
care shall involve the principal signing the applicable 456  
instrument as described in division (A) (1) (a) of this section, 457  
or acknowledging the principal's signature, at the end of the 458  
instrument in the physical presence or electronic presence, as 459  
applicable, of each witness. A witness for a durable power of 460  
attorney for health care that is electronically executed may be 461  
in either the physical or electronic presence of the principal. 462  
A witness for a durable power of attorney for health care that 463  
is executed electronically in the electronic presence of the 464  
principal shall be located within this state. A witness for a 465  
durable power of attorney for health care that is executed 466  
electronically by the principal who is a vulnerable adult shall 467  
sign the durable power of attorney for health care in the 468  
physical presence of the principal. Then, each witness shall 469  
subscribe the witness's signature after the signature of the 470  
principal and, by doing so, attest to the witness's belief that 471  
the principal appears to be of sound mind and not under or 472  
subject to duress, fraud, or undue influence. The signatures of 473  
the principal and the witnesses under this division are not 474  
required to appear on the same page of the instrument. 475

~~(C)~~(C) (1) If acknowledged for purposes of division (A) (1) 476  
(b) of this section, a durable power of attorney for health care 477  
shall be acknowledged before a notary public, ~~who~~. The notary 478  
public shall make the certification described in section 147.53 479  
of the Revised Code and also shall attest that the principal 480  
appears to be of sound mind and not under or subject to duress, 481  
fraud, or undue influence. 482

(2) If the durable power of attorney for health care is 483  
executed electronically, the notary public performing the 484  
certification and attestation described in division (C) (1) of 485  
this section shall do so through an electronic notarization, 486  
pursuant to section 147.591 of the Revised Code, or as an online 487  
notarization pursuant to sections 147.60 to 147.66 of the 488  
Revised Code. 489

(D) (1) If a principal has both a valid durable power of 490  
attorney for health care and a valid declaration, division (B) 491  
of section 2133.03 of the Revised Code applies. If a principal 492  
has both a valid durable power of attorney for health care and a 493  
DNR identification that is based upon a valid declaration and if 494  
the declaration supersedes the durable power of attorney for 495  
health care under division (B) of section 2133.03 of the Revised 496  
Code, the DNR identification supersedes the durable power of 497  
attorney for health care to the extent of any conflict between 498  
the two. A valid durable power of attorney for health care 499  
supersedes any DNR identification that is based upon a do-not- 500  
resuscitate order that a physician issued for the principal 501  
which is inconsistent with the durable power of attorney for 502  
health care or a valid decision by the attorney in fact under a 503  
durable power of attorney. 504

(2) As used in division (D) of this section: 505

(a) "Declaration" has the same meaning as in section 2133.01 of the Revised Code.	506 507
(b) "Do-not-resuscitate order" and "DNR identification" have the same meanings as in section 2133.21 of the Revised Code.	508 509 510
(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 principal's person, estate, or both is revoked by the principal's subsequent nomination of a guardian of the principal's person, estate, or both, and, except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.	511 512 513 514 515 516 517 518 519 520 521 522 523
(2) The principal may direct that bond be waived for a person nominated as guardian or successor guardian under division (E) (1) of this section.	524 525 526
(3) A durable power of attorney for health care that contains the nomination of a person to be the guardian of the person, estate, or both of the principal may be filed with the probate court for safekeeping, and the probate court shall designate the nomination as the nomination of a standby guardian.	527 528 529 530 531 532
(4) If a guardian is appointed for the principal, a durable power of attorney for health care is not terminated, and	533 534

the authority of the attorney in fact continues unless the 535  
court, pursuant to its authority under section 2111.50 of the 536  
Revised Code, limits, suspends, or terminates the power of 537  
attorney after notice to the attorney in fact and upon a finding 538  
that the limitation, suspension, or termination is in the best 539  
interest of the principal. 540

Sec. 1337.121. A durable power of attorney for health care 541  
executed electronically under section 1337.12 of the Revised 542  
Code may include some or all of the information specified in the 543  
printed form of the instrument in section 1337.17 of the Revised 544  
Code according to the intention of the principal. The record of 545  
an electronic durable power of attorney for health care may be 546  
retrieved and copied in readable text. 547

**Sec. 1337.22.** As used in sections 1337.21 to 1337.64 of 548  
the Revised Code: 549

(A) "Agent" means a person granted authority to act for a 550  
principal under a power of attorney, whether denominated an 551  
agent, attorney in fact, or otherwise. "Agent" includes an 552  
original agent, coagent, successor agent, and a person to which 553  
an agent's authority is delegated. 554

(B) "Durable," with respect to a power of attorney, means 555  
not terminated by the principal's incapacity. 556

(C) "Electronic" means relating to technology having 557  
electrical, digital, magnetic, wireless, optical, 558  
electromagnetic, or similar capabilities. 559

(D) "Good faith" means honesty in fact. 560

(E) "Incapacity" means inability of an individual to 561  
manage property or business affairs for either of the following 562  
reasons: 563

(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.	564 565 566
(2) The individual is any of the following:	567
(a) Missing;	568
(b) Detained, including incarcerated in a penal system;	569
(c) Outside the United States and unable to return.	570
(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.	571 572 573 574 575
(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.	576 577 578
(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 specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.	579 580 581 582 583 584 585 586 587 588 589 590 591

(I) "Principal" means an individual who grants authority to an agent in a power of attorney.	592 593
(J) "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.	594 595 596
(K) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.	597 598 599
(L) "Sign" means, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol or to attach to or logically associate with the record an electronic sound, symbol, or process.	600 601 602 603
(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.	604 605 606 607
(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.	608 609 610 611 612
<u>(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.</u>	613 614 615 616
<u>(P) "Electronic presence" has the same meaning as in section 2107.01 of the Revised Code.</u>	617 618
<b>Sec. 1337.25. (A) A power of attorney <del>must</del> shall be signed</b>	619

by the principal or in the principal's conscious presence or 620  
electronic presence by another individual directed by the 621  
principal to sign the principal's name on the power of attorney. 622  
A signature on a power of attorney is presumed to be genuine if 623  
the principal or the principal and other individual directed by 624  
the principal to sign the principal's name acknowledges the 625  
signature before a notary public or other individual authorized 626  
by law to take acknowledgments. 627

(B) If a power of attorney is executed electronically, the 628  
principal's signature shall only be acknowledged before a notary 629  
public performing an electronic notarization, pursuant to 630  
section 147.591 of the Revised Code, or an online notarization 631  
pursuant to sections 147.60 to 147.66 of the Revised Code. 632

**Sec. 1345.01.** As used in sections 1345.01 to 1345.13 of 633  
the Revised Code: 634

(A) "Consumer transaction" means a sale, lease, 635  
assignment, award by chance, or other transfer of an item of 636  
goods, a service, a franchise, or an intangible, to an 637  
individual for purposes that are primarily personal, family, or 638  
household, or solicitation to supply any of these things. 639  
"Consumer transaction" also means services provided by a notary 640  
public to a testator in the acknowledgement, certification, and 641  
attestation pertaining to the testator's electronic will under 642  
section 2107.03 of the Revised Code. "Consumer transaction" does 643  
not include transactions between persons, defined in sections 644  
4905.03 and 5725.01 of the Revised Code, and their customers, 645  
except for transactions involving a loan made pursuant to 646  
sections 1321.35 to 1321.48 of the Revised Code and transactions 647  
in connection with residential mortgages between loan officers, 648  
mortgage brokers, or nonbank mortgage lenders and their 649

customers; transactions involving a home construction service 650  
contract as defined in section 4722.01 of the Revised Code; 651  
transactions between certified public accountants or public 652  
accountants and their clients; transactions between attorneys, 653  
physicians, or dentists and their clients or patients; and 654  
transactions between veterinarians and their patients that 655  
pertain to medical treatment but not ancillary services. 656

