

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 595**

**Representatives Cupp, Rezabek**

**Cosponsors: Representatives Seitz, Riedel**

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**A BILL**

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

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

**Section 1.** That sections 313.14, 2101.24, 2107.01, 23  
2107.05, 2107.07, 2107.08, 2107.09, 2107.10, 2107.11, 2107.12, 24  
2107.16, 2107.18, 2107.20, 2107.22, 2107.33, 2107.52, 2107.71, 25  
2137.01, 2721.03, 5802.03, 5806.04, and 5808.19 be amended and 26  
sections 2111.182, 2111.52, 5802.05, 5817.01, 5817.02, 5817.03, 27  
5817.04, 5817.05, 5817.06, 5817.07, 5817.08, 5817.09, 5817.10, 28  
5817.11, 5817.12, 5817.13, and 5817.14 of the Revised Code be 29  
enacted to read as follows: 30

**Sec. 313.14.** (A) (1) The coroner shall make a reasonable 31  
effort to notify any known relatives of a deceased person who 32  
meets death in the manner described by section 313.12 of the 33  
Revised Code by letter or otherwise. ~~The next of kin, other~~ 34  
~~relatives, or friends of the deceased person, in the order~~ 35  
~~named, shall have prior right as to disposition of the body of~~ 36  
~~such deceased person. If relatives of the deceased are unknown,~~ 37  
~~the coroner shall make a diligent effort to ascertain the next~~ 38  
~~of kin, other relatives, or friends of the deceased person~~ 39  
coroner shall also make a reasonable effort to determine the 40  
identity of the person who has been assigned the rights of 41  
disposition for the deceased person under sections 2108.70 to 42  
2108.90 of the Revised Code and shall notify that person. After 43  
the coroner has completed the performance of the coroner's legal 44  
duties with respect to the body of the deceased person, the 45  
coroner shall return the body to that person. 46

(2) The coroner shall take charge and possession of all 47  
moneys, clothing, and other valuable personal effects of ~~such~~ 48  
the deceased person, found in connection with or pertaining to 49  
~~such~~ the body, and shall store ~~such~~ the possessions in the 50

county coroner's office or such other suitable place as is 51  
provided for ~~such-that~~ storage by the board of county 52  
commissioners. If the coroner considers it advisable, the 53  
coroner may, after taking adequate precautions for the security 54  
of ~~such-those~~ possessions, store the possessions where the 55  
coroner finds them until other storage space becomes available. 56  
The person who has been assigned the rights of disposition for 57  
the deceased person under sections 2108.70 to 2108.90 of the 58  
Revised Code may request the coroner to give those possessions 59  
to that person. 60

(B) In cases in which the cost of the burial is paid by 61  
the county, after using such of the clothing as is necessary in 62  
the burial of the body, the coroner shall sell at public auction 63  
the valuable personal effects of ~~such-the~~ deceased persons, 64  
found in connection with or pertaining to the unclaimed dead 65  
body, except firearms, which shall be disposed of as provided in 66  
division (C) of this section. The coroner shall make a verified 67  
inventory of ~~such-the~~ effects and they shall be sold within 68  
eighteen months after burial, or after delivery of ~~such-the~~ body 69  
in accordance with section 1713.34 of the Revised Code. All 70  
moneys derived from ~~such-the~~ sale shall be deposited in the 71  
county treasury. A notice of ~~such-the~~ sale shall be given in one 72  
newspaper of general circulation in the county, for five days in 73  
succession, and the sale shall be held immediately thereafter. 74  
The cost of such advertisement and notices shall be paid by the 75  
board upon the submission of a verified statement ~~therefor~~ for 76  
that cost, certified to the coroner. 77

(C) If a firearm is included in the personal effects of a 78  
deceased person who meets death in the manner described by 79  
section 313.12 of the Revised Code, the coroner shall deliver 80  
the firearm to the chief of police of the municipal corporation 81

within which the body is found, or to the sheriff of the county 82  
if the body is not found within a municipal corporation. Upon 83  
delivery of the firearm to the chief of police or the sheriff, 84  
the chief of police or sheriff shall give the coroner a receipt 85  
for the firearm that states the date of delivery and an accurate 86  
description of the firearm. The firearm shall be used for 87  
evidentiary purposes only. 88

The person who has been assigned the rights of disposition 89  
for the deceased ~~person's next of kin or other relative~~ person 90  
under sections 2108.70 to 2108.90 of the Revised Code may 91  
request that the firearm be given to ~~the next of kin or other~~ 92  
~~relative~~ that person once the firearm is no longer needed for 93  
evidentiary purposes. The chief of police or the sheriff shall 94  
give the firearm to ~~the next of kin or other relative~~ that 95  
person who requested the firearm only if the ~~next of kin or~~ 96  
~~other relative~~ person may lawfully possess the firearm under 97  
applicable law of this state or the United States. The chief of 98  
police or the sheriff shall keep a record identifying the ~~next~~ 99  
~~of kin or other relative~~ person to whom the firearm is given, 100  
the date the firearm was given to ~~the next of kin or other~~ 101  
~~relative~~ that person, and an accurate description of the 102  
firearm. 103

