

As Reported by the House Civil Justice Committee

132nd General Assembly

Regular Session

2017-2018

Sub. H. B. No. 595

Representatives Cupp, Rezabek

Cosponsors: Representatives Seitz, Riedel, Manning

A BILL

| | |
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| To amend sections 313.14, 2101.24, 2105.19, | 1 |
| 2107.01, 2107.05, 2107.07, 2107.08, 2107.09, | 2 |
| 2107.10, 2107.11, 2107.12, 2107.16, 2107.18, | 3 |
| 2107.20, 2107.22, 2107.33, 2107.52, 2107.71, | 4 |
| 2137.01, 2721.03, 5802.03, 5806.04, and 5808.19, | 5 |
| to enact sections 2111.182, 2111.52, 2113.032, | 6 |
| 5802.05, 5817.01, 5817.02, 5817.03, 5817.04, | 7 |
| 5817.05, 5817.06, 5817.07, 5817.08, 5817.09, | 8 |
| 5817.10, 5817.11, 5817.12, 5817.13, and 5817.14, | 9 |
| and to repeal sections 2107.081, 2107.082, | 10 |
| 2107.083, 2107.084, and 2107.085 of the Revised | 11 |
| Code relative to procedures for a testator to | 12 |
| file a declaratory judgment action to declare | 13 |
| the validity of a will prior to death and the | 14 |
| settlor of a trust to file such an action to | 15 |
| declare its validity, exceptions to antilapse | 16 |
| provisions in class gifts in wills and trusts, | 17 |
| incorporation of a written trust into a will, | 18 |
| trusts for a minor, arbitration of trust | 19 |
| disputes, the creation of county and multicounty | 20 |
| guardianship services boards, the coroner's | 21 |
| disposition of person dying of suspicious or | 22 |
| unusual death, an application for the release of | 23 |

medical records and medical billing records, and 24
adding involuntary manslaughter not resulting 25
from a felony vehicular homicide offense to the 26
list of offenses excluding an individual from 27
inheriting from a decedent. 28

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

Section 1. That sections 313.14, 2101.24, 2105.19, 29
2107.01, 2107.05, 2107.07, 2107.08, 2107.09, 2107.10, 2107.11, 30
2107.12, 2107.16, 2107.18, 2107.20, 2107.22, 2107.33, 2107.52, 31
2107.71, 2137.01, 2721.03, 5802.03, 5806.04, and 5808.19 be 32
amended and sections 2111.182, 2111.52, 2113.032, 5802.05, 33
5817.01, 5817.02, 5817.03, 5817.04, 5817.05, 5817.06, 5817.07, 34
5817.08, 5817.09, 5817.10, 5817.11, 5817.12, 5817.13, and 35
5817.14 of the Revised Code be enacted to read as follows: 36

Sec. 313.14. (A) (1) The coroner shall make a reasonable 37
effort to notify any known relatives of a deceased person who 38
meets death in the manner described by section 313.12 of the 39
Revised Code by letter or otherwise. ~~The next of kin, other~~ 40
~~relatives, or friends of the deceased person, in the order~~ 41
~~named, shall have prior right as to disposition of the body of~~ 42
~~such deceased person. If relatives of the deceased are unknown,~~ 43
~~the coroner shall make a diligent effort to ascertain the next~~ 44
~~of kin, other relatives, or friends of the deceased person~~ 45
coroner shall also make a reasonable effort to determine the 46
identity of the person who has been assigned the rights of 47
disposition for the deceased person under sections 2108.70 to 48
2108.90 of the Revised Code and shall notify that person. After 49
the coroner has completed the performance of the coroner's legal 50

duties with respect to the body of the deceased person, the 51
coroner shall return the body to that person. 52

(2) The coroner shall take charge and possession of all 53
moneys, clothing, and other valuable personal effects of ~~such-~~ 54
~~the~~ deceased person, found in connection with or pertaining to 55
~~such-the~~ body, and shall store ~~such-the~~ possessions in the 56
county coroner's office or such other suitable place as is 57
provided for ~~such-that~~ storage by the board of county 58
commissioners. If the coroner considers it advisable, the 59
coroner may, after taking adequate precautions for the security 60
of ~~such-those~~ possessions, store the possessions where the 61
coroner finds them until other storage space becomes available. 62
The person who has been assigned the rights of disposition for 63
the deceased person under sections 2108.70 to 2108.90 of the 64
Revised Code may request the coroner to give those possessions 65
to that person. 66

(B) In cases in which the cost of the burial is paid by 67
the county, after using such of the clothing as is necessary in 68
the burial of the body, the coroner shall sell at public auction 69
the valuable personal effects of ~~such-the~~ deceased persons, 70
found in connection with or pertaining to the unclaimed dead 71
body, except firearms, which shall be disposed of as provided in 72
division (C) of this section. The coroner shall make a verified 73
inventory of ~~such-the~~ effects and they shall be sold within 74
eighteen months after burial, or after delivery of ~~such-the~~ body 75
in accordance with section 1713.34 of the Revised Code. All 76
moneys derived from ~~such-the~~ sale shall be deposited in the 77
county treasury. A notice of ~~such-the~~ sale shall be given in one 78
newspaper of general circulation in the county, for five days in 79
succession, and the sale shall be held immediately thereafter. 80
The cost of such advertisement and notices shall be paid by the 81

board upon the submission of a verified statement ~~therefor~~ for
that cost, certified to the coroner.

(C) If a firearm is included in the personal effects of a
deceased person who meets death in the manner described by
section 313.12 of the Revised Code, the coroner shall deliver
the firearm to the chief of police of the municipal corporation
within which the body is found, or to the sheriff of the county
if the body is not found within a municipal corporation. Upon
delivery of the firearm to the chief of police or the sheriff,
the chief of police or sheriff shall give the coroner a receipt
for the firearm that states the date of delivery and an accurate
description of the firearm. The firearm shall be used for
evidentiary purposes only.

The person who has been assigned the rights of disposition
for the deceased ~~person's next of kin or other relative person~~
under sections 2108.70 to 2108.90 of the Revised Code may
request that the firearm be given to ~~the next of kin or other~~
~~relative~~ that person once the firearm is no longer needed for
evidentiary purposes. The chief of police or the sheriff shall
give the firearm to ~~the next of kin or other relative~~ that
person who requested the firearm only if the ~~next of kin or~~
~~other relative person~~ may lawfully possess the firearm under
applicable law of this state or the United States. The chief of
police or the sheriff shall keep a record identifying the ~~next~~
~~of kin or other relative~~ person to whom the firearm is given,
the date the firearm was given to ~~the next of kin or other~~
~~relative~~ that person, and an accurate description of the
firearm.

If a ~~next of kin or other relative~~ the person who has been
assigned the rights of disposition for the deceased person under

sections 2108.70 to 2108.90 of the Revised Code does not request 112
the firearm or is not entitled to possess the firearm, the 113
firearm shall be used at the discretion of the chief of police 114
or the sheriff. 115

(D) This section does not invalidate section 1713.34 of 116
the Revised Code. 117

Sec. 2101.24. (A) (1) Except as otherwise provided by law, 118
the probate court has exclusive jurisdiction: 119

(a) To take the proof of wills and to admit to record 120
authenticated copies of wills executed, proved, and allowed in 121
the courts of any other state, territory, or country. If the 122
probate judge is unavoidably absent, any judge of the court of 123
common pleas may take proof of wills and approve bonds to be 124
given, but the record of these acts shall be preserved in the 125
usual records of the probate court. 126

(b) To grant and revoke letters testamentary and of 127
administration; 128

(c) To direct and control the conduct and settle the 129
accounts of executors and administrators and order the 130
distribution of estates; 131

(d) To appoint the attorney general to serve as the 132
administrator of an estate pursuant to section 2113.06 of the 133
Revised Code; 134

(e) To appoint and remove guardians, conservators, and 135
testamentary trustees, direct and control their conduct, and 136
settle their accounts; 137

(f) To grant marriage licenses; 138

(g) To make inquests respecting persons who are so 139

mentally impaired as a result of a mental or physical illness or 140
disability, as a result of intellectual disability, or as a 141
result of chronic substance abuse, that they are unable to 142
manage their property and affairs effectively, subject to 143
guardianship; 144

(h) To qualify assignees, appoint and qualify trustees and 145
commissioners of insolvents, control their conduct, and settle 146
their accounts; 147

(i) To authorize the sale of lands, equitable estates, or 148
interests in lands or equitable estates, and the assignments of 149
inchoate dower in such cases of sale, on petition by executors, 150
administrators, and guardians; 151

(j) To authorize the completion of real property contracts 152
on petition of executors and administrators; 153

(k) To construe wills; 154

(l) To render declaratory judgments, including, but not 155
limited to, those rendered pursuant to ~~section 2107.084~~ Chapter 156
5817. of the Revised Code; 157

(m) To direct and control the conduct of fiduciaries and 158
settle their accounts; 159

(n) To authorize the sale or lease of any estate created 160
by will if the estate is held in trust, on petition by the 161
trustee; 162

(o) To terminate a testamentary trust in any case in which 163
a court of equity may do so; 164

(p) To hear and determine actions to contest the validity 165
of wills; 166

(q) To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption;

(r) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;

(s) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;

(t) To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;

(u) To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337.16 of the Revised Code;

(v) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;

(w) To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with certain patients allegedly in a terminal condition or in a permanently unconscious state pursuant to division (E) of section 2133.08 of the Revised Code, in accordance with that division;

(x) To hear and determine applications that pertain to the withholding or withdrawal of nutrition and hydration from certain patients allegedly in a permanently unconscious state pursuant to section 2133.09 of the Revised Code, in accordance with that section;

(y) To hear and determine applications of attending

physicians in accordance with division (B) of section 2133.15 of 195
the Revised Code; 196

(z) To hear and determine actions relative to the use or 197
continuation of comfort care in connection with certain 198
principals under durable powers of attorney for health care, 199
declarants under declarations, or patients in accordance with 200
division (E) of either section 1337.16 or 2133.12 of the Revised 201
Code; 202

(aa) To hear and determine applications for an order 203
relieving an estate from administration under section 2113.03 of 204
the Revised Code; 205

(bb) To hear and determine applications for an order 206
granting a summary release from administration under section 207
2113.031 of the Revised Code; 208

(cc) To hear and determine actions relating to the 209
exercise of the right of disposition, in accordance with section 210
2108.90 of the Revised Code; 211

(dd) To hear and determine actions relating to the 212
disinterment and reinterment of human remains under section 213
517.23 of the Revised Code; 214

(ee) To hear and determine petitions for an order for 215
treatment of a person suffering from alcohol and other drug 216
abuse filed under section 5119.93 of the Revised Code and to 217
order treatment of that nature in accordance with, and take 218
other actions afforded to the court under, sections 5119.90 to 219
5119.98 of the Revised Code. 220