(B) "Person" includes an individual, corporation, 657  
government, governmental subdivision or agency, business trust, 658  
estate, trust, partnership, association, cooperative, or other 659  
legal entity. 660

(C) "Supplier" means a seller, lessor, assignor, 661  
franchisor, or other person engaged in the business of effecting 662  
or soliciting consumer transactions, whether or not the person 663  
deals directly with the consumer. If the consumer transaction is 664  
in connection with a residential mortgage, "supplier" does not 665  
include an assignee or purchaser of the loan for value, except 666  
as otherwise provided in section 1345.091 of the Revised Code. 667  
For purposes of this division, in a consumer transaction in 668  
connection with a residential mortgage, "seller" means a loan 669  
officer, mortgage broker, or nonbank mortgage lender. 670

(D) "Consumer" means a person who engages in a consumer 671  
transaction with a supplier. 672

(E) "Knowledge" means actual awareness, but such actual 673  
awareness may be inferred where objective manifestations 674  
indicate that the individual involved acted with such awareness. 675

(F) "Natural gas service" means the sale of natural gas, 676  
exclusive of any distribution or ancillary service. 677

(G) "Public telecommunications service" means the 678

transmission by electromagnetic or other means, other than by a 679  
telephone company as defined in section 4927.01 of the Revised 680  
Code, of signs, signals, writings, images, sounds, messages, or 681  
data originating in this state regardless of actual call 682  
routing. "Public telecommunications service" excludes a system, 683  
including its construction, maintenance, or operation, for the 684  
provision of telecommunications service, or any portion of such 685  
service, by any entity for the sole and exclusive use of that 686  
entity, its parent, a subsidiary, or an affiliated entity, and 687  
not for resale, directly or indirectly; the provision of 688  
terminal equipment used to originate telecommunications service; 689  
broadcast transmission by radio, television, or satellite 690  
broadcast stations regulated by the federal government; or cable 691  
television service. 692

(H) (1) "Loan officer" means an individual who for 693  
compensation or gain, or in anticipation of compensation or 694  
gain, takes or offers to take a residential mortgage loan 695  
application; assists or offers to assist a buyer in obtaining or 696  
applying to obtain a residential mortgage loan by, among other 697  
things, advising on loan terms, including rates, fees, and other 698  
costs; offers or negotiates terms of a residential mortgage 699  
loan; or issues or offers to issue a commitment for a 700  
residential mortgage loan. "Loan officer" also includes a 701  
mortgage loan originator as defined in section 1322.01 of the 702  
Revised Code. 703

(2) "Loan officer" does not include an employee of a bank, 704  
savings bank, savings and loan association, credit union, or 705  
credit union service organization organized under the laws of 706  
this state, another state, or the United States; an employee of 707  
a subsidiary of such a bank, savings bank, savings and loan 708  
association, or credit union; or an employee of an affiliate 709

that (a) controls, is controlled by, or is under common control 710  
with, such a bank, savings bank, savings and loan association, 711  
or credit union and (b) is subject to examination, supervision, 712  
and regulation, including with respect to the affiliate's 713  
compliance with applicable consumer protection requirements, by 714  
the board of governors of the federal reserve system, the 715  
comptroller of the currency, the office of thrift supervision, 716  
the federal deposit insurance corporation, or the national 717  
credit union administration. 718

(I) "Residential mortgage" or "mortgage" means an 719  
obligation to pay a sum of money evidenced by a note and secured 720  
by a lien upon real property located within this state 721  
containing two or fewer residential units or on which two or 722  
fewer residential units are to be constructed and includes such 723  
an obligation on a residential condominium or cooperative unit. 724

(J) (1) "Mortgage broker" means any of the following: 725

(a) A person that holds that person out as being able to 726  
assist a buyer in obtaining a mortgage and charges or receives 727  
from either the buyer or lender money or other valuable 728  
consideration readily convertible into money for providing this 729  
assistance; 730

(b) A person that solicits financial and mortgage 731  
information from the public, provides that information to a 732  
mortgage broker or a person that makes residential mortgage 733  
loans, and charges or receives from either of them money or 734  
other valuable consideration readily convertible into money for 735  
providing the information; 736

(c) A person engaged in table-funding or warehouse-lending 737  
mortgage loans that are residential mortgage loans. 738

(2) "Mortgage broker" does not include a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration; or an employee of any such entity.

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

(L) For purposes of divisions (H), (J), and (K) of this section: 770  
771

(1) "Control" of another entity means ownership, control, 772  
or power to vote twenty-five per cent or more of the outstanding 773  
shares of any class of voting securities of the other entity, 774  
directly or indirectly or acting through one or more other 775  
persons. 776

(2) "Credit union service organization" means a CUSO as 777  
defined in 12 C.F.R. 702.2. 778

**Sec. 2107.01.** ~~As~~ Unless the context otherwise requires, as 779  
used in Chapters 2101. to 2131. of the Revised Code: 780

~~(A)~~ (A) (1) "Will" includes ~~codicils~~ the following: 781

(a) Codicils to wills admitted to probate, ~~lost~~; 782

(b) Lost, spoliated, or destroyed wills, ~~and instruments~~; 783

(c) Instruments declared valid under division (A) (1) of 784  
section 5817.10 of the Revised Code, ~~but "will"~~; 785

(d) Electronic wills and copies of electronic wills. 786

(2) "Will" does not include inter vivos trusts or other 787  
instruments that have not been admitted to probate. 788

(B) "Testator" means any person who makes a will. 789

(C) "Copy of an electronic will" means a copy of the 790  
record of an electronic will that is readable as text. 791

(D) "Electronic" or "electronically" means relating to 792  
technology having electrical, digital, magnetic, wireless, 793  
optical, electromagnetic, or similar capabilities. 794

(E) "Electronic presence" means the relationship of two or 795

more individuals in different locations communicating in real 796  
time to the same extent as if the individuals were physically 797  
present in the same location. 798

(F) "Electronic will" means a will that is executed 799  
electronically pursuant to section 2107.03 of the Revised Code, 800  
and includes a copy of an electronic will. 801

(G) "Original will" means the original will in writing or 802  
the copy of an electronic will that is offered for or admitted 803  
to probate. 804

(H) "Record" means information that is inscribed in a 805  
tangible medium or that is stored in an electronic medium and is 806  
retrievable in perceivable form. 807

(I) "Sign" means to do either of the following with the 808  
present intent to authenticate or adopt a record: 809

(1) Execute or adopt a tangible symbol; 810

(2) Affix to or logically associate with a record an 811  
electronic symbol or process. 812

(J) "Vulnerable adult" means a person who is eighteen 813  
years of age or older and whose ability to perform the normal 814  
activities of daily living or to provide for the person's own 815  
care or protection is impaired due to a mental, emotional, 816  
sensory, or long-term physical or developmental, disability or 817  
dysfunction, or brain damage, or the debilitating infirmities of 818  
aging. 819

(K) "Will annexed" means the original will, a copy of the 820  
original will in writing, or a copy of the electronic will, 821  
whichever is applicable. 822