If a ~~next of kin or other relative~~ the person who has been 104  
assigned the rights of disposition for the deceased person under 105  
sections 2108.70 to 2108.90 of the Revised Code does not request 106  
the firearm or is not entitled to possess the firearm, the 107  
firearm shall be used at the discretion of the chief of police 108  
or the sheriff. 109

(D) This section does not invalidate section 1713.34 of 110  
the Revised Code. 111

<b>Sec. 2101.24.</b> (A) (1) Except as otherwise provided by law,	112
the probate court has exclusive jurisdiction:	113
(a) To take the proof of wills and to admit to record	114
authenticated copies of wills executed, proved, and allowed in	115
the courts of any other state, territory, or country. If the	116
probate judge is unavoidably absent, any judge of the court of	117
common pleas may take proof of wills and approve bonds to be	118
given, but the record of these acts shall be preserved in the	119
usual records of the probate court.	120
(b) To grant and revoke letters testamentary and of	121
administration;	122
(c) To direct and control the conduct and settle the	123
accounts of executors and administrators and order the	124
distribution of estates;	125
(d) To appoint the attorney general to serve as the	126
administrator of an estate pursuant to section 2113.06 of the	127
Revised Code;	128
(e) To appoint and remove guardians, conservators, and	129
testamentary trustees, direct and control their conduct, and	130
settle their accounts;	131
(f) To grant marriage licenses;	132
(g) To make inquests respecting persons who are so	133
mentally impaired as a result of a mental or physical illness or	134
disability, as a result of intellectual disability, or as a	135
result of chronic substance abuse, that they are unable to	136
manage their property and affairs effectively, subject to	137
guardianship;	138
(h) To qualify assignees, appoint and qualify trustees and	139

commissioners of insolvents, control their conduct, and settle	140
their accounts;	141
(i) To authorize the sale of lands, equitable estates, or	142
interests in lands or equitable estates, and the assignments of	143
inchoate dower in such cases of sale, on petition by executors,	144
administrators, and guardians;	145
(j) To authorize the completion of real property contracts	146
on petition of executors and administrators;	147
(k) To construe wills;	148
(l) To render declaratory judgments, including, but not	149
limited to, those rendered pursuant to <del>section 2107.084</del> <u>Chapter</u>	150
<u>5817.</u> of the Revised Code;	151
(m) To direct and control the conduct of fiduciaries and	152
settle their accounts;	153
(n) To authorize the sale or lease of any estate created	154
by will if the estate is held in trust, on petition by the	155
trustee;	156
(o) To terminate a testamentary trust in any case in which	157
a court of equity may do so;	158
(p) To hear and determine actions to contest the validity	159
of wills;	160
(q) To make a determination of the presumption of death of	161
missing persons and to adjudicate the property rights and	162
obligations of all parties affected by the presumption;	163
(r) To act for and issue orders regarding wards pursuant	164
to section 2111.50 of the Revised Code;	165
(s) To hear and determine actions against sureties on the	166

bonds of fiduciaries appointed by the probate court;	167
(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;	168 169 170
(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;	171 172 173
(v) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;	174 175 176
(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;	177 178 179 180 181 182
(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;	183 184 185 186 187
(y) To hear and determine applications of attending physicians in accordance with division (B) of section 2133.15 of the Revised Code;	188 189 190
(z) To hear and determine actions relative to the use or continuation of comfort care in connection with certain principals under durable powers of attorney for health care, declarants under declarations, or patients in accordance with division (E) of either section 1337.16 or 2133.12 of the Revised	191 192 193 194 195

Code;	196
(aa) To hear and determine applications for an order	197
relieving an estate from administration under section 2113.03 of	198
the Revised Code;	199
(bb) To hear and determine applications for an order	200
granting a summary release from administration under section	201
2113.031 of the Revised Code;	202
(cc) To hear and determine actions relating to the	203
exercise of the right of disposition, in accordance with section	204
2108.90 of the Revised Code;	205
(dd) To hear and determine actions relating to the	206
disinterment and reinterment of human remains under section	207
517.23 of the Revised Code;	208
(ee) To hear and determine petitions for an order for	209
treatment of a person suffering from alcohol and other drug	210
abuse filed under section 5119.93 of the Revised Code and to	211
order treatment of that nature in accordance with, and take	212
other actions afforded to the court under, sections 5119.90 to	213
5119.98 of the Revised Code.	214
(2) In addition to the exclusive jurisdiction conferred	215
upon the probate court by division (A) (1) of this section, the	216
probate court shall have exclusive jurisdiction over a	217
particular subject matter if both of the following apply:	218
(a) Another section of the Revised Code expressly confers	219
jurisdiction over that subject matter upon the probate court.	220
(b) No section of the Revised Code expressly confers	221
jurisdiction over that subject matter upon any other court or	222
agency.	223