(2) In addition to the exclusive jurisdiction conferred 221
upon the probate court by division (A) (1) of this section, the 222
probate court shall have exclusive jurisdiction over a 223

particular subject matter if both of the following apply: 224

(a) Another section of the Revised Code expressly confers 225
jurisdiction over that subject matter upon the probate court. 226

(b) No section of the Revised Code expressly confers 227
jurisdiction over that subject matter upon any other court or 228
agency. 229

(B) (1) The probate court has concurrent jurisdiction with, 230
and the same powers at law and in equity as, the general 231
division of the court of common pleas to issue writs and orders, 232
and to hear and determine actions as follows: 233

(a) If jurisdiction relative to a particular subject 234
matter is stated to be concurrent in a section of the Revised 235
Code or has been construed by judicial decision to be 236
concurrent, any action that involves that subject matter; 237

(b) Any action that involves an inter vivos trust; a trust 238
created pursuant to section 5815.28 of the Revised Code; a 239
charitable trust or foundation; subject to divisions (A) (1) (t) 240
and (y) of this section, a power of attorney, including, but not 241
limited to, a durable power of attorney; the medical treatment 242
of a competent adult; or a writ of habeas corpus; 243

(c) Subject to section 2101.31 of the Revised Code, any 244
action with respect to a probate estate, guardianship, trust, or 245
post-death dispute that involves any of the following: 246

(i) A designation or removal of a beneficiary of a life 247
insurance policy, annuity contract, retirement plan, brokerage 248
account, security account, bank account, real property, or 249
tangible personal property; 250

(ii) A designation or removal of a payable-on-death 251

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| beneficiary or transfer-on-death beneficiary; | 252 |
| (iii) A change in the title to any asset involving a joint | 253 |
| and survivorship interest; | 254 |
| (iv) An alleged gift; | 255 |
| (v) The passing of assets upon the death of an individual | 256 |
| otherwise than by will, intestate succession, or trust. | 257 |
| (2) Any action that involves a concurrent jurisdiction | 258 |
| subject matter and that is before the probate court may be | 259 |
| transferred by the probate court, on its order, to the general | 260 |
| division of the court of common pleas. | 261 |
| <u>(3) Notwithstanding that the probate court has exclusive</u> | 262 |
| <u>jurisdiction to render declaratory judgments under Chapter 5817.</u> | 263 |
| <u>of the Revised Code, the probate court may transfer the</u> | 264 |
| <u>proceeding to the general division of the court of common pleas</u> | 265 |
| <u>pursuant to division (A) of section 5817.04 of the Revised Code.</u> | 266 |
| (C) The probate court has plenary power at law and in | 267 |
| equity to dispose fully of any matter that is properly before | 268 |
| the court, unless the power is expressly otherwise limited or | 269 |
| denied by a section of the Revised Code. | 270 |
| (D) The jurisdiction acquired by a probate court over a | 271 |
| matter or proceeding is exclusive of that of any other probate | 272 |
| court, except when otherwise provided by law. | 273 |
| Sec. 2105.19. (A) Except as provided in division (C) of | 274 |
| this section, no person who is convicted of, pleads guilty to, | 275 |
| or is found not guilty by reason of insanity of a violation of | 276 |
| or complicity in the violation of section 2903.01, 2903.02, or | 277 |
| 2903.03 of the Revised Code <u>or a violation of division (A) of</u> | 278 |
| <u>section 2903.04 of the Revised Code that is not a proximate</u> | 279 |

result of a felony violation of section 2903.06 of the Revised 280
Code, or of an existing or former law of any other state, the 281
United States, or a foreign nation, substantially equivalent to 282
a violation of or complicity in the violation of any of these 283
sections, no person who is indicted for a violation of or 284
complicity in the violation of any of those sections or laws and 285
subsequently is adjudicated incompetent to stand trial on that 286
charge, and no juvenile who is found to be a delinquent child by 287
reason of committing an act that, if committed by an adult, 288
would be a violation of or complicity in the violation of any of 289
those sections or laws, shall in any way benefit by the death. 290
All property of the decedent, and all money, insurance proceeds, 291
or other property or benefits payable or distributable in 292
respect of the decedent's death, shall pass or be paid or 293
distributed as if the person who caused the death of the 294
decedent had predeceased the decedent. 295

(B) A person prohibited by division (A) of this section 296
from benefiting by the death of another is a constructive 297
trustee for the benefit of those entitled to any property or 298
benefit that the person has obtained, or over which the person 299
has exerted control, because of the decedent's death. A person 300
who purchases any such property or benefit from the constructive 301
trustee, for value, in good faith, and without notice of the 302
constructive trustee's disability under division (A) of this 303
section, acquires good title, but the constructive trustee is 304
accountable to the beneficiaries for the proceeds or value of 305
the property or benefit. 306

(C) A person who is prohibited from benefiting from a 307
death pursuant to division (A) of this section either because 308
the person was adjudicated incompetent to stand trial or was 309
found not guilty by reason of insanity, or the person's guardian 310

appointed pursuant to Chapter 2111. of the Revised Code or other 311
legal representative, may file a complaint to declare the 312
person's right to benefit from the death in the probate court in 313
which the decedent's estate is being administered or that 314
released the estate from administration. The complaint shall be 315
filed no later than sixty days after the person is adjudicated 316
incompetent to stand trial or found not guilty by reason of 317
insanity. The court shall notify each person who is a devisee or 318
legatee under the decedent's will, or if there is no will, each 319
person who is an heir of the decedent pursuant to section 320
2105.06 of the Revised Code that a complaint of that nature has 321
been filed within ten days after the filing of the complaint. 322
The person who files the complaint, and each person who is 323
required to be notified of the filing of the complaint under 324
this division, is entitled to a jury trial in the action. To 325
assert the right, the person desiring a jury trial shall demand 326
a jury in the manner prescribed in the Civil Rules. 327

A person who files a complaint pursuant to this division 328
shall be restored to the person's right to benefit from the 329
death unless the court determines, by a preponderance of the 330
evidence, that the person would have been convicted of a 331
violation of, or complicity in the violation of, section 332
2903.01, 2903.02, or 2903.03 of the Revised Code or a violation 333
of division (A) of section 2903.04 of the Revised Code that is 334
not a proximate result of a felony violation of section 2903.06 335
of the Revised Code, or of a law of another state, the United 336
States, or a foreign nation that is substantially similar to any 337
of those sections, if the person had been brought to trial in 338
the case in which the person was adjudicated incompetent or if 339
the person were not insane at the time of the commission of the 340
offense. 341

Sec. 2107.01. As used in Chapters 2101. to 2131. of the 342
Revised Code: 343

(A) "Will" includes codicils to wills admitted to probate, 344
lost, spoliated, or destroyed wills, and instruments ~~admitted to~~ 345
~~probate~~ declared valid under division (A)(1) of section 2107.081- 346
5817.10 of the Revised Code, but "will" does not include inter 347
vivos trusts or other instruments that have not been admitted to 348
probate. 349

(B) "Testator" means any person who makes a will. 350

Sec. 2107.05. (A) An existing document, book, record, or 351
memorandum may be incorporated in a will by reference, if 352
referred to as being in existence at the time the will is 353
executed. That document, book, record, or memorandum shall be 354
deposited in the probate court when the will is probated or 355
within thirty days after the will is probated, unless the court 356
grants an extension of time for good cause shown. A copy may be 357
substituted for the original document, book, record, or 358
memorandum if the copy is certified to be correct by a person 359
authorized to take acknowledgments. 360

(B) Notwithstanding division (A) of this section, if a 361
will incorporates a trust instrument only in the event that a 362
bequest or devise to the trust is ineffective, the trust 363
instrument shall be deposited in the probate court not later 364
than thirty days after the final determination that such bequest 365
or devise is ineffective. 366

(C) If a testator intends to incorporate a trust 367
instrument in a will, the testator's will shall manifest that 368
intent through the use of the term "incorporate," "made a part 369
of," or similar language. In the absence of such clear and 370

express intent, a trust instrument shall not be incorporated 371
into or made a part of the will. Any language in the testator's 372
will that only identifies a trust shall not be sufficient to 373
manifest an intent to incorporate that trust instrument by 374
reference in the will. 375

(D) The amendment of this section by adding divisions (B) 376
and (C) applies, and shall be construed as applying, to the 377
wills of testators who die on or after the effective date of 378
this amendment. 379

Sec. 2107.07. A will may be deposited by the testator, or 380
by some person for the testator, in the office of the judge of 381
the probate court in the county in which the testator lives, 382
before or after the death of the testator, and if deposited 383
after the death of the testator, with or without applying for 384
its probate. Upon the payment of the fee of twenty-five dollars 385
to the court, the judge shall receive, keep, and give a 386
certificate of deposit for the will. That will shall be safely 387
kept until delivered or disposed of as provided by section 388
2107.08 of the Revised Code. If the will is not delivered or 389
disposed of as provided in that section within one hundred years 390
after the date the will was deposited, the judge may dispose of 391
the will in any manner the judge considers feasible. The judge 392
shall retain an electronic copy of the will prior to its 393
disposal after one hundred years under this section. 394

Every will that is so deposited shall be enclosed in a 395
sealed envelope that shall be indorsed with the name of the 396
testator. The judge shall indorse on the envelope the date of 397
delivery and the person by whom the will was delivered. The 398
envelope may be indorsed with the name of a person to whom it is 399
to be delivered after the death of the testator. The will shall 400

not be opened or read until delivered to a person entitled to 401
receive it, until the testator files a complaint in the probate 402
court for a declaratory judgment of the validity of the will 403
pursuant to section ~~2107.081~~ 5817.02 of the Revised Code, or 404
until otherwise disposed of as provided in section 2107.08 of 405
the Revised Code. Subject to section 2107.08 of the Revised 406
Code, the deposited will shall not be a public record until the 407
time that an application is filed to probate it. 408

Sec. 2107.08. During the lifetime of a testator, the 409
testator's will, deposited according to section 2107.07 of the 410
Revised Code, shall be delivered only to the testator, to some 411
person authorized by the testator by a written order, or to a 412
probate court for a determination of its validity when the 413
testator so requests. After the testator's death, the will shall 414
be delivered to the person named in the indorsement on the 415
envelope of the will, if there is a person named who demands it. 416
If the testator has filed a complaint in the probate court for a 417
judgment declaring the validity of the will pursuant to section 418
~~2107.081~~ 5817.02 of the Revised Code and ~~the court has rendered~~ 419
~~the a judgment~~ is rendered pursuant to division (A)(1) of 420
section 5817.10 of the Revised Code declaring the will valid, 421
~~the probate judge with possession of the court who rendered the~~ 422
judgment shall deliver the will to the proper probate court as 423
determined under section 2107.11 of the Revised Code, upon the 424
death of the testator, for probate. 425