**Sec. 2107.03. (A) Except oral wills governed by section** 823

2107.60 of the Revised Code, every will shall be in writing, ~~but~~ 824  
~~may be including~~ handwritten or typewritten, or be an electronic 825  
will. 826

(B)(1) Both of the following apply to a will in writing: 827

(a) The will shall be signed at the end by the testator or 828  
by some other person in the testator's conscious presence and at 829  
the testator's express direction. 830

(b) The will shall be attested and subscribed in the 831  
conscious presence of the testator, by two or more competent 832  
witnesses, who saw the testator subscribe, or heard the testator 833  
acknowledge the testator's signature. 834

(2) For purposes of division (B)(1) of this section, 835  
"conscious presence" means within the range of any of the 836  
testator's senses, excluding the sense of sight or sound that is 837  
sensed by telephonic, electronic, or other distant 838  
communication. 839

(C) All of the following apply to an electronic will: 840

(1)(a) The will shall be a record that is readable as text 841  
at the time it is signed under divisions (C)(2) and (3) of this 842  
section. 843

(b) Prior to signing the will under divisions (C)(2) and 844  
(3) of this section, the testator or the individual who will 845  
sign the will in the testator's name, and the witnesses to the 846  
will may review the contents of the will. 847

(2) The will shall be signed at the end by the testator or 848  
by another individual in the testator's name, in the testator's 849  
physical presence or electronic presence, and by the testator's 850  
direction. 851

(3) The will shall be signed in the physical presence or 852  
electronic presence of the testator by two or more competent 853  
witnesses and all of the following apply: 854

(a) If the witnesses sign the will in the electronic 855  
presence of the testator, they shall be located in this state. 856

(b) If the testator is a vulnerable adult, the witnesses 857  
shall sign the will in the physical presence of the testator. 858

(c) The witnesses shall sign the will within a reasonable 859  
time after witnessing the signing of the will under division (C) 860  
(2) of this section. 861

(d) The witnesses shall subscribe and attest their 862  
signatures to the will. 863

(4) (a) The will shall be acknowledged before a notary 864  
public who shall make the certification described in section 865  
147.53 of the Revised Code and also shall attest that the 866  
testator appears to be of sound mind and not subject to duress, 867  
fraud, or undue influence. The notary public performing the 868  
certification and attestation shall do so through an electronic 869  
notarization, pursuant to section 147.591 of the Revised Code, 870  
or as an online notarization pursuant to sections 147.60 to 871  
147.66 of the Revised Code. 872

(b) If the notary public before whom the will is 873  
acknowledged under division (C) (4) (a) of this section has 874  
reasonable cause to believe during the course of the 875  
certification proceedings that the testator does not appear to 876  
be of sound mind or is subject to duress, fraud, or undue 877  
influence, the notary public shall terminate the certification 878  
proceedings. 879

(5) Prior to the acknowledgment of the will by the notary 880

public under division (C) (4) (a) of this section, the notary 881  
public shall require the presentation of a government-issued 882  
identification credential by the testator and the witnesses, and 883  
shall perform the credential analysis and identity proofing of 884  
the testator and the witnesses, in accordance with division (E) 885  
of section 147.64 of the Revised Code and the standards adopted 886  
by the secretary of state to implement that division. 887

(D) (1) The procedures under divisions (C) (2), (3), (4), 888  
and (5) of this section shall be recorded by electronic media 889  
containing both audio and visual components. The format of the 890  
recording shall be preserved and stored in a safe, secure, and 891  
appropriate manner. 892

(2) The recording required under division (D) (1) of this 893  
section may be cited as evidence of both of the following: 894

(a) That the person executing the electronic will is the 895  
testator of the will; 896

(b) That the persons signing the electronic will under 897  
divisions (C) (2) and (3) of this section verbally acknowledge 898  
that they have signed the electronic will, that they recognize 899  
the consequences of their signing the electronic will, and that 900  
they understand the significance of the electronic will. 901

(E) The testator of the electronic will may request that a 902  
copy of the electronic will, certified as provided for in 903  
division (C) (4) (a) of this section, be sent to the testator and 904  
any other person designated by the testator in either of the 905  
following forms and manners: 906

(1) In paper form, by certified mail, return receipt 907  
requested, to the respective residence addresses; 908

(2) In portable document format or PDF, by electronic 909

mail, to the respective electronic mail addresses. 910

(F) The intent of the testator that the record described 911  
in division (C) (1) of this section is the testator's electronic 912  
will may be established by extrinsic evidence. 913

(G) Electronic wills are subject to Chapter 1345. of the 914  
Revised Code. 915

**Sec. 2107.031.** (A) On and after the effective date of this 916  
section, the laws of this state that are applicable to wills 917  
apply to electronic wills unless it is clear from the context or 918  
meaning of a particular provision of the law that it applies 919  
only to a will in writing or a will other than an electronic 920  
will. 921

(B) The principles of equity apply to an electronic will. 922

**Sec. 2107.07.** (A) A will in writing or an electronic will 923  
may be deposited by the testator, or by some person for the 924  
testator, in the office of the judge of the probate court in the 925  
county in which the testator lives, before or after the death of 926  
the testator, and if deposited after the death of the testator, 927  
with or without applying for its probate. 928

Upon the payment of the fee of twenty-five dollars to the 929  
court, the judge shall receive, keep, and give a certificate of 930  
deposit for the will. That will shall be safely kept until 931  
delivered or disposed of as provided by section 2107.08 of the 932  
Revised Code. If the will is not delivered or disposed of as 933  
provided in that section within one hundred years after the date 934  
the will was deposited, the judge may dispose of the will in any 935  
manner the judge considers feasible. The judge shall retain an 936  
electronic copy of the will prior to its disposal after one 937  
hundred years under this section. 938

(B) Every will that is not an electronic will and that is 939  
so deposited shall be enclosed in a sealed envelope that shall 940  
be indorsed with the name of the testator. The judge shall 941  
indorse on the envelope the date of delivery and the person by 942  
whom the will was delivered. The envelope may be indorsed with 943  
the name of a person to whom it is to be delivered after the 944  
death of the testator. The will shall not be opened or read 945  
until delivered to a person entitled to receive it, until the 946  
testator files a complaint in the probate court for a 947  
declaratory judgment of the validity of the will pursuant to 948  
section 5817.02 of the Revised Code, or until otherwise disposed 949  
of as provided in section 2107.08 of the Revised Code. Subject 950  
to section 2107.08 of the Revised Code, the deposited will shall 951  
not be a public record until the time that an application is 952  
filed to probate it. 953

**Sec. 2107.17.** When a witness to a will, or other witness 954  
competent to testify at a probate or declaratory judgment 955  
proceeding, resides out of its jurisdiction, or resides within 956  
it but is infirm and unable to attend court, the probate court 957  
may issue a commission with the will annexed directed to any 958  
suitable person. In lieu of the original will, the probate 959  
court, in its discretion, may annex to the commission a 960  
photocopy of the original will or a copy of ~~the that~~ will made 961  
by any similar process. The person to whom the commission is 962  
directed shall take the deposition or authorize the taking of 963  
the deposition of the witness as provided by the Rules of Civil 964  
Procedure. The testimony, certified and returned, shall be 965  
admissible and have the same effect in the proceedings as if 966  
taken in open court. 967

**Sec. 2107.24.** (A) If a document that is executed that 968  
purports to be a will in writing is not executed in compliance 969

with the requirements of division (B) of section 2107.03 of the 970  
Revised Code, that document shall be treated as if it had been 971  
executed as a will in writing in compliance with the 972  
requirements of that ~~section~~ division if a probate court, after 973  
holding a hearing, finds that the proponent of the document as a 974  
purported will in writing has established, by clear and 975  
convincing evidence, all of the following: 976