If no person named in the indorsement demands the will and 426
it is not one that has been declared valid pursuant to division 427
(A)(1) of section ~~2107.084~~ 5817.10 of the Revised Code, it shall 428
be publicly opened in the probate court within one month after 429
notice of the testator's death and retained in the office of the 430
probate judge until offered for probate. If the jurisdiction 431

belongs to any other probate court, the will shall be delivered 432
to the person entitled to its custody, to be presented for 433
probate in the other court. If the probate judge who opens the 434
will has jurisdiction of it, the probate judge immediately shall 435
give notice of its existence to the executor named in the will 436
or, if any, to the persons holding a power to nominate an 437
executor as described in section 2107.65 of the Revised Code, 438
or, if it is the case, to the executor named in the will and to 439
the persons holding a power to nominate a coexecutor as 440
described in that section. If no executor is named and no 441
persons hold a power to nominate an executor as described in 442
that section, the probate judge shall give notice to other 443
persons immediately interested. 444

Sec. 2107.09. (A) If real property is devised or personal 445
property is bequeathed by a will, the executor or any interested 446
person may cause the will to be brought before the probate court 447
of the county in which the decedent was domiciled. By judicial 448
order, the court may compel the person having the custody or 449
control of the will to produce it before the court for the 450
purpose of being proved. 451

If the person having the custody or control of the will 452
intentionally conceals or withholds it or neglects or refuses to 453
produce it for probate without reasonable cause, the person may 454
be committed to the county jail and kept in custody until the 455
will is produced. The person also shall be liable to any party 456
aggrieved for the damages sustained by that neglect or refusal. 457

Any judicial order issued pursuant to this section may be 458
issued into any county in the state and shall be served and 459
returned by the officer to whom it is delivered. 460

The officer to whom the process is delivered shall be 461

liable for neglect in its service or return in the same manner 462
as sheriffs are liable for neglect in not serving or returning a 463
capias issued upon an indictment. 464

(B) In the case of a will that has been declared valid 465
pursuant to division (A)(1) of section 2107.084-5817.10 of the 466
Revised Code, the probate judge of the probate court or of the 467
general division of the court of common pleas to which the 468
proceeding was transferred pursuant to division (A) of section 469
5817.04 of the Revised Code who made the declaration ~~or who has~~ 470
~~possession of the will~~ shall cause ~~the will and~~ the judgment 471
declaring ~~validity~~ the will valid to be brought before the 472
proper probate court as determined by section 2107.11 of the 473
Revised Code at a time after the death of the testator. If the 474
death of the testator is brought to the attention of the ~~probate~~ 475
applicable judge by an interested party, the judge shall cause 476
the judgment declaring the will valid to be brought before the 477
proper probate court at that time. 478

Sec. 2107.10. (A) No property or right, testate or 479
intestate, shall pass to a beneficiary named in a will who knows 480
of the existence of the will for one year after the death of the 481
testator and has the power to control it and, without reasonable 482
cause, intentionally conceals or withholds it or neglects or 483
refuses within that one year to cause it to be offered for or 484
admitted to probate. The property devised or bequeathed to that 485
beneficiary shall pass as if the beneficiary had predeceased the 486
testator. 487

(B) No property or right, testate or intestate, passes to 488
a beneficiary named in a will when the will was declared valid 489
~~and filed with a probate judge by a court pursuant to division~~ 490
(A)(1) of section 2107.084-5817.10 of the Revised Code, the 491

declaration ~~and filing~~ took place in a county different from the 492
county in which the will of the testator would be probated under 493
section 2107.11 of the Revised Code, and the named beneficiary 494
knew of the declaration ~~and filing~~ and of the death of the 495
testator and did not notify the ~~probate judge with whom of the~~ 496
court in which the will was filed declared valid. This division 497
does not preclude a named beneficiary from acquiring property or 498
rights from the estate of the testator for failing to notify a 499
~~probate judge of that court~~ if the named beneficiary reasonably 500
believes that the judge has previously been notified of the 501
testator's death. 502

Sec. 2107.11. (A) A will shall be admitted to probate: 503

(1) In the county in this state in which the testator was 504
domiciled at the time of the testator's death; 505

(2) In any county of this state where any real property or 506
personal property of the testator is located if, at the time of 507
the testator's death, the testator was not domiciled in this 508
state, and provided that the will has not previously been 509
admitted to probate in this state or in the state of the 510
testator's domicile; 511

(3) In the county of this state in which a ~~probate court~~ 512
rendered a judgment declaring that the will was valid ~~and in~~ 513
~~which the will was filed with the probate court pursuant to~~ 514
division (A) (1) of section 5817.10 of the Revised Code. 515

(B) For the purpose of division (A) (2) of this section, 516
intangible personal property is located in the place where the 517
instrument evidencing a debt, obligation, stock, or chose in 518
action is located or if there is no instrument of that nature 519
where the debtor resides. 520

Sec. 2107.12. When a will is presented for probate or for 521
a declaratory judgment of its validity pursuant to ~~section~~ 522
~~2107.081~~ Chapter 5817. of the Revised Code, persons interested 523
in its outcome may contest the jurisdiction of the court to 524
entertain the application. Preceding a hearing of a contest as 525
to jurisdiction, all parties named in such will as legatees, 526
devisees, trustees, or executors shall have notice ~~thereof~~ of 527
the hearing in such manner as may be ordered by the court. 528

When ~~such~~ that contest is made, the parties may call 529
witnesses and shall be heard upon the question involved. The 530
decision of the court as to its jurisdiction may be reviewed on 531
error. 532

Sec. 2107.16. (A) When offered for probate, a will may be 533
admitted to probate and allowed upon such proof as would be 534
satisfactory, and in like manner as if an absent or incompetent 535
witness were dead: 536

(1) If it appears to the probate court that a witness to 537
such will has gone to parts unknown; 538

(2) If the witness was competent at the time of attesting 539
its execution and afterward became incompetent; 540

(3) If testimony of a witness cannot be obtained within a 541
reasonable time. 542

(B) When offered for probate, a will shall be admitted to 543
probate and allowed when there has been a prior judgment by a 544
~~probate~~ court declaring that the will is valid pursuant to 545
division (A) (1) of section 2107.084-5817.10 of the Revised Code, 546
if the will ~~has not been removed from the possession of the~~ 547
~~probate judge and has not been modified or revoked under~~ 548
~~division (C) or (D) of section 2107.084 of the Revised Code.~~ 549

Sec. 2107.18. The probate court shall admit a will to 550
probate if it appears from the face of the will, or if the 551
probate court requires, in its discretion, the testimony of the 552
witnesses to a will and it appears from that testimony, that the 553
execution of the will complies with the law in force at the time 554
of the execution of the will in the jurisdiction in which it was 555
executed, with the law in force in this state at the time of the 556
death of the testator, or with the law in force in the 557
jurisdiction in which the testator was domiciled at the time of 558
the testator's death. 559

The probate court shall admit a will to probate when there 560
has been a prior judgment by a ~~probate~~ court declaring that the 561
will is valid, rendered pursuant to division (A) (1) of section 562
~~2107.084-5817.10~~ of the Revised Code, if the will ~~has not been~~ 563
~~removed from the possession of the probate judge and has not~~ 564
~~been modified or revoked under division (C) or (D) of section~~ 565
~~2107.084 of the Revised Code.~~ 566

Sec. 2107.20. When admitted to probate every will shall be 567
filed in the office of the probate judge and recorded, together 568
with any testimony or prior judgment of a ~~probate~~ court 569
declaring the will valid pursuant to division (A) (1) of section 570
5817.10 of the Revised Code, by the judge or the clerk of the 571
probate court in a book to be kept for that purpose. 572

A copy of the recorded will, with a copy of the order of 573
probate annexed to the copy of the recorded will, certified by 574
the judge under seal of the judge's court, shall be as effectual 575
in all cases as the original would be, if established by proof. 576

Sec. 2107.22. (A) (1) (a) When a will has been admitted to 577
probate by a probate court and another will of later date is 578
presented to the same court for probate, notice of the will of 579

later date shall be given to those persons required to be 580
notified under section 2107.19 of the Revised Code, and to the 581
fiduciaries and beneficiaries under the will of earlier date. 582
The probate court may admit the will of later date to probate 583
the same as if no earlier will had been so admitted if it 584
appears from the face of the will of later date, or if an 585
interested person makes a demand as described in division (A) (1) 586
(b) of this section and it appears from the testimony of the 587
witnesses to the will given in accordance with that division, 588
that the execution of the will complies with the law in force at 589
the time of the execution of the will in the jurisdiction in 590
which it was executed, with the law in force in this state at 591
the time of the death of the testator, or with the law in force 592
in the jurisdiction in which the testator was domiciled at the 593
time of the testator's death. 594

(b) Upon the demand of a person interested in having a 595
will of later date admitted to probate, the probate court shall 596
cause at least two of the witnesses to the will of later date, 597
and any other witnesses that the interested person desires to 598
have appear, to come before the probate court and provide 599
testimony. If the interested person so requests, the probate 600
court shall issue a subpoena to compel the presence of any such 601
witness before the probate court to provide testimony. 602

Witnesses before the probate court pursuant to this 603
division shall be examined, and may be cross-examined, in open 604
court, and their testimony shall be reduced to writing and then 605
filed in the records of the probate court pertaining to the 606
testator's estate. 607

(2) When an authenticated copy of a will has been admitted 608
to record by a probate court, and an authenticated copy of a 609

will of later date that was executed and proved as required by 610
law, is presented to the same court for record, it shall be 611
admitted to record in the same manner as if no authenticated 612
copy of the will of earlier date had been so admitted. 613

(3) If a probate court admits a will of later date to 614
probate, or an authenticated copy of a will of later date to 615
record, its order shall operate as a revocation of the order 616
admitting the will of earlier date to probate, or shall operate 617
as a revocation of the order admitting the authenticated copy of 618
the will of earlier date to record. The probate court shall 619
enter on the record of the earlier will a marginal note "later 620
will admitted to probate ..." (giving the date admitted). 621

(B) When a will that has been declared valid pursuant to 622
division (A) (1) of section 2107.084-5817.10 of the Revised Code 623
has been admitted to probate by a probate court, and an 624
authenticated copy of another will of later date that was 625
executed and proved as required by law is presented to the same 626
court for record, the will of later date shall be admitted the 627
same as if no other will had been admitted and the proceedings 628
shall continue as provided in this section. 629

Sec. 2107.33. (A) A will shall be revoked in the following 630
manners: 631

(1) By the testator by tearing, canceling, obliterating, 632
or destroying it with the intention of revoking it; 633

(2) By some person, at the request of the testator and in 634
the testator's presence, by tearing, canceling, obliterating, or 635
destroying it with the intention of revoking it; 636

(3) By some person tearing, canceling, obliterating, or 637
destroying it pursuant to the testator's express written 638

direction; 639

(4) By some other written will or codicil, executed as 640
prescribed by this chapter; 641

(5) By some other writing that is signed, attested, and 642
subscribed in the manner provided by this chapter. 643

~~(B) A will that has been declared valid and is in the 644
possession of a probate judge also may be revoked according to 645
division (C) of section 2107.084 of the Revised Code. 646~~

~~(C) If a testator removes a will that has been declared 647
valid and is in the possession of a probate judge pursuant to 648
section 2107.084 of the Revised Code from the possession of the 649
judge, the declaration of validity that was rendered no longer 650
has any effect. 651~~

~~(D)~~ If after executing a will, a testator is divorced, 652
obtains a dissolution of marriage, has the testator's marriage 653
annulled, or, upon actual separation from the testator's spouse, 654
enters into a separation agreement pursuant to which the parties 655
intend to fully and finally settle their prospective property 656
rights in the property of the other, whether by expected 657
inheritance or otherwise, any disposition or appointment of 658
property made by the will to the former spouse or to a trust 659
with powers created by or available to the former spouse, any 660
provision in the will conferring a general or special power of 661
appointment on the former spouse, and any nomination in the will 662
of the former spouse as executor, trustee, or guardian shall be 663
revoked unless the will expressly provides otherwise. 664

~~(E)~~ (C) Property prevented from passing to a former spouse 665
or to a trust with powers created by or available to the former 666
spouse because of revocation by this section shall pass as if 667

the former spouse failed to survive the decedent, and other 668
provisions conferring some power or office on the former spouse 669
shall be interpreted as if the spouse failed to survive the 670
decedent. If provisions are revoked solely by this section, they 671
shall be deemed to be revived by the testator's remarriage with 672
the former spouse or upon the termination of a separation 673
agreement executed by them. 674

~~(F)~~ (D) A bond, agreement, or covenant made by a testator, 675
for a valuable consideration, to convey property previously 676
devised or bequeathed in a will does not revoke the devise or 677
bequest. The property passes by the devise or bequest, subject 678
to the remedies on the bond, agreement, or covenant, for a 679
specific performance or otherwise, against the devisees or 680
legatees, that might be had by law against the heirs of the 681
testator, or the testator's next of kin, if the property had 682
descended to them. 683

~~(G)~~ (E) A testator's revocation of a will shall be valid 684
only if the testator, at the time of the revocation, has the 685
same capacity as the law requires for the execution of a will. 686

~~(H)~~ (F) As used in this section: 687

(1) "Trust with powers created by or available to the 688
former spouse" means a trust that is revocable by the former 689
spouse, with respect to which the former spouse has a power of 690
withdrawal, or with respect to which the former spouse may take 691
a distribution that is not subject to an ascertainable standard 692
but does not mean a trust in which those powers of the former 693
spouse are revoked by section 5815.31 of the Revised Code or 694
similar provisions in the law of another state. 695

(2) "Ascertainable standard" means a standard that is 696

related to a trust beneficiary's health, maintenance, support, 697
or education. 698

Sec. 2107.52. (A) As used in this section: 699

(1) "Class member" means an individual who fails to 700
survive the testator but who would have taken under a devise in 701
the form of a class gift had the individual survived the 702
testator. 703

(2) "Descendant of a grandparent" means an individual who 704
qualifies as a descendant of a grandparent of the testator or of 705
the donor of a power of appointment under either of the 706
following: 707

(a) The rules of construction applicable to a class gift 708
created in the testator's will if the devise or the exercise of 709
the power of appointment is in the form of a class gift; 710

(b) The rules for intestate succession if the devise or 711
the exercise of the power of appointment is not in the form of a 712
class gift. 713

(3) "Devise" means an alternative devise, a devise in the 714
form of a class gift, or an exercise of a power of appointment. 715

(4) "Devisee" means any of the following: 716

(a) A class member if the devise is in the form of a class 717
gift; 718

(b) An individual or class member who was deceased at the 719
time the testator executed the testator's will or an individual 720
or class member who was then living but who failed to survive 721
the testator; 722

(c) An appointee under a power of appointment exercised by 723

the testator's will. 724

(5) "Per stirpes" means that the shares of the descendants 725
of a devisee who does not survive the testator are determined in 726
the same way they would have been determined under division (A) 727
of section 2105.06 of the Revised Code if the devisee had died 728
intestate and unmarried on the date of the testator's death. 729

(6) "Stepchild" means a child of the surviving, deceased, 730
or former spouse of the testator or of the donor of a power of 731
appointment and not of the testator or donor. 732

(7) "Surviving devisee" or "surviving descendant" means a 733
devisee or descendant, whichever is applicable, who survives the 734
testator by at least one hundred twenty hours. 735

(8) "Testator" includes the donee of a power of 736
appointment if the power is exercised in the testator's will. 737

(B) (1) As used in "surviving descendants" in divisions (B) 738
(2) (a) and (b) of this section, "descendants" means the 739
descendants of a deceased devisee or class member under the 740
applicable division who would take under a class gift created in 741
the testator's will. 742

(2) Unless a contrary intent appears in the will, if a 743
devisee fails to survive the testator and is a grandparent, a 744
descendant of a grandparent, or a stepchild of either the 745
testator or the donor of a power of appointment exercised by the 746
testator's will, either of the following applies: 747

(a) If the devise is not in the form of a class gift and 748
the deceased devisee leaves surviving descendants, a substitute 749
gift is created in the devisee's surviving descendants. The 750
surviving descendants take, per stirpes, the property to which 751
the devisee would have been entitled had the devisee survived 752

the testator. 753

(b) If the devise is in the form of a class gift, other 754
than a devise to "issue," "descendants," "heirs of the body," 755
"heirs," "next of kin," "relatives," or "family," or a class 756
described by language of similar import that includes more than 757
one generation, a substitute gift is created in the surviving 758
descendants of any deceased devisee. The property to which the 759
devisees would have been entitled had all of them survived the 760
testator passes to the surviving devisees and the surviving 761
descendants of the deceased devisees. Each surviving devisee 762
takes the share to which the surviving devisee would have been 763
entitled had the deceased devisees survived the testator. Each 764
deceased devisee's surviving descendants who are substituted for 765
the deceased devisee take, per stirpes, the share to which the 766
deceased devisee would have been entitled had the deceased 767
devisee survived the testator. For purposes of division (B) (2) 768
(b) of this section, "deceased devisee" means a class member who 769
failed to survive the testator by at least one hundred twenty 770
hours and left one or more surviving descendants. 771

(C) For purposes of this section, each of the following 772
applies: 773

(1) Attaching the word "surviving" or "living" to a 774
devise, such as a gift "to my surviving (or living) children," 775
is not, in the absence of other language in the will or other 776
evidence to the contrary, a sufficient indication of an intent 777
to negate the application of division (B) of this section. 778

(2) Attaching other words of survivorship to a devise, 779
such as "to my child, if my child survives me," is, in the 780
absence of other language in the will or other evidence to the 781
contrary, a sufficient indication of an intent to negate the 782

application of division (B) of this section. 783

(3) A residuary clause is not a sufficient indication of 784
an intent to negate the application of division (B) of this 785
section unless the will specifically provides that upon lapse or 786
failure the nonresiduary devise, or nonresiduary devises in 787
general, pass under the residuary clause. 788

(4) Unless the language creating a power of appointment 789
expressly excludes the substitution of the descendants of an 790
appointee for the appointee, a surviving descendant of a 791
deceased appointee of a power of appointment may be substituted 792
for the appointee under this section, whether or not the 793
descendant is an object of the power of appointment. 794

(D) Except as provided in division (A), (B), or (C) of 795
this section, each of the following applies: 796

(1) A devise, other than a residuary devise, that fails 797
for any reason becomes a part of the residue. 798

(2) If the residue is devised to two or more persons, the 799
share of a residuary devisee that fails for any reason passes to 800
the other residuary devisee, or to other residuary devisees in 801
proportion to the interest of each in the remaining part of the 802
residue. 803

(3) If a residuary devise fails for any reason in its 804
entirety, the residue passes by intestate succession. 805

(E) This section applies only to outright devises and 806
appointments. Devises and appointments in trust, including to a 807
testamentary trust, are subject to section 5808.19 of the 808
Revised Code. 809

(F) This section applies to wills of decedents who die on 810

or after ~~the effective date of this section~~ March 22, 2012. 811

Sec. 2107.71. (A) A person interested in a will or codicil 812
admitted to probate in the probate court that has not been 813
declared valid by judgment of a ~~probate court~~ pursuant to 814
division (A) (1) of section 2107.084-5817.10 of the Revised Code 815
~~or that has been declared valid by judgment of a probate court~~ 816
~~pursuant to section 2107.084 of the Revised Code but has been~~ 817
~~removed from the possession of the probate judge,~~ may contest 818
its validity by filing a complaint in the probate court in the 819
county in which the will or codicil was admitted to probate. 820

(B) Except as otherwise provided in this division, no 821
person may contest the validity of any will or codicil as to 822
facts decided if it was submitted to a probate court by the 823
testator during the testator's lifetime and declared valid by 824
judgment of ~~the probate a court and filed with the judge of the~~ 825
~~probate court~~ pursuant to division (A) (1) of section 2107.084- 826
5817.10 of the Revised Code ~~and if the will was not removed from~~ 827
~~the possession of the probate judge.~~ A person may contest the 828
validity of that will, ~~modification,~~ or codicil as to those 829
facts if the person is one who should have been named a party 830
defendant in the action in which the will, ~~modification,~~ or 831
codicil was declared valid, pursuant to division (A) of section 832
2107.081 or 2107.084-5817.05 of the Revised Code, and if the 833
person was not named a defendant and properly served in that 834
action. Upon the filing of a complaint contesting the validity 835
of a will or codicil that is authorized by this division, the 836
court shall proceed with the action ~~in the same manner as if the~~ 837
~~will, modification, or codicil had not been previously declared~~ 838
~~valid under sections 2107.081 to 2107.085 of the Revised Code.~~ 839

(C) No person may introduce, as evidence in an action 840

authorized by this section contesting the validity of a will, 841
the fact that the testator of the will did not file a complaint 842
for a judgment declaring its validity under ~~section 2107.081~~ 843
Chapter 5817. of the Revised Code. 844

Sec. 2111.182. If a minor is entitled to money or property 845
whether by settlement or judgment for personal injury or damage 846
to tangible or intangible property, inheritance or otherwise, 847
the probate court may order that all or a portion of the amount 848
received by the minor be deposited into a trust for the benefit 849
of that beneficiary until the beneficiary reaches twenty-five 850
years of age, and order the distribution of the amount in 851
accordance with the provisions of the trust. Prior to the 852
appointment as a trustee of a trust created pursuant to this 853
section, the person to be appointed shall be approved by a 854
parent or guardian of the minor beneficiary of the trust, unless 855
otherwise ordered by the probate court. 856

Sec. 2111.52. (A) A probate court may accept funds or 857
other program assistance from, or charge fees for services 858
described in division (C) of this section rendered to, 859
individuals, corporations, agencies, or organizations, 860
including, but not limited to, a county board of alcohol, drug 861
addiction, and mental health services or a county board of 862
developmental disabilities, unless a county board of alcohol, 863
drug addiction, and mental health services or a county board of 864
developmental disabilities does not agree to the payment of 865
those fees. Any funds or fees received by the probate court 866
under this division shall be paid into the county treasury and 867
credited to a fund to be known as the county probate court 868
guardianship services fund. 869