(1) The decedent prepared the document or caused the 977  
document to be prepared. 978

(2) The decedent signed the document and intended the 979  
document to constitute the decedent's will. 980

(3) The decedent signed the document under division (A) (2) 981  
of this section in the conscious presence of two or more 982  
witnesses. As used in division (A) (3) of this section, 983  
"conscious presence" means within the range of any of the 984  
witnesses' senses, excluding the sense of sight or sound that is 985  
sensed by telephonic, electronic, or other distant 986  
communication. 987

(B) ~~If the~~ If a document that is executed that purports to 988  
be an electronic will is not executed in compliance with the 989  
requirements of division (C) of section 2107.03 of the Revised 990  
Code, that document shall be treated as if it had been executed 991  
as an electronic will in compliance with the requirements of 992  
that division if a probate court, after holding a hearing, finds 993  
that the proponent of the document as a purported electronic 994  
will has established, by clear and convincing evidence, all of 995  
the following: 996

(1) The decedent prepared the document or caused the 997  
document to be prepared. 998

<u>(2) The decedent signed the document and intended the</u>	999
<u>document to constitute the decedent's will.</u>	1000
<u>(3) The requirements of division (C) of section 2107.03 of</u>	1001
<u>the Revised Code were complied with.</u>	1002
<u>(C) The executor may file an action in the probate court</u>	1003
<u>to recover court costs and attorney's fees from the attorney, if</u>	1004
<u>any, responsible for the execution of the document if either of</u>	1005
<u>the following applies:</u>	1006
<u>(1) The probate court holds a hearing pursuant to division</u>	1007
(A) of this section and finds that the proponent of the document	1008
as a purported will <u>in writing</u> has established by clear and	1009
convincing evidence the requirements under divisions (A) (1),	1010
(2), and (3) of this section, <del>the executor may file an action in</del>	1011
<del>the probate court to recover court costs and attorney's fees</del>	1012
<del>from the attorney, if any, responsible for the execution of the</del>	1013
<del>document.</del>	1014
<u>(2) The probate court holds a hearing pursuant to division</u>	1015
<u>(B) of this section and finds that the proponent of the document</u>	1016
<u>as a purported electronic will has established by clear and</u>	1017
<u>convincing evidence the requirements under divisions (B) (1),</u>	1018
<u>(2), and (3) of this section.</u>	1019
<b>Sec. 2107.27.</b> (A) When application is made to the probate	1020
court to admit to probate a will that has been lost, spoliated,	1021
or destroyed as provided in section 2107.26 of the Revised Code	1022
or a document that is treated as a will as provided in section	1023
2107.24 of the Revised Code, the party seeking to prove the will	1024
shall give a written notice by certified mail to the surviving	1025
spouse of the testator, to all persons who would be entitled to	1026
inherit from the testator under Chapter 2105. of the Revised	1027

Code if the testator had died intestate, to all legatees and 1028  
devisees that are named in the will, and to all legatees and 1029  
devisees that are named in the most recent will prior to the 1030  
lost, spoliated, or destroyed will that is known to the 1031  
applicant or in the most recent will prior to the document that 1032  
is treated as a will if the most recent will is known to the 1033  
applicant. 1034

(B) In the cases described in division (A) of this 1035  
section, the proponents and opponents of the will shall cause 1036  
the witnesses to the will, and any other witnesses that have 1037  
relevant and material knowledge about the will, to appear before 1038  
the court to testify. If any witnesses reside out of its 1039  
jurisdiction, or reside within its jurisdiction but are infirm 1040  
or unable to attend, the probate court may order their testimony 1041  
to be taken and reduced to writing by some competent person. The 1042  
testimony shall be filed in the records of the probate court 1043  
pertaining to the testator's estate. 1044

(C) If upon such proof the court finds that the 1045  
requirements of section 2107.24 or 2107.26 of the Revised Code, 1046  
whichever is applicable, have been met, the probate court shall 1047  
find and establish the contents of the will as near as can be 1048  
ascertained. The contents of the will established under section 1049  
2107.26 of the Revised Code shall be as effectual for all 1050  
purposes as if the original will had been admitted to probate 1051  
and record. The contents of the will established under section 1052  
2107.24 of the Revised Code shall be as effectual for all 1053  
purposes as if the document treated as a will had satisfied all 1054  
of the requirements of division (B) or (C) of section 2107.03 of 1055  
the Revised Code, whichever is applicable, and had been admitted 1056  
to probate and record. 1057

**Sec. 2107.29.** When the court record of a will is 1058  
destroyed, a copy of the will or a copy of the will and its 1059  
probate may be recorded by the probate court if it appears to 1060  
the court's satisfaction that the court record has been 1061  
destroyed and if it appears, by reason of a certificate signed 1062  
and sealed by the probate judge, that the copy is a true copy of 1063  
the original will or a true copy of the original will and its 1064  
probate. 1065

**Sec. 2107.30.** When the court record of a will has been 1066  
destroyed, the original will may again be admitted to probate 1067  
and record. 1068

**Sec. 2107.31.** Sections 2107.29 and 2107.30 of the Revised 1069  
Code do not affect the proceedings or extend the time for 1070  
contesting the validity of any will or for asserting rights 1071  
~~thereunder under the will~~. The court record provided for in ~~such~~ 1072  
~~those sections must shall~~ show that the original court record 1073  
was destroyed, and the time, as near as may be, when the will 1074  
was originally admitted to probate and record. 1075

**Sec. 2107.33.** (A) A will in writing shall be revoked in 1076  
any of the following manners: 1077

(1) By the testator by tearing, canceling, obliterating, 1078  
or destroying it with the intention of revoking it; 1079

(2) By some person, at the request of the testator and in 1080  
the testator's physical presence, by tearing, canceling, 1081  
obliterating, or destroying it with the intention of revoking 1082  
it; 1083

(3) By some person tearing, canceling, obliterating, or 1084  
destroying it pursuant to the testator's express written 1085  
direction; 1086

(4) By some other written will or codicil or by an 1087  
electronic will, executed as prescribed by this chapter; 1088

(5) By some other writing that is signed, attested, and 1089  
subscribed in the manner provided by this chapter. 1090

~~(B)~~ (B) (1) An electronic will shall be revoked in either of 1091  
the following manners: 1092

(a) By the testator's subsequent will that revokes all or 1093  
part of the electronic will expressly or by inconsistency; 1094

(b) By a physical act, if it is established by a 1095  
preponderance of the evidence that the testator, with the intent 1096  
of revoking all or part of the will, performed the act or 1097  
directed another individual who performed the act in the 1098  
physical presence of the testator. 1099

(2) As used in division (B) (1) (b) of this section, 1100  
"physical act" includes, but is not limited to, using a delete 1101  
or trash function on the computer pertaining to the electronic 1102  
will or typing or writing "revoked" on an electronic or printed 1103  
copy of the electronic will. 1104

(C) If after executing a will, a testator is divorced, 1105  
obtains a dissolution of marriage, has the testator's marriage 1106  
annulled, or, upon actual separation from the testator's spouse, 1107  
enters into a separation agreement pursuant to which the parties 1108  
intend to fully and finally settle their prospective property 1109  
rights in the property of the other, whether by expected 1110  
inheritance or otherwise, any disposition or appointment of 1111  
property made by the will to the former spouse or to a trust 1112  
with powers created by or available to the former spouse, any 1113  
provision in the will conferring a general or special power of 1114  
appointment on the former spouse, and any nomination in the will 1115

of the former spouse as executor, trustee, or guardian shall be 1116  
revoked unless the will expressly provides otherwise. 1117