(B) The probate courts of two or more counties may accept 870

funds or other program assistance from, or charge fees for 871
services described in division (C) of this section rendered to, 872
individuals, corporations, agencies, or organizations, 873
including, but not limited to, a county board of alcohol, drug 874
addiction, and mental health services or a county board of 875
developmental disabilities, unless a county board of alcohol, 876
drug addiction, and mental health services or a county board of 877
developmental disabilities does not agree to the payment of 878
those fees. Any funds or fees received by the probate courts of 879
two or more counties under this division shall be paid into the 880
county treasury of one or more of the counties and credited to a 881
fund to be known as the multicounty probate court guardianship 882
services fund. 883

(C) The moneys in a county or multicounty probate court 884
guardianship services fund shall be used for services to help 885
ensure the treatment of any person who is under the care of a 886
county board of alcohol, drug addiction, and mental health 887
services or a county board of developmental disabilities, or any 888
other guardianships. These services include, but are not limited 889
to, involuntary commitment proceedings and the establishment and 890
management of adult guardianships, including all associated 891
expenses, for wards who are under the care of a county board of 892
alcohol, drug addiction, and mental health services, a county 893
board of developmental disabilities, or any other guardianships. 894

(D) If a judge of a probate court determines that some of 895
the moneys in the county or multicounty probate court 896
guardianship services fund are needed for the efficient 897
operation of that probate court, the moneys may be used for the 898
acquisition of equipment, the hiring and training of staff, 899
community services programs, volunteer guardianship training 900
services, the employment of magistrates, and other related 901

services. 902

(E) The moneys in the county or multicounty probate court 903
guardianship services fund that may be used in part for the 904
establishment and management of adult guardianships under 905
division (C) of this section may be utilized to establish a 906
county or multicounty guardianship service. 907

(F) (1) A county or multicounty guardianship service under 908
division (E) of this section is established by creating a county 909
or multicounty guardianship service board. The judge of the 910
probate court shall appoint one member. The board of directors 911
of a county board of developmental disabilities shall appoint 912
one member. The board of directors of a county board of alcohol, 913
drug addiction, and mental health services shall appoint one 914
member. The term of appointment of each member is four years. 915

(2) The county or multicounty guardianship services board 916
may appoint a director of the board. The board shall determine 917
the compensation of the director based on the availability of 918
funds contained in the county or multicounty probate court 919
guardianship services fund. 920

(3) The county or multicounty guardianship services board 921
may receive appointments from one or more county probate courts 922
to serve as guardians of both the person and estate of wards. 923
The director or any designee of a county or multicounty 924
guardianship services board may act on behalf of the board in 925
relation to all guardianship matters. 926

(4) The director of a county or multicounty guardianship 927
services board may hire employees subject to available funds in 928
the county or multicounty probate court guardianship services 929
fund. 930

(5) The county or multicounty guardianship services board 931
may charge a reasonable fee for services provided to wards. A 932
probate judge shall approve any fees charged by the board under 933
division (F) (5) of this section. 934

(6) The county or multicounty guardianship services board 935
that is created under division (F) (1) of this section shall 936
promulgate all rules and regulations necessary for the efficient 937
operation of the board and the county or multicounty 938
guardianship services. 939

Sec. 2113.032. Any person who is entitled to be appointed 940
as a personal representative of a decedent may file an 941
application with the probate court in the county in which the 942
decedent resided seeking the release of the decedent's medical 943
records and medical billing records. The application shall 944
include a decedent's estate form listing the decedent's known 945
surviving spouse, children, next of kin, legatees, and devisees, 946
if any. The application may be filed prior to the filing of any 947
application for authority to administer the decedent's estate. 948
Upon the filing of the application and the payment of a filing 949
fee as determined by the court, the probate court may order that 950
release without a hearing and direct all medical providers that 951
provided medical care or treatment to the decedent to release 952
those medical records and medical billing records to the 953
applicant for the limited purpose of deciding whether or not to 954
file a wrongful death claim. The medical records and medical 955
billing records are confidential and shall not be made available 956
for public viewing. The probate court shall send copies of the 957
application and the judgment entry to anyone listed on the 958
decedent's estate form described in this section. Upon obtaining 959
the requested applicable records, the applicant shall file a 960
report with the court certifying that all requested medical 961

records and medical billing records have been received and shall 962
indicate whether an administration of the decedent's estate will 963
be filed within the applicable statute of limitations filing 964
time. 965

Sec. 2137.01. As used in this chapter: 966

(A) "Account" means an arrangement under a terms-of- 967
service agreement in which a custodian carries, maintains, 968
processes, receives, or stores a digital asset of the user or 969
provides goods or services to the user. 970

(B) "Agent" means a person granted authority to act for a 971
principal under a power of attorney, whether denominated as 972
agent, attorney in fact, or otherwise. 973

(C) "Carries" means engages in the transmission of an 974
electronic communication. 975

(D) "Catalogue of electronic communications" means 976
information that identifies each person with which a user has 977
had an electronic communication, the time and date of the 978
communication, and the electronic address of the person. 979

(E) "Content of an electronic communication" means 980
information concerning the substance or meaning of the 981
communication that meets all of the following conditions: 982

(1) It has been sent or received by a user. 983

(2) It is in electronic storage by a custodian providing 984
an electronic-communication service to the public or is carried 985
or maintained by a custodian providing a remote-computing 986
service to the public. 987

(3) It is not readily accessible to the public. 988

(F) "Court" means the probate court for all matters in 989
which the court has exclusive jurisdiction under section 2101.24 990
of the Revised Code. "Court" also includes the probate court or 991
the general division of the court of common pleas for matters in 992
which such courts have concurrent jurisdiction under section 993
2101.24 of the Revised Code. 994

(G) "Custodian" means a person that carries, maintains, 995
processes, receives, or stores a digital asset of a user. 996

(H) "Designated recipient" means a person chosen by a user 997
using an online tool to administer digital assets of the user. 998

(I) "Digital asset" means an electronic record in which an 999
individual has a right or interest. "Digital asset" does not 1000
include an underlying asset or liability unless the asset or 1001
liability is itself an electronic record. 1002

(J) "Electronic" means relating to technology having 1003
electrical, digital, magnetic, wireless, optical, 1004
electromagnetic, or similar capabilities. 1005

(K) "Electronic communication" has the same meaning as in 1006
18 U.S.C. 2510(12), as amended. 1007

(L) "Electronic-communication service" means a custodian 1008
that provides to a user the ability to send or receive an 1009
electronic communication. 1010

(M) "Fiduciary" means an original, additional, or 1011
successor agent, guardian, personal representative, or trustee. 1012

(N) (1) "Guardian" means any person, association, or 1013
corporation appointed by the probate court to have the care and 1014
management of the person, the estate, or the person and the 1015
estate of an incompetent or minor. When applicable, "guardian" 1016

includes, but is not limited to, a limited guardian, an interim 1017
guardian, a standby guardian, and an emergency guardian 1018
appointed pursuant to division (B) of section 2111.02 of the 1019
Revised Code. "Guardian" also includes both of the following: 1020

(a) An agency under contract with the department of 1021
developmental disabilities for the provision of protective 1022
service under sections 5123.55 to 5123.59 of the Revised Code 1023
when appointed by the probate court to have the care and 1024
management of the person of an incompetent; 1025

(b) A conservator appointed by the probate court in an 1026
order of conservatorship issued pursuant to section 2111.021 of 1027
the Revised Code. 1028

(2) "Guardian" does not include a guardian under sections 1029
5905.01 to 5905.19 of the Revised Code. 1030

(O) "Information" means data, text, images, videos, 1031
sounds, codes, computer programs, software, databases, or the 1032
like. 1033

(P) "Online tool" means an electronic service provided by 1034
a custodian that allows the user, in an agreement distinct from 1035
the terms-of-service agreement between the custodian and user, 1036
to provide directions for disclosure or nondisclosure of digital 1037
assets to a third person. 1038

(Q) "Person" means an individual, corporation, business 1039
trust, estate, trust, partnership, limited liability company, 1040
association, joint venture, government, governmental agency or 1041
instrumentality, public corporation, or any other legal or 1042
commercial entity. 1043

(R) "Personal representative" means an executor, 1044
administrator, special administrator, or other person acting 1045

under the authority of the probate court to perform 1046
substantially the same function under the law of this state. 1047
"Personal representative" also includes a commissioner in a 1048
release of assets from administration under section 2113.03 of 1049
the Revised Code and an applicant for summary release from 1050
administration under section 2113.031 of the Revised Code. 1051

(S) "Power of attorney" means a writing or other record 1052
that grants authority to an agent to act in the place of the 1053
principal. 1054

(T) "Principal" means an individual who grants authority 1055
to an agent in a power of attorney. 1056

(U) "Record" means information that is inscribed on a 1057
tangible medium or that is stored in an electronic or other 1058
medium and is retrievable in perceivable form. 1059

(V) "Remote-computing service" means a custodian that 1060
provides to a user computer-processing services or the storage 1061
of digital assets by means of an electronic communications 1062
system, as defined in 18 U.S.C. 2510(14), as amended. 1063

(W) "Terms-of-service agreement" means an agreement that 1064
controls the relationship between a user and a custodian. 1065

(X) "Trustee" means a fiduciary with legal title to 1066
property pursuant to an agreement or declaration that creates a 1067
beneficial interest in another. "Trustee" includes an original, 1068
additional, and successor trustee and a cotrustee. 1069

(Y) "User" means a person that has an account with a 1070
custodian. 1071

(Z) "Ward" means any person for whom a guardian is acting 1072
or for whom the probate court is acting pursuant to section 1073

2111.50 of the Revised Code. "Ward" includes a person for whom a conservator has been appointed by the probate court in an order of conservatorship issued pursuant to section 2111.021 of the Revised Code.

(AA) "Will" includes codicils to wills admitted to probate, lost, spoliated, or destroyed wills, and instruments admitted to probate under ~~section 2107.081~~ Chapter 5817. of the Revised Code. "Will" does not include inter vivos trusts or other instruments that have not been admitted to probate.

Sec. 2721.03. Subject to division (B) of section 2721.02 of the Revised Code, any person interested under a deed, will, written contract, or other writing constituting a contract or any person whose rights, status, or other legal relations are affected by a constitutional provision, statute, rule as defined in section 119.01 of the Revised Code, municipal ordinance, township resolution, contract, or franchise may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

The testator of a will may have the validity of the will determined at any time during the testator's lifetime pursuant to ~~sections 2107.081 to 2107.085~~ Chapter 5817. of the Revised Code. The settlor of a trust may have the validity of the trust determined at any time during the settlor's lifetime pursuant to Chapter 5817. of the Revised Code.

Sec. 5802.03. ~~The~~ (A) Except as otherwise provided in division (B) of this section, the probate division of the court of common pleas has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the

court of common pleas to issue writs and orders and to hear and 1104
determine any action that involves an inter vivos trust. 1105

(B) The probate division of the court of common pleas has 1106
exclusive jurisdiction to render declaratory judgments under 1107
Chapter 5817. of the Revised Code. However, the probate division 1108
of the court of common pleas may transfer a declaratory judgment 1109
proceeding under that chapter to the general division of the 1110
court of common pleas pursuant to division (A) of section 1111
5817.04 of the Revised Code. 1112

Sec. 5802.05. (A) A provision in the terms of a trust, 1113
excluding a testamentary trust, that requires the arbitration of 1114
disputes, other than disputes of the validity of all or a part 1115
of a trust instrument, between or among the beneficiaries and a 1116
fiduciary under the trust, or a combination of those persons or 1117
entities, is enforceable. 1118

(B) Unless otherwise specified in the terms of the trust, 1119
a trust provision requiring arbitration as described in division 1120
(A) of this section shall be presumed to require binding 1121
arbitration under Chapter 2711. of the Revised Code. 1122

Sec. 5806.04. (A) ~~Any~~ Subject to division (E) of this 1123
section, any of the following actions pertaining to a revocable 1124
trust that is made irrevocable by the death of the settlor of 1125
the trust shall be commenced by the earlier of the date that is 1126
two years after the date of the death of the settlor of the 1127
trust or that is six months from the date on which the trustee 1128
sends the person bringing the action a copy of the trust 1129
instrument and a notice informing the person of the trust's 1130
existence, of the trustee's name and address, and of the time 1131
allowed under this division for commencing an action: 1132

- (1) An action to contest the validity of the trust; 1133
- (2) An action to contest the validity of any amendment to 1134
the trust that was made during the lifetime of the settlor of 1135
the trust; 1136
- (3) An action to contest the revocation of the trust 1137
during the lifetime of the settlor of the trust; 1138
- (4) An action to contest the validity of any transfer made 1139
to the trust during the lifetime of the settlor of the trust. 1140
- (B) Upon the death of the settlor of a revocable trust 1141
that was made irrevocable by the death of the settlor, the 1142
trustee, without liability, may proceed to distribute the trust 1143
property in accordance with the terms of the trust unless either 1144
of the following applies: 1145
- (1) The trustee has actual knowledge of a pending action 1146
to contest the validity of the trust, any amendment to the 1147
trust, the revocation of the trust, or any transfer made to the 1148
trust during the lifetime of the settlor of the trust. 1149
- (2) The trustee receives written notification from a 1150
potential contestant of a potential action to contest the 1151
validity of the trust, any amendment to the trust, the 1152
revocation of the trust, or any transfer made to the trust 1153
during the lifetime of the settlor of the trust, and the action 1154
is actually filed within ninety days after the written 1155
notification was given to the trustee. 1156
- (C) If a distribution of trust property is made pursuant 1157
to division (B) of this section, a beneficiary of the trust 1158
shall return any distribution to the extent that it exceeds the 1159
distribution to which the beneficiary is entitled if the trust, 1160
an amendment to the trust, or a transfer made to the trust later 1161

is determined to be invalid. 1162

(D) This section applies only to revocable trusts that are 1163
made irrevocable by the death of the settlor of the trust if the 1164
grantor dies on or after July 23, 2002. 1165

(E) Except as otherwise provided in this division, no 1166
person may contest the validity of any trust as to facts decided 1167
if the trust was submitted to a probate court by the settlor 1168
during the settlor's lifetime and declared valid by the judgment 1169
of a court pursuant to division (B) (1) of section 5817.10 of the 1170
Revised Code. A person may contest the validity of that trust as 1171
to those facts if the person is one who should have been named a 1172
party defendant in the action in which the trust was declared 1173
valid, pursuant to division (A) of section 5817.06 of the 1174
Revised Code, and if the person was not named a defendant and 1175
properly served in that action. 1176

Sec. 5808.19. (A) As used in this section, unless 1177
otherwise provided in any other provision in this section: 1178

(1) "Beneficiary" means the beneficiary of a future 1179
interest and includes a class member if the future interest is 1180
in the form of a class gift. 1181

(2) "Class member" means an individual who fails to 1182
survive the distribution date by at least one hundred twenty 1183
hours but who would have taken under a future interest in the 1184
form of a class gift had the individual survived the 1185
distribution date by at least one hundred twenty hours. 1186

(3) "Descendant of a grandparent of the transferor" means 1187
an individual who would qualify as a descendant of a grandparent 1188
of the transferor under the rules of construction that would 1189
apply to a class gift under the transferor's will to the 1190

descendants of the transferor's grandparent. 1191

(4) "Distribution date," with respect to a future 1192
interest, means the time when the future interest is to take 1193
effect in possession or enjoyment. The distribution date need 1194
not occur at the beginning or end of a calendar day but may 1195
occur at a time during the course of a day. 1196

(5) "Future interest" means an alternative future interest 1197
or a future interest in the form of a class gift. 1198

(6) "Future interest under the terms of a trust" means a 1199
future interest that was created by a transfer creating a trust 1200
or a transfer to an existing trust, or by an exercise of a power 1201
of appointment to an existing trust, that directs the 1202
continuance of an existing trust, designates a beneficiary of an 1203
existing trust, or creates a trust. 1204

(7) "Per stirpes" means that the shares of the descendants 1205
of a beneficiary who does not survive the distribution date by 1206
at least one hundred twenty hours are determined in the same way 1207
they would have been determined under division (A) of section 1208
2105.06 of the Revised Code if the beneficiary had died 1209
intestate and unmarried on the distribution date. 1210

(8) "Revocable trust" means a trust that was revocable 1211
immediately before the settlor's death by the settlor alone or 1212
by the settlor with the consent of any person other than a 1213
person holding an adverse interest. A trust's characterization 1214
as revocable is not affected by the settlor's lack of capacity 1215
to exercise the power of revocation, regardless of whether an 1216
agent of the settlor under a power of attorney, or a guardian of 1217
the person or estate of the settlor, was serving. 1218

(9) "Stepchild" means a child of the surviving, deceased, 1219

or former spouse of the transferor and not of the transferor. 1220

(10) "Transferor" means any of the following: 1221

(a) The donor and donee of a power of appointment, if the 1222
future interest was in property as a result of the exercise of a 1223
power of appointment; 1224

(b) The testator, if the future interest was devised by 1225
will; 1226

(c) The settlor, if the future interest was conveyed by 1227
inter vivos trust. 1228

(B) (1) (a) As used in "surviving descendants" in divisions 1229
(B) (2) (b) (i) and (ii) of this section, "descendants" means the 1230
descendants of a deceased beneficiary or class member who would 1231
take under a class gift created in the trust. 1232

(b) As used in divisions (B) (2) (b) (i) and (ii) of this 1233
section, "surviving beneficiaries" or "surviving descendants" 1234
means beneficiaries or descendants, whichever is applicable, who 1235
survive the distribution date by at least one hundred twenty 1236
hours. 1237

(2) Unless a contrary intent appears in the instrument 1238
creating a future interest under the terms of a trust, each of 1239
the following applies: 1240

(a) A future interest under the terms of a trust is 1241
contingent on the beneficiary's surviving the distribution date 1242
by at least one hundred twenty hours. 1243

(b) If a beneficiary of a future interest under the terms 1244
of a trust does not survive the distribution date by at least 1245
one hundred twenty hours and if the beneficiary is a grandparent 1246
of the transferor, a descendant of a grandparent of the 1247

transferor, or a stepchild of the transferor, either of the 1248
following applies: 1249

(i) If the future interest is not in the form of a class 1250
gift and the deceased beneficiary leaves surviving descendants, 1251
a substitute gift is created in the beneficiary's surviving 1252
descendants. The surviving descendants take, per stirpes, the 1253
property to which the beneficiary would have been entitled had 1254
the beneficiary survived the distribution date by at least one 1255
hundred twenty hours. 1256

(ii) If the future interest is in the form of a class 1257
gift, other than a future interest to "issue," "descendants," 1258
"heirs of the body," "heirs," "next of kin," "relatives," or 1259
"family," or a class described by language of similar import 1260
that includes more than one generation, a substitute gift is 1261
created in the surviving descendants of the deceased beneficiary 1262
or beneficiaries. The property to which the beneficiaries would 1263
have been entitled had all of them survived the distribution 1264
date by at least one hundred twenty hours passes to the 1265
surviving beneficiaries and the surviving descendants of the 1266
deceased beneficiaries. Each surviving beneficiary takes the 1267
share to which the surviving beneficiary would have been 1268
entitled had the deceased beneficiaries survived the 1269
distribution date by at least one hundred twenty hours. Each 1270
deceased beneficiary's surviving descendants who are substituted 1271
for the deceased beneficiary take, per stirpes, the share to 1272
which the deceased beneficiary would have been entitled had the 1273
deceased beneficiary survived the distribution date by at least 1274
one hundred twenty hours. For purposes of division (B) (2) (b) (ii) 1275
of this section, "deceased beneficiary" means a class member who 1276
failed to survive the distribution date by at least one hundred 1277
twenty hours and left one or more surviving descendants. 1278

(C) For purposes of this section, each of the following 1279
applies: 1280

(1) Describing a class of beneficiaries as "surviving" or 1281
"living," without specifying when the beneficiaries must be 1282
surviving or living, such as a gift "for my spouse for life, 1283
then to my surviving (or living) children," is not, in the 1284
absence of other language in the trust instrument or other 1285
evidence to the contrary, a sufficient indication of an intent 1286
to negate the application of division (B) (2) (b) of this section. 1287

(2) Subject to division (C) (1) of this section, attaching 1288
words of survivorship to a future interest under the terms of a 1289
trust, such as "for my spouse for life, then to my children who 1290
survive my spouse" or "for my spouse for life, then to my then- 1291
living children" is, in the absence of other language in the 1292
trust instrument or other evidence to the contrary, a sufficient 1293
indication of an intent to negate the application of division 1294
(B) (2) (b) of this section. Words of survivorship under division 1295
(C) (2) of this section include words of survivorship that relate 1296
to the distribution date or to an earlier or an unspecified 1297
time, whether those words of survivorship are expressed as 1298
condition-precedent, condition-subsequent, or in any other form. 1299

(3) A residuary clause in a will is not a sufficient 1300
indication of an intent that is contrary to the application of 1301
this section, whether or not the will specifically provides that 1302
lapsed or failed devises are to pass under the residuary clause. 1303
A residuary clause in a revocable trust instrument is not a 1304
sufficient indication of an intent that is contrary to the 1305
application of this section unless the distribution date is the 1306
date of the settlor's death and the revocable trust instrument 1307
specifically provides that upon lapse or failure the 1308

nonresiduary devise, or nonresiduary devises in general, pass 1309
under the residuary clause. 1310

(D) If, after the application of divisions (B) and (C) of 1311
this section there is no surviving taker of the property, and a 1312
contrary intent does not appear in the instrument creating the 1313
future interest, the property passes in the following order: 1314