~~(C)~~ (D) Property prevented from passing to a former spouse 1118  
or to a trust with powers created by or available to the former 1119  
spouse because of revocation by this section shall pass as if 1120  
the former spouse failed to survive the decedent, and other 1121  
provisions conferring some power or office on the former spouse 1122  
shall be interpreted as if the spouse failed to survive the 1123  
decedent. If provisions are revoked solely by this section, they 1124  
shall be deemed to be revived by the testator's remarriage with 1125  
the former spouse or upon the termination of a separation 1126  
agreement executed by them. 1127

~~(D)~~ (E) A bond, agreement, or covenant made by a testator, 1128  
for a valuable consideration, to convey property previously 1129  
devised or bequeathed in a will does not revoke the devise or 1130  
bequest. The property passes by the devise or bequest, subject 1131  
to the remedies on the bond, agreement, or covenant, for a 1132  
specific performance or otherwise, against the devisees or 1133  
legatees, that might be had by law against the heirs of the 1134  
testator, or the testator's next of kin, if the property had 1135  
descended to them. 1136

~~(E)~~ (F) A testator's revocation of a will shall be valid 1137  
only if the testator, at the time of the revocation, has the 1138  
same capacity as the law requires for the execution of a will. 1139

~~(F)~~ (G) As used in this section: 1140

(1) "Trust with powers created by or available to the 1141  
former spouse" means a trust that is revocable by the former 1142  
spouse, with respect to which the former spouse has a power of 1143  
withdrawal, or with respect to which the former spouse may take 1144

a distribution that is not subject to an ascertainable standard 1145  
but does not mean a trust in which those powers of the former 1146  
spouse are revoked by section 5815.31 of the Revised Code or 1147  
similar provisions in the law of another state. 1148

(2) "Ascertainable standard" means a standard that is 1149  
related to a trust beneficiary's health, maintenance, support, 1150  
or education. 1151

**Sec. 2107.60.** (A) An oral will, made in the last sickness, 1152  
shall be valid in respect to personal property if the oral will 1153  
is reduced to writing or transcribed electronically and 1154  
~~subscribed by two competent disinterested witnesses~~ within ten 1155  
days after the speaking of the testamentary words by two 1156  
competent disinterested witnesses who were, at the time the 1157  
testamentary words were spoken, in the physical presence or 1158  
electronic presence of the testator. The witnesses who were, at 1159  
the time the testamentary words were spoken, in the electronic 1160  
presence of the testator shall be located within this state. The 1161  
witnesses shall prove that the testator was of sound mind and 1162  
memory, not under restraint, and that the testator called upon 1163  
some person physically or electronically present at the time the 1164  
testamentary words were spoken to bear testimony to the 1165  
disposition as the testator's will. 1166

(B) No oral will shall be admitted to record unless it is 1167  
offered for probate within three months after the death of the 1168  
testator. 1169

**Sec. 2107.63.** A testator may by will devise, bequeath, or 1170  
appoint real or personal property or any interest in real or 1171  
personal property to a trustee of a trust that is evidenced by a 1172  
written or electronic instrument signed by the testator or any 1173  
other settlor either before or on the same date of the execution 1174

of the will of the testator, that is identified in the will, and 1175  
that has been signed, or is signed at any time after the 1176  
execution of the testator's will, by the trustee or trustees 1177  
identified in the will or their successors or by any other 1178  
person lawfully serving, by court appointment or otherwise, as a 1179  
trustee. 1180

The property or interest so devised, bequeathed, or 1181  
appointed to the trustee shall become a part of the trust 1182  
estate, shall be subject to the jurisdiction of the court having 1183  
jurisdiction of the trust, and shall be administered in 1184  
accordance with the terms and provisions of the instrument 1185  
creating the trust, including, unless the will specifically 1186  
provides otherwise, any amendments or modifications of the trust 1187  
made in writing or electronically before, concurrently with, or 1188  
after the making of the will and prior to the death of the 1189  
testator. The termination of the trust, or its entire revocation 1190  
prior to the testator's death, shall invalidate the devise, 1191  
bequest, or appointment to the trustee. 1192

This section shall not affect any of the rights accorded 1193  
to a surviving spouse under section 2106.01 of the Revised Code. 1194  
This section applies, and shall be construed as applying, to the 1195  
wills of decedents who die on or after the effective date of 1196  
this amendment, regardless of the date of the execution of their 1197  
wills. 1198

**Sec. 2129.05.** Authenticated copies of wills of persons ~~not~~ 1199  
~~domiciled in this state,~~ executed and proved according to the 1200  
laws of any state or territory of the United States, relative to 1201  
property in this state, may be admitted to record in the probate 1202  
court of a county where a part of that property is situated. The 1203  
authenticated copies, so recorded, shall be as valid as wills 1204

made in this state. 1205

When such a will, or authenticated copy, is admitted to 1206  
record, a copy of the will or of the authenticated copy, with 1207  
the copy of the order to record it annexed to that copy, 1208  
certified by the probate judge under the seal of the probate 1209  
court, may be filed and recorded in the office of the probate 1210  
judge of any other county where a part of the property is 1211  
situated, and it shall be as effectual as the authenticated copy 1212  
of the will would be if approved and admitted to record by the 1213  
court. 1214

**Sec. 2133.01.** Unless the context otherwise requires, as 1215  
used in sections 2133.01 to 2133.15 of the Revised Code: 1216

(A) "Adult" means an individual who is eighteen years of 1217  
age or older. 1218

(B) "Attending physician" means the physician to whom a 1219  
declarant or other patient, or the family of a declarant or 1220  
other patient, has assigned primary responsibility for the 1221  
treatment or care of the declarant or other patient, or, if the 1222  
responsibility has not been assigned, the physician who has 1223  
accepted that responsibility. 1224

(C) "Comfort care" means any of the following: 1225

(1) Nutrition when administered to diminish the pain or 1226  
discomfort of a declarant or other patient, but not to postpone 1227  
the declarant's or other patient's death; 1228

(2) Hydration when administered to diminish the pain or 1229  
discomfort of a declarant or other patient, but not to postpone 1230  
the declarant's or other patient's death; 1231

(3) Any other medical or nursing procedure, treatment, 1232

intervention, or other measure that is taken to diminish the 1233  
pain or discomfort of a declarant or other patient, but not to 1234  
postpone the declarant's or other patient's death. 1235

(D) "Consulting physician" means a physician who, in 1236  
conjunction with the attending physician of a declarant or other 1237  
patient, makes one or more determinations that are required to 1238  
be made by the attending physician, or to be made by the 1239  
attending physician and one other physician, by an applicable 1240  
provision of this chapter, to a reasonable degree of medical 1241  
certainty and in accordance with reasonable medical standards. 1242

(E) "Declarant" means any adult who has executed a 1243  
declaration in accordance with section 2133.02 of the Revised 1244  
Code. 1245

(F) "Declaration" means a written or an electronic 1246  
document executed in accordance with section 2133.02 of the 1247  
Revised Code. 1248

(G) "Durable power of attorney for health care" means a 1249  
document created pursuant to sections 1337.11 to 1337.17 of the 1250  
Revised Code. 1251