(1) If the future interest was created by the exercise of 1315
a power of appointment, the property passes under the donor's 1316
gift-in-default clause, if any, which clause is treated as 1317
creating a future interest under the terms of a trust. 1318

(2) If no taker is produced under division (D) (1) of this 1319
section and the trust was created in a nonresiduary devise in 1320
the transferor's will or in a codicil to the transferor's will, 1321
the property passes under the residuary clause in the 1322
transferor's will. For purposes of division (D) (2) of this 1323
section, the residuary clause is treated as creating a future 1324
interest under the terms of a trust. 1325

(3) If no taker is produced under divisions (D) (1) and (2) 1326
of this section, the transferor is deceased, and the trust was 1327
created in a nonresiduary gift under the terms of a revocable 1328
trust of the transferor, the property passes under the residuary 1329
clause in the transferor's revocable trust instrument. For 1330
purposes of division (D) (3) of this section, the residuary 1331
clause in the transferor's revocable trust instrument is treated 1332
as creating a future interest under the terms of a trust. 1333

(4) If no taker is produced under divisions (D) (1), (2), 1334
and (3) of this section, the property passes to those persons 1335
who would succeed to the transferor's intestate estate and in 1336
the shares as provided in the intestate succession law of the 1337

transferor's domicile if the transferor died on the distribution 1338
date. Notwithstanding division (A) (10) of this section, for 1339
purposes of division (D) (4) of this section, if the future 1340
interest was created by the exercise of a power of appointment, 1341
"transferor" means the donor if the power is a nongeneral power, 1342
or the donee if the power is a general power. 1343

(E) This section applies to all trusts that become 1344
irrevocable on or after ~~the effective date of this section~~ March 1345
22, 2012. This section does not apply to any trust that was 1346
irrevocable before ~~the effective date of this section~~ March 22, 1347
2012, even if property was added to the trust on or after ~~that~~ 1348
~~effective date~~ March 22, 2012. 1349

Sec. 5817.01. As used in this chapter: 1350

(A) (1) "Beneficiary under a trust" means either of the 1351
following: 1352

(a) Any person that has a present or future beneficial 1353
interest in a trust, whether vested or contingent; 1354

(b) Any person that, in a capacity other than that of 1355
trustee, holds a power of appointment over trust property, but 1356
does not include the class of permitted appointees among whom 1357
the power holder may appoint. 1358

(2) "Beneficiary under a trust" includes a charitable 1359
organization that is expressly designated in the terms of the 1360
trust to receive distributions, but does not include any 1361
charitable organization that is not expressly designated in the 1362
terms of the trust to receive distributions, but to whom the 1363
trustee may in its discretion make distributions. 1364

(B) (1) "Beneficiary under a will" means either of the 1365
following: 1366

(a) Any person designated in a will to receive a 1367
testamentary disposition of real or personal property; 1368

(b) Any person that, in a capacity other than that of 1369
executor, holds a power of appointment over estate assets, but 1370
does not include the class of permitted appointees among whom 1371
the power holder may appoint. 1372

(2) "Beneficiary under a will" includes a charitable 1373
organization that is expressly designated in the terms of the 1374
will to receive testamentary distributions, but does not include 1375
any charitable organization that is not expressly designated in 1376
the terms of the will to receive distributions, but to whom the 1377
executor may in its discretion make distributions. 1378

(C) "Court" means the probate court of the county in which 1379
the complaint under section 5817.02 or 5817.03 of the Revised 1380
Code is filed or the general division of the court of common 1381
pleas to which the probate court transfers the proceeding under 1382
division (A) of section 5817.04 of the Revised Code. 1383

(D) "Related trust" means a trust for which both of the 1384
following apply: 1385

(1) The testator is the settlor of the trust. 1386

(2) The trust is named as a beneficiary in the will in 1387
accordance with section 2107.63 of the Revised Code. 1388

(E) "Related will" means a will for which both of the 1389
following apply: 1390

(1) The testator is the settlor of a trust. 1391

(2) The will names the trust as a beneficiary in 1392
accordance with section 2107.63 of the Revised Code. 1393

(F) "Trust" means an inter vivos revocable or irrevocable 1394
trust instrument to which, at the time the complaint for 1395
declaration of validity is filed under section 5817.03 of the 1396
Revised Code, either of the following applies: 1397

(1) The settlor resides in, or is domiciled in, this 1398
state. 1399

(2) The trust's principal place of administration is in 1400
this state. 1401

Sec. 5817.02. (A) A testator may file a complaint with the 1402
probate court to determine before the testator's death that the 1403
testator's will is a valid will subject only to subsequent 1404
revocation or modification of the will. The right to file a 1405
complaint for a determination of the validity of a testator's 1406
will under this chapter, or to voluntarily dismiss a complaint 1407
once filed, is personal to the testator and may not be exercised 1408
by the testator's guardian or an agent under the testator's 1409
power of attorney. 1410

(B) A testator who desires to obtain a validity 1411
determination as to the testator's will shall file a complaint 1412
to determine the validity of both the will and any related 1413
trust. 1414

(C) The failure of a testator to file a complaint for a 1415
judgment declaring the validity of a will shall not be construed 1416
as evidence or an admission that the will is not valid. 1417

(D) A complaint for a determination of the validity of a 1418
testator's will shall be accompanied by an express written 1419
waiver of the testator's physician-patient privilege provided in 1420
division (B) of section 2317.02 of the Revised Code. 1421

Sec. 5817.03. (A) A settlor may file a complaint with the 1422

probate court to determine before the settlor's death that the 1423
settlor's trust is valid and enforceable under its terms, 1424
subject only to a subsequent revocation or modification of the 1425
trust. The right to file a complaint for a determination of the 1426
validity of a settlor's trust under this chapter, or to 1427
voluntarily dismiss a complaint once filed, is personal to the 1428
settlor and may not be exercised by the settlor's guardian or an 1429
agent under the settlor's power of attorney. 1430

(B) A settlor who desires to obtain a validity 1431
determination as to the settlor's trust shall file a complaint 1432
to determine the validity of both the trust and the related 1433
will. 1434

(C) The failure of a settlor to file a complaint for a 1435
judgment declaring the validity of a trust shall not be 1436
construed as evidence or an admission that the trust is not 1437
valid. 1438

(D) A complaint for a determination of the validity of a 1439
settlor's trust shall be accompanied by an express written 1440
waiver of the settlor's physician-patient privilege provided in 1441
division (B) of section 2317.02 of the Revised Code. 1442

Sec. 5817.04. (A) A complaint to determine the validity of 1443
a will or a trust shall be filed with the probate court. The 1444
probate judge, upon the motion of a party or the judge's own 1445
motion, may transfer the proceeding to the general division of 1446
the court of common pleas. 1447

(B) The venue for a complaint under section 5817.02 of the 1448
Revised Code is either of the following: 1449

(1) The probate court of the county in this state where 1450
the testator is domiciled; 1451

(2) If the testator is not domiciled in this state, the 1452
probate court of any county in this state where any real 1453
property or personal property of the testator is located or, if 1454
there is no such property, the probate court of any county in 1455
this state. 1456

(C) The venue for a complaint under section 5817.03 of the 1457
Revised Code is either of the following: 1458

(1) The probate court of the county in this state where 1459
the settlor resides or is domiciled; 1460

(2) If the settlor does not reside or is not domiciled in 1461
this state, the probate court of the county in this state in 1462
which the trust's principal place of administration is located. 1463

Sec. 5817.05. (A) A complaint under section 5817.02 of the 1464
Revised Code shall name as party defendants all of the 1465
following, as applicable: 1466

(1) The testator's spouse; 1467

(2) The testator's children; 1468

(3) The testator's heirs who would take property pursuant 1469
to section 2105.06 of the Revised Code had the testator died 1470
intestate at the time the complaint is filed; 1471

(4) The testator's beneficiaries under the will; 1472

(5) Any beneficiary under the testator's most recent prior 1473
will. 1474

(B) A complaint under section 5817.02 of the Revised Code 1475
may name as a party defendant any other person that the testator 1476
believes may have a pecuniary interest in the determination of 1477
the validity of the testator's will. 1478

- (C) A complaint under section 5817.02 of the Revised Code 1479
may contain all or any of the following: 1480
- (1) A statement that a copy of the will has been filed 1481
with the court; 1482
- (2) A statement that the will is in writing; 1483
- (3) A statement that the will was signed by the testator, 1484
or was signed in the testator's name by another person in the 1485
testator's conscious presence and at the testator's express 1486
direction; 1487
- (4) A statement that the will was signed in the conscious 1488
presence of the testator by two or more competent individuals, 1489
each of whom either witnessed the testator sign the will, or 1490
heard the testator acknowledge signing the will; 1491
- (5) A statement that the will was executed with the 1492
testator's testamentary intent; 1493
- (6) A statement that the testator had testamentary 1494
capacity; 1495
- (7) A statement that the testator executed the will free 1496
from undue influence, not under restraint or duress, and in the 1497
exercise of the testator's free will; 1498
- (8) A statement that the execution of the will was not the 1499
result of fraud or mistake; 1500
- (9) The names and addresses of the testator and all of the 1501
defendants and, if any of the defendants are minors, their ages; 1502
- (10) A statement that the will has not been revoked or 1503
modified; 1504
- (11) A statement that the testator is familiar with the 1505

contents of the will. 1506

Sec. 5817.06. (A) A complaint under section 5817.03 of the 1507
Revised Code shall name as party defendants the following, as 1508
applicable: 1509

(1) The settlor's spouse; 1510

(2) The settlor's children; 1511

(3) The settlor's heirs who would take property pursuant 1512
to section 2105.06 of the Revised Code had the settlor died 1513
intestate at the time the complaint is filed; 1514

(4) The trustee or trustees under the trust; 1515

(5) The beneficiaries under the trust; 1516

(6) If the trust amends, amends and restates, or replaces 1517
a prior trust, any beneficiary under the settlor's most recent 1518
prior trust. 1519

(B) A complaint under section 5817.03 of the Revised Code 1520
may name as a party defendant any other person that the settlor 1521
believes may have a pecuniary interest in the determination of 1522
the validity of the settlor's trust. 1523

(C) A complaint under section 5817.03 of the Revised Code 1524
may contain all or any of the following: 1525

(1) A statement that a copy of the trust has been filed 1526
with the court; 1527

(2) A statement that the trust is in writing and was 1528
signed by the settlor; 1529

(3) A statement that the trust was executed with the 1530
intent to create a trust; 1531