(H) "Guardian" means a person appointed by a probate court 1252  
pursuant to Chapter 2111. of the Revised Code to have the care 1253  
and management of the person of an incompetent. 1254

(I) "Health care facility" means any of the following: 1255

(1) A hospital; 1256

(2) A hospice care program, pediatric respite care 1257  
program, or other institution that specializes in comfort care 1258  
of patients in a terminal condition or in a permanently 1259  
unconscious state; 1260

(3) A nursing home or residential care facility, as defined in section 3721.01 of the Revised Code;	1261 1262
(4) A home health agency and any residential facility where a person is receiving care under the direction of a home health agency;	1263 1264 1265
(5) An intermediate care facility for individuals with intellectual disabilities.	1266 1267
(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.	1268 1269 1270 1271 1272 1273
(K) "Home health agency" has the same meaning as in section 3740.01 of the Revised Code.	1274 1275
(L) "Hospice care program" and "pediatric respite care program" have the same meanings as in section 3712.01 of the Revised Code.	1276 1277 1278
(M) "Hospital" has the same meanings as in sections 3701.01, 3727.01, and 5122.01 of the Revised Code.	1279 1280
(N) "Hydration" means fluids that are artificially or technologically administered.	1281 1282
(O) "Incompetent" has the same meaning as in section 2111.01 of the Revised Code.	1283 1284
(P) "Intermediate care facility for the individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.	1285 1286 1287

(Q) "Life-sustaining treatment" means any medical 1288  
procedure, treatment, intervention, or other measure that, when 1289  
administered to a qualified patient or other patient, will serve 1290  
principally to prolong the process of dying. 1291

(R) "Nurse" means a person who is licensed to practice 1292  
nursing as a registered nurse or to practice practical nursing 1293  
as a licensed practical nurse pursuant to Chapter 4723. of the 1294  
Revised Code. 1295

(S) "Nursing home" has the same meaning as in section 1296  
3721.01 of the Revised Code. 1297

(T) "Nutrition" means sustenance that is artificially or 1298  
technologically administered. 1299

(U) "Permanently unconscious state" means a state of 1300  
permanent unconsciousness in a declarant or other patient that, 1301  
to a reasonable degree of medical certainty as determined in 1302  
accordance with reasonable medical standards by the declarant's 1303  
or other patient's attending physician and one other physician 1304  
who has examined the declarant or other patient, is 1305  
characterized by both of the following: 1306

(1) Irreversible unawareness of one's being and 1307  
environment. 1308

(2) Total loss of cerebral cortical functioning, resulting 1309  
in the declarant or other patient having no capacity to 1310  
experience pain or suffering. 1311

(V) "Person" has the same meaning as in section 1.59 of 1312  
the Revised Code and additionally includes political 1313  
subdivisions and governmental agencies, boards, commissions, 1314  
departments, institutions, offices, and other instrumentalities. 1315

(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 1344  
an electronic copy of the record of a declaration executed 1345  
electronically. 1346

(DD) "Electronic," "electronically," "electronic 1347  
presence," "record," "sign," and "vulnerable adult" have the 1348  
same meanings as in section 2107.01 of the Revised Code. 1349

**Sec. 2133.02.** (A) (1) An adult who is of sound mind 1350  
voluntarily may execute at any time a declaration governing the 1351  
use or continuation, or the withholding or withdrawal, of life- 1352  
sustaining treatment. ~~The~~ If the declaration is in writing, it 1353  
shall be signed at the end by the declarant or by another 1354  
individual at the direction of the declarant, and shall state 1355  
the date of its execution, and either. If the declaration is 1356  
executed electronically, the declarant or another individual at 1357  
the direction of the declarant shall sign the record associated 1358  
with, and at the end of, the declaration, and shall state the 1359  
date of its execution. The declaration shall be witnessed as 1360  
described in division (B) (1) of this section or be acknowledged 1361  
by the declarant in accordance with division (B) (2) of this 1362  
section. The declaration may include a designation by the 1363  
declarant of one or more persons who are to be notified by the 1364  
declarant's attending physician at any time that life-sustaining 1365  
treatment would be withheld or withdrawn pursuant to the 1366  
declaration. The declaration may include a specific 1367  
authorization for the use or continuation or the withholding or 1368  
withdrawal of CPR, but the failure to include a specific 1369  
authorization for the withholding or withdrawal of CPR does not 1370  
preclude the withholding or withdrawal of CPR in accordance with 1371  
sections 2133.01 to 2133.15 or sections 2133.21 to 2133.26 of 1372  
the Revised Code. 1373

(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 1405  
a printed form of a declaration; 1406

(ii) Placing the declarant's initials or ~~signature~~ signing 1407  
underneath or adjacent to the statement, check, or other mark 1408  
described in division (A) (3) (a) (i) of this section. 1409

(b) Division (A) (3) (a) of this section does not apply to 1410  
the extent that a declaration authorizes the withholding or 1411  
withdrawal of life-sustaining treatment when a declarant is in a 1412  
terminal condition. The provisions of division (E) of section 1413  
2133.12 of the Revised Code pertaining to comfort care shall 1414  
apply to a declarant in a terminal condition. 1415

(B) (1) If witnessed for purposes of division (A) of this 1416  
section, a declaration shall be witnessed by two individuals as 1417  
described in this division in whose physical presence, if the 1418  
declaration is in writing, or physical or electronic presence, 1419  
if the declaration is executed electronically, the declarant, or 1420  
another individual at the direction of the declarant, signed the 1421  
declaration. The witnesses to a declaration that is executed 1422  
electronically in the electronic presence of the declarant or 1423  
another individual at the direction of the declarant shall be 1424  
located within this state. The witnesses to a declaration that 1425  
is executed electronically by a declarant who is a vulnerable 1426  
adult or by another individual at the direction of a declarant 1427  
who is a vulnerable adult shall sign the declaration in the 1428  
physical presence of the declarant. The witnesses to a 1429  
declaration shall be adults who are not related to the declarant 1430  
by blood, marriage, or adoption, who are not the attending 1431  
physician of the declarant, and who are not the administrator of 1432  
any nursing home in which the declarant is receiving care. Each 1433  
witness shall subscribe the witness' signature after the 1434

signature of the declarant or other individual at the direction 1435  
of the declarant and, by doing so, attest to the witness' belief 1436  
that the declarant appears to be of sound mind and not under or 1437  
subject to duress, fraud, or undue influence. The signatures of 1438  
the declarant or other individual at the direction of the 1439  
declarant under division (A) of this section and of the 1440  
witnesses under this division are not required to appear on the 1441  
same page of the declaration. 1442

~~(2)~~(2)(a) If acknowledged for purposes of division (A) of 1443  
this section, a declaration shall be acknowledged before a 1444  
notary public, who shall make the certification described in 1445  
section 147.53 of the Revised Code and also shall attest that 1446  
the declarant appears to be of sound mind and not under or 1447  
subject to duress, fraud, or undue influence. 1448

(b) If a declaration is executed electronically, a notary 1449  
public performing the certification and attestation described in 1450  
division (B)(2)(a) of this section shall do so through an 1451  
electronic notarization, pursuant to section 147.591 of the 1452  
Revised Code, or as an online notarization pursuant to sections 1453  
147.60 to 147.66 of the Revised Code. 1454

(C) An attending physician, or other health care personnel 1455  
acting under the direction of an attending physician, who is 1456  
furnished a copy of a declaration shall make it a part of the 1457  
declarant's medical record and, when section 2133.05 of the 1458  
Revised Code is applicable, also shall comply with that section. 1459

(D) (1) Subject to division (D) (2) of this section, an 1460  
attending physician of a declarant or a health care facility in 1461  
which a declarant is confined may refuse to comply or allow 1462  
compliance with the declarant's declaration on the basis of a 1463  
matter of conscience or on another basis. An employee or agent 1464

of an attending physician of a declarant or of a health care 1465  
facility in which a declarant is confined may refuse to comply 1466  
with the declarant's declaration on the basis of a matter of 1467  
conscience. 1468

(2) If an attending physician of a declarant or a health 1469  
care facility in which a declarant is confined is not willing or 1470  
not able to comply or allow compliance with the declarant's 1471  
declaration, the physician or facility promptly shall so advise 1472  
the declarant and comply with the provisions of section 2133.10 1473  
of the Revised Code, or, if the declaration has become operative 1474  
as described in division (A) of section 2133.03 of the Revised 1475  
Code, shall comply with the provisions of section 2133.10 of the 1476  
Revised Code. 1477

(E) As used in this section, "CPR" has the same meaning as 1478  
in section 2133.21 of the Revised Code. 1479

**Sec. 5302.22.** (A) ~~As~~ Unless the context otherwise 1480  
requires, as used in sections 5302.22, 5302.222, 5302.23, and 1481  
5302.24 of the Revised Code: 1482

(1) "Affidavit of confirmation" means an affidavit 1483  
executed under division (A) of section 5302.222 of the Revised 1484  
Code. 1485

(2) "Survivorship tenancy" means an ownership of real 1486  
property or any interest in real property by two or more persons 1487  
that is created by executing a deed pursuant to section 5302.17 1488  
of the Revised Code. 1489

(3) "Survivorship tenant" means one of the owners of real 1490  
property or any interest in real property in a survivorship 1491  
tenancy. 1492

(4) "Tenants by the entireties" mean only those persons 1493

who are vested as tenants in an estate by the entireties with 1494  
survivorship pursuant to any deed recorded between February 9, 1495  
1972, and April 3, 1985, under section 5302.17 of the Revised 1496  
Code as it existed during that period of time. Nothing in 1497  
sections 5302.22, 5302.222, 5302.23, and 5302.24 of the Revised 1498  
Code authorizes the creation of a tenancy by the entireties or 1499  
recognizes a tenancy by the entireties created outside that 1500  
period of time. 1501

(5) "Transfer on death designation affidavit" means an 1502  
affidavit executed under this section. 1503

(6) "Transfer on death beneficiary or beneficiaries" means 1504  
the beneficiary or beneficiaries designated in a transfer on 1505  
death designation affidavit. 1506

(7) "Electronic" and "record" have the same meanings as in 1507  
section 2107.01 of the Revised Code. 1508

(B) Any individual who, under the Revised Code or the 1509  
common law of this state, owns real property or any interest in 1510  
real property as a sole owner, as a tenant in common, or as a 1511  
survivorship tenant, or together with the individual's spouse 1512  
owns an indivisible interest in real property as tenants by the 1513  
entireties, may designate the entire interest, or any specified 1514  
part that is less than the entire interest, in that real 1515  
property as transferable on death to a designated beneficiary or 1516  
beneficiaries by executing, together with the individual's 1517  
spouse, if any, a transfer on death designation affidavit as 1518  
provided in this section. 1519

A transfer on death designation affidavit may be executed 1520  
in writing or in an electronic manner. If executed in an 1521  
electronic manner, a certified copy or a copy of the affidavit 1522

that is readable as text shall be considered to be a certified 1523  
copy or a copy of the record of the affidavit. A copy of that 1524  
affidavit shall be offered for recording with the county 1525  
recorder as provided in this section. 1526

If the affidavit is executed by an individual together 1527  
with the individual's spouse, if any, the dower rights of the 1528  
spouse are subordinate to the vesting of title to the interest 1529  
in the real property in the transfer on death beneficiary or 1530  
beneficiaries designated under this section. The affidavit shall 1531  
be recorded in the office of the county recorder in the county 1532  
in which the real property is located, and, when so recorded, 1533  
the affidavit or a certified copy of the affidavit shall be 1534  
evidence of the transfer on death beneficiary or beneficiaries 1535  
so designated in the affidavit insofar as the affidavit affects 1536  
title to the real property. 1537

(C) (1) If an individual who owns real property or an 1538  
interest in real property as a sole owner or as a tenant in 1539  
common executes a transfer on death designation affidavit, upon 1540  
the death of that individual, title to the real property or 1541  
interest in the real property specified in the affidavit vests 1542  
in the transfer on death beneficiary or beneficiaries designated 1543  
in the affidavit. 1544

(2) If an individual who owns real property or an interest 1545  
in real property as a survivorship tenant executes a transfer on 1546  
death designation affidavit, upon the death of that individual 1547  
or of one but not all of the surviving survivorship tenants, 1548  
title to the real property or interest in the real property 1549  
specified in the affidavit vests in the surviving survivorship 1550  
tenant or tenants. Upon the death of the last surviving 1551  
survivorship tenant, title to the real property or interest in 1552

the real property vests in the transfer on death beneficiary or 1553  
beneficiaries designated in the affidavit, subject to division 1554  
(B) (7) of section 5302.23 of the Revised Code. 1555

(3) If an individual who together with the individual's 1556  
spouse owns an indivisible interest in real property as tenants 1557  
by the entirety executes a transfer on death designation 1558  
affidavit, upon the death of that individual, title to the real 1559  
property or interest in the real property vests in the remaining 1560  
tenant by the entirety. Upon the death of the remaining tenant 1561  
by the entirety, title to the real property or interest in the 1562  
real property vests in the transfer on death beneficiary or 1563  
beneficiaries designated in the affidavit, subject to division 1564  
(B) (7) of section 5302.23 of the Revised Code. 1565

(D) A transfer on death designation affidavit shall be 1566  
verified before any person authorized to administer oaths and 1567  
shall include all of the following: 1568

(1) A description of the real property the title to which 1569  
is affected by the affidavit and a reference to an instrument of 1570  
record containing that description; 1571

(2) If less than the entire interest in the real property 1572  
is to be transferred on death under the affidavit, a statement 1573  
of the specific interest or part of the interest in the real 1574  
property that is to be so transferred; 1575

(3) A statement by the individual executing the affidavit 1576  
that the individual is the person appearing on the record of the 1577  
real property as the owner of the real property or interest in 1578  
the real property at the time of the recording of the affidavit 1579  
and the marital status of that owner. If the owner is married, 1580  
the affidavit shall include a statement by the owner's spouse 1581

stating that the spouse's dower rights are subordinate to the 1582  
vesting of title to the real property or interest in the real 1583  
property in the transfer on death beneficiary or beneficiaries 1584  
designated in the affidavit. 1585

(4) A statement designating one or more persons, 1586  
identified by name, as transfer on death beneficiary or 1587  
beneficiaries. 1588

(E) The county recorder of the county in which a transfer 1589  
on death designation affidavit is offered for recording shall 1590  
receive the affidavit and cause it to be recorded in the same 1591  
manner as deeds are recorded. The county recorder shall collect 1592  
a fee for recording the affidavit in the same amount as the fee 1593  
for recording deeds. The county recorder shall index the 1594  
affidavit in the name of the owner of record of the real 1595  
property or interest in the real property who executed the 1596  
affidavit. 1597