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|---|------|
| <u>(4) A statement that the settlor had the legal capacity to</u> | 1532 |
| <u>enter into and establish the trust;</u> | 1533 |
| <u>(5) A statement that the trust has a definite beneficiary</u> | 1534 |
| <u>or is one of the following:</u> | 1535 |
| <u>(a) A charitable trust;</u> | 1536 |
| <u>(b) A trust for the care of an animal as provided in</u> | 1537 |
| <u>section 5804.08 of the Revised Code;</u> | 1538 |
| <u>(c) A trust for a noncharitable purpose as provided in</u> | 1539 |
| <u>section 5804.09 of the Revised Code.</u> | 1540 |
| <u>(6) A statement that the trustee of the trust has duties</u> | 1541 |
| <u>to perform;</u> | 1542 |
| <u>(7) A statement that the same person is not the sole</u> | 1543 |
| <u>trustee and sole beneficiary of the trust;</u> | 1544 |
| <u>(8) A statement that the settlor executed the trust free</u> | 1545 |
| <u>from undue influence, not under restraint or duress, and in the</u> | 1546 |
| <u>exercise of the settlor's free will;</u> | 1547 |
| <u>(9) A statement that execution of the trust was not the</u> | 1548 |
| <u>result of fraud or mistake;</u> | 1549 |
| <u>(10) The names and addresses of the settlor and all of the</u> | 1550 |
| <u>defendants and, if any of the defendants are minors, their ages;</u> | 1551 |
| <u>(11) A statement that the trust has not been revoked or</u> | 1552 |
| <u>modified;</u> | 1553 |
| <u>(12) A statement that the settlor is familiar with the</u> | 1554 |
| <u>contents of the trust.</u> | 1555 |
| <u>Sec. 5817.07. (A) Service of process, with a copy of the</u> | 1556 |
| <u>complaint and the will, and a copy of the related trust, if</u> | 1557 |
| <u>applicable, shall be made on every party defendant named in the</u> | 1558 |

complaint filed under section 5817.02 of the Revised Code, as 1559
provided in the applicable Rules of Civil Procedure. 1560

(B) Service of process, with a copy of the complaint and 1561
the trust, and a copy of the related will, if applicable, shall 1562
be made on every party defendant named in the complaint filed 1563
under section 5817.03 of the Revised Code, as provided in the 1564
applicable Rules of Civil Procedure. 1565

Sec. 5817.08. (A) After a complaint is filed under section 1566
5817.02 or 5817.03 of the Revised Code, the court shall fix a 1567
time and place for a hearing. 1568

(B) Notice of the hearing shall be given to the testator 1569
or settlor, as applicable, and to all party defendants, as 1570
provided in the applicable Rules of Civil Procedure. 1571

(C) The hearing shall be adversarial in nature and shall 1572
be conducted pursuant to sections 2101.31 and 2721.10 of the 1573
Revised Code, except as otherwise provided in this chapter. 1574

Sec. 5817.09. (A) The testator or settlor has the burden 1575
of establishing prima facie proof of the execution of the will 1576
or trust, as applicable. A person who opposes the complaint has 1577
the burden of establishing one or more of the following: 1578

(1) The lack of testamentary intent or the intent to 1579
create a trust, as the case may be; 1580

(2) The lack of the testator's testamentary capacity, or 1581
the settlor's legal capacity to enter into and establish the 1582
trust; 1583

(3) Undue influence, restraint, or duress on the testator 1584
or settlor; 1585

(4) Fraud or mistake in the execution of the will or 1586

trust; 1587

(5) Revocation of the will or trust. 1588

(B) A party to the proceeding has the ultimate burden of 1589
persuasion as to the matters for which the party has the initial 1590
burden of proof. 1591

Sec. 5817.10. (A) (1) The court shall declare the will 1592
valid if it finds all of the following: 1593

(a) The will was properly executed pursuant to section 1594
2107.03 of the Revised Code or under any prior law of this state 1595
that was in effect at the time of execution. 1596

(b) The testator had the requisite testamentary capacity, 1597
was free from undue influence, and was not under restraint or 1598
duress. 1599

(c) The execution of the will was not the result of fraud 1600
or mistake. 1601

(2) After the testator's death, unless the will is 1602
modified or revoked after the court's declaration under division 1603
(A) (1) of this section, the will has full legal effect as the 1604
instrument of the disposition of the testator's estate and shall 1605
be admitted to probate upon request. 1606

(B) (1) The court shall declare the trust valid if it finds 1607
all of the following: 1608

(a) The trust meets the requirements of section 5804.02 of 1609
the Revised Code. 1610

(b) The settlor had the legal capacity to enter into and 1611
establish the trust, was free from undue influence, and was not 1612
under restraint or duress. 1613

(c) The execution of the trust was not the result of fraud 1614
or mistake. 1615

(2) Unless the trust is modified or revoked after the 1616
court's declaration, the trust has full legal effect. 1617

(C) The court may, if it finds the will or trust to be 1618
valid, attach a copy of the valid document to the court's 1619
judgment entry, but failure to do so shall not affect the 1620
determination of validity of the will or trust. 1621

Sec. 5817.11. (A) Unless the will or trust is modified or 1622
revoked, and except as otherwise provided in this section, no 1623
person may contest the validity of a will or trust that is 1624
declared valid in a proceeding pursuant to this chapter. 1625

(B) The failure to name a necessary defendant under 1626
division (A) of section 5817.05 of the Revised Code is not 1627
jurisdictional. A declaration of a will's validity under this 1628
chapter shall be binding upon all defendants who were named or 1629
represented, and properly served pursuant to division (A) of 1630
section 5817.07 of the Revised Code, notwithstanding the failure 1631
to name a necessary defendant. However, if a person is one who 1632
should have been named a party defendant in the action in which 1633
the will was declared valid and if the person was not named a 1634
defendant and properly served in that action, that person, after 1635
the testator's death, may contest the validity of a will 1636
declared valid. 1637

(C) The failure to name a necessary defendant under 1638
division (A) of section 5817.06 of the Revised Code is not 1639
jurisdictional. A declaration of a trust's validity under this 1640
chapter shall be binding upon all defendants who were named or 1641
represented, and properly served pursuant to division (B) of 1642

section 5817.07 of the Revised Code, notwithstanding the failure 1643
to name a necessary defendant. However, if a person is one who 1644
should have been named a party defendant in the action in which 1645
the trust was declared valid and if the person was not named a 1646
defendant and properly served in that action, that person may 1647
contest the validity of a trust declared valid. 1648

(D) In determining whether a person was a party defendant 1649
and properly served in an action to declare a will or trust 1650
valid under this chapter, the representation rules of Chapter 1651
5803. of the Revised Code shall be applied, and a person 1652
represented in the action under those rules is bound by the 1653
declaration of validity even if, by the time of the testator's 1654
death, or the challenge to the trust, the representing person 1655
has died or would no longer be able to represent the person to 1656
be represented in the proceeding under this chapter. 1657

Sec. 5817.12. (A) After a declaration of a will's validity 1658
under division (A)(1) of section 5817.10 of the Revised Code, 1659
the will may be modified by a later will or codicil executed 1660
according to the laws of this state or another state, and the 1661
will may be revoked under section 2107.33 of the Revised Code or 1662
other applicable law. 1663

(B) The revocation by a later will, or other document 1664
under section 2107.33 of the Revised Code, of a will that has 1665
been declared valid under division (A)(1) of section 5817.10 of 1666
the Revised Code does not affect the will or the prior 1667
declaration of its validity if the later will or other document 1668
is found by a court of competent jurisdiction to be invalid due 1669
to the testator's lack of testamentary capacity, or undue 1670
influence, restraint, or duress on the testator, or otherwise. 1671

(C) The amendment by a later codicil of a will that has 1672

been declared valid under division (A)(1) of section 5817.10 of 1673
the Revised Code does not affect the will or the prior 1674
declaration of its validity except as provided by the codicil. 1675
However, the codicil is not considered validated under this 1676
chapter unless its validity is also declared as provided in this 1677
chapter. 1678

Sec. 5817.13. (A) After a declaration of a trust's 1679
validity under division (B)(1) of section 5817.10 of the Revised 1680
Code, the trust may be modified, terminated, revoked, or 1681
reformed under sections 5804.10 to 5804.16 of the Revised Code, 1682
or other applicable law. 1683

(B) The modification, termination, revocation, or 1684
reformation by a new trust or other document of a trust that has 1685
been declared valid under division (B)(1) of section 5817.10 of 1686
the Revised Code does not affect the trust or the prior 1687
declaration of its validity if the later trust or other document 1688
is found by a court of competent jurisdiction to be invalid due 1689
to the settlor's lack of capacity, or undue influence, 1690
restraint, or duress on the settlor, or otherwise. 1691

(C) An amendment of a trust that has been declared valid 1692
under division (B)(1) of section 5817.10 of the Revised Code 1693
does not affect the trust or the prior declaration of its 1694
validity except as provided by the amendment. However, the 1695
amendment is not considered validated under this chapter unless 1696
its validity is also declared as provided in this chapter. 1697

Sec. 5817.14. (A) The finding of facts by a court in a 1698
proceeding brought under this chapter is not admissible as 1699
evidence in any proceeding other than a proceeding brought to 1700
determine the validity of a will or trust. 1701

(B) The determination or judgment rendered in a proceeding 1702
under this chapter is not binding upon the parties to that 1703
proceeding in any action that is not brought to determine the 1704
validity of a will or trust. 1705

(C) The failure of a testator to file a complaint for a 1706
judgment declaring the validity of a will that the testator has 1707
executed is not admissible as evidence in any proceeding to 1708
determine the validity of that will or any other will executed 1709
by the testator. 1710

(D) The failure of a settlor to file a complaint for a 1711
judgment declaring the validity of a trust that the settlor has 1712
executed is not admissible as evidence in any proceeding to 1713
determine the validity of that trust or any other trust executed 1714
by the settlor. 1715

Section 2. That existing sections 313.14, 2101.24, 1716
2105.19, 2107.01, 2107.05, 2107.07, 2107.08, 2107.09, 2107.10, 1717
2107.11, 2107.12, 2107.16, 2107.18, 2107.20, 2107.22, 2107.33, 1718
2107.52, 2107.71, 2137.01, 2721.03, 5802.03, 5806.04, and 1719
5808.19 and sections 2107.081, 2107.082, 2107.083, 2107.084, and 1720
2107.085 of the Revised Code are hereby repealed. 1721

Section 3. This act's amendment of section 2107.05 of the 1722
Revised Code is intended to abrogate the holdings of the Ohio 1723
Supreme Court in *Hageman v. Cleveland Trust Company*, 45 Ohio 1724
St.2d 178 (1976) and the Ohio Second District Court of Appeals 1725
in *Gehrke v. Senkiw*, 2016 Ohio 2657 (2016). 1726

Section 4. Section 2101.24 of the Revised Code is 1727
presented in this act as a composite of the section as amended 1728
by both Sub. S.B. 23 of the 130th General Assembly and Sub. H.B. 1729
158 of the 131st General Assembly. The General Assembly, 1730

applying the principle stated in division (B) of section 1.52 of 1731
the Revised Code that amendments are to be harmonized if 1732
reasonably capable of simultaneous operation, finds that the 1733
composite is the resulting version of the section in effect 1734
prior to the effective date of the section as presented in this 1735
act. 1736