(F) A transfer on death designation affidavit need not be 1598  
supported by consideration and need not be delivered to the 1599  
transfer on death beneficiary or beneficiaries designated in the 1600  
affidavit to be effective. However, in order to be effective, 1601  
that affidavit shall be recorded with the county recorder as 1602  
described in this section prior to the death of the individual 1603  
who executed the affidavit. 1604

(G) Subject to division (C) of this section, upon the 1605  
death of any individual who owns real property or an interest in 1606  
real property that is subject to a transfer on death beneficiary 1607  
designation made under a transfer on death designation affidavit 1608  
as provided in this section, that real property or interest in 1609  
real property of the deceased owner shall be transferred only to 1610  
the transfer on death beneficiary or beneficiaries who are 1611

identified in the affidavit by name and who survive the deceased 1612  
owner or that are in existence on the date of death of the 1613  
deceased owner. 1614

For purposes of this division, if a natural or legal 1615  
person designated by name in the affidavit as a transfer on 1616  
death beneficiary or as a contingent transfer on death 1617  
beneficiary as provided in division (B) (2) of section 5302.23 of 1618  
the Revised Code solely in that person's capacity as a trustee 1619  
of a trust has died, has resigned, or otherwise has been 1620  
replaced by a successor trustee of the trust on the date of 1621  
death of the deceased owner, the successor trustee of the trust 1622  
shall be considered the transfer on death beneficiary or 1623  
contingent transfer on death beneficiary in existence on the 1624  
date of death of the deceased owner in full compliance with this 1625  
division, notwithstanding that the successor trustee is not 1626  
named as a transfer on death beneficiary or contingent transfer 1627  
on death beneficiary in the affidavit. 1628

(H) Any person who knowingly makes any false statement in 1629  
a transfer on death designation affidavit is guilty of 1630  
falsification under division (A) (6) of section 2921.13 of the 1631  
Revised Code. 1632

**Sec. 5817.01.** As used in this chapter: 1633

(A) (1) "Beneficiary under a trust" means either of the 1634  
following: 1635

(a) Any person that has a present or future beneficial 1636  
interest in a trust, whether vested or contingent; 1637

(b) Any person that, in a capacity other than that of 1638  
trustee, holds a power of appointment over trust property, but 1639  
does not include the class of permitted appointees among whom 1640

the power holder may appoint. 1641

(2) "Beneficiary under a trust" includes a charitable 1642  
organization that is expressly designated in the terms of the 1643  
trust to receive distributions, but does not include any 1644  
charitable organization that is not expressly designated in the 1645  
terms of the trust to receive distributions, but to whom the 1646  
trustee may in its discretion make distributions. 1647

(B) (1) "Beneficiary under a will" means either of the 1648  
following: 1649

(a) Any person designated in a will to receive a 1650  
testamentary disposition of real or personal property; 1651

(b) Any person that, in a capacity other than that of 1652  
executor, holds a power of appointment over estate assets, but 1653  
does not include the class of permitted appointees among whom 1654  
the power holder may appoint. 1655

(2) "Beneficiary under a will" includes a charitable 1656  
organization that is expressly designated in the terms of the 1657  
will to receive testamentary distributions, but does not include 1658  
any charitable organization that is not expressly designated in 1659  
the terms of the will to receive distributions, but to whom the 1660  
executor may in its discretion make distributions. 1661

(C) "Court" means the probate court of the county in which 1662  
the complaint under section 5817.02 or 5817.03 of the Revised 1663  
Code is filed or the general division of the court of common 1664  
pleas to which the probate court transfers the proceeding under 1665  
division (A) of section 5817.04 of the Revised Code. 1666

(D) "Related trust" means a trust for which both of the 1667  
following apply: 1668

(1) The testator is the settlor of the trust.	1669
(2) The trust is named as a beneficiary in the will in accordance with section 2107.63 of the Revised Code.	1670 1671
(E) "Related will" means a will for which both of the following apply:	1672 1673
(1) The testator is the settlor of a trust.	1674
(2) The will names the trust as a beneficiary in accordance with section 2107.63 of the Revised Code.	1675 1676
(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:	1677 1678 1679 1680
(1) The settlor resides in, or is domiciled in, this state.	1681 1682
(2) The trust's principal place of administration is in this state.	1683 1684
<u>(G) "Will" includes an electronic will.</u>	1685
<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>	1686 1687 1688
<b>Sec. 5817.05.</b> (A) A complaint under section 5817.02 of the Revised Code shall name as party defendants all of the following, as applicable:	1689 1690 1691
(1) The testator's spouse;	1692
(2) The testator's children;	1693
(3) The testator's heirs who would take property pursuant	1694

to section 2105.06 of the Revised Code had the testator died 1695  
intestate at the time the complaint is filed; 1696

(4) The testator's beneficiaries under the will; 1697

(5) Any beneficiary under the testator's most recent prior 1698  
will. 1699

(B) A complaint under section 5817.02 of the Revised Code 1700  
may name as a party defendant any other person that the testator 1701  
believes may have a pecuniary interest in the determination of 1702  
the validity of the testator's will. 1703

(C) A complaint under section 5817.02 of the Revised Code 1704  
may contain all or any of the following: 1705

(1) A statement that a copy of the written or electronic 1706  
will has been filed with the court; 1707

(2) A statement that the will is in writing or is an 1708  
electronic will; 1709

(3) A statement that the will, if in writing, was signed 1710  
by the testator, or was signed in the testator's name by another 1711  
person in the testator's conscious presence and at the 1712  
testator's express direction; or a statement that the will, if 1713  
an electronic will, was signed at the end by the testator or by 1714  
another individual in the testator's name, in the testator's 1715  
physical presence or electronic presence, and at the testator's 1716  
express direction; 1717

(4) A statement that the will, if in writing, was signed 1718  
in the conscious presence of the testator by two or more 1719  
competent individuals, each of whom either witnessed the 1720  
testator sign the will, or heard the testator acknowledge 1721  
signing the will; or a statement that the will, if an electronic 1722

will, was signed in the physical presence or electronic presence 1723  
of the testator by two or more competent individuals and that 1724  
all of the applicable requirements specified in divisions (C) (3) 1725  
(a), (b), (c), and (d) of section 2107.03 of the Revised Code 1726  
were complied with; 1727

(5) A statement that the will was executed with the 1728  
testator's testamentary intent; 1729

(6) A statement that the testator had testamentary 1730  
capacity; 1731

(7) A statement that the testator executed the will free 1732  
from undue influence, not under restraint or duress, and in the 1733  
exercise of the testator's free will; 1734

(8) A statement that the execution of the will was not the 1735  
result of fraud or mistake; 1736

(9) The names and addresses of the testator and all of the 1737  
defendants and, if any of the defendants are minors, their ages; 1738

(10) A statement that the will has not been revoked or 1739  
modified; 1740

(11) A statement that the testator is familiar with the 1741  
contents of the will. 1742

**Section 2.** That existing sections 147.051, 147.591, 1743  
317.32, 1337.11, 1337.12, 1337.22, 1337.25, 1345.01, 2107.01, 1744  
2107.03, 2107.07, 2107.17, 2107.24, 2107.27, 2107.29, 2107.30, 1745  
2107.31, 2107.33, 2107.60, 2107.63, 2129.05, 2133.01, 2133.02, 1746  
5302.22, 5817.01, and 5817.05 of the Revised Code are hereby 1747  
repealed. 1748

**Section 3.** The General Assembly respectfully requests that 1749  
the Supreme Court amend its rules and procedures to further 1750

implement the purposes of this act in relation to electronically	1751
executed wills, declarations or living wills, and powers of	1752
attorney.	1753