(B) (1) The probate court has concurrent jurisdiction with,	224
and the same powers at law and in equity as, the general	225
division of the court of common pleas to issue writs and orders,	226
and to hear and determine actions as follows:	227
(a) If jurisdiction relative to a particular subject	228
matter is stated to be concurrent in a section of the Revised	229
Code or has been construed by judicial decision to be	230
concurrent, any action that involves that subject matter;	231
(b) Any action that involves an inter vivos trust; a trust	232
created pursuant to section 5815.28 of the Revised Code; a	233
charitable trust or foundation; subject to divisions (A) (1) (t)	234
and (y) of this section, a power of attorney, including, but not	235
limited to, a durable power of attorney; the medical treatment	236
of a competent adult; or a writ of habeas corpus;	237
(c) Subject to section 2101.31 of the Revised Code, any	238
action with respect to a probate estate, guardianship, trust, or	239
post-death dispute that involves any of the following:	240
(i) A designation or removal of a beneficiary of a life	241
insurance policy, annuity contract, retirement plan, brokerage	242
account, security account, bank account, real property, or	243
tangible personal property;	244
(ii) A designation or removal of a payable-on-death	245
beneficiary or transfer-on-death beneficiary;	246
(iii) A change in the title to any asset involving a joint	247
and survivorship interest;	248
(iv) An alleged gift;	249
(v) The passing of assets upon the death of an individual	250
otherwise than by will, intestate succession, or trust.	251

(2) Any action that involves a concurrent jurisdiction 252  
subject matter and that is before the probate court may be 253  
transferred by the probate court, on its order, to the general 254  
division of the court of common pleas. 255

(3) Notwithstanding that the probate court has exclusive 256  
jurisdiction to render declaratory judgments under Chapter 5817. 257  
of the Revised Code, the probate court may transfer the 258  
proceeding to the general division of the court of common pleas 259  
pursuant to division (A) of section 5817.04 of the Revised Code. 260

(C) The probate court has plenary power at law and in 261  
equity to dispose fully of any matter that is properly before 262  
the court, unless the power is expressly otherwise limited or 263  
denied by a section of the Revised Code. 264

(D) The jurisdiction acquired by a probate court over a 265  
matter or proceeding is exclusive of that of any other probate 266  
court, except when otherwise provided by law. 267

**Sec. 2107.01.** As used in Chapters 2101. to 2131. of the 268  
Revised Code: 269

(A) "Will" includes codicils to wills admitted to probate, 270  
lost, spoliated, or destroyed wills, and instruments ~~admitted to~~ 271  
~~probate~~ declared valid under division (A) (1) of section 2107.01- 272  
5817.10 of the Revised Code, but "will" does not include inter 273  
vivos trusts or other instruments that have not been admitted to 274  
probate. 275

(B) "Testator" means any person who makes a will. 276

**Sec. 2107.05.** (A) An existing document, book, record, or 277  
memorandum may be incorporated in a will by reference, if 278  
referred to as being in existence at the time the will is 279  
executed. That document, book, record, or memorandum shall be 280

deposited in the probate court when the will is probated or 281  
within thirty days after the will is probated, unless the court 282  
grants an extension of time for good cause shown. A copy may be 283  
substituted for the original document, book, record, or 284  
memorandum if the copy is certified to be correct by a person 285  
authorized to take acknowledgments. 286

(B) Notwithstanding division (A) of this section, if a 287  
will incorporates a trust instrument only in the event that a 288  
bequest or devise to the trust is ineffective, the trust 289  
instrument shall be deposited in the probate court not later 290  
than thirty days after the final determination that such bequest 291  
or devise is ineffective. 292

(C) If a testator intends to incorporate a trust 293  
instrument in a will, the testator's will shall manifest that 294  
intent through the use of the term "incorporate," "made a part 295  
of," or similar language. In the absence of such clear and 296  
express intent, a trust instrument shall not be incorporated 297  
into or made a part of the will. Any language in the testator's 298  
will that only identifies a trust shall not be sufficient to 299  
manifest an intent to incorporate that trust instrument by 300  
reference in the will. 301

(D) The amendment of this section by adding divisions (B) 302  
and (C) applies, and shall be construed as applying, to the 303  
wills of testators who die on or after the effective date of 304  
this amendment. 305

**Sec. 2107.07.** A will may be deposited by the testator, or 306  
by some person for the testator, in the office of the judge of 307  
the probate court in the county in which the testator lives, 308  
before or after the death of the testator, and if deposited 309  
after the death of the testator, with or without applying for 310

its probate. Upon the payment of the fee of twenty-five dollars 311  
to the court, the judge shall receive, keep, and give a 312  
certificate of deposit for the will. That will shall be safely 313  
kept until delivered or disposed of as provided by section 314  
2107.08 of the Revised Code. If the will is not delivered or 315  
disposed of as provided in that section within one hundred years 316  
after the date the will was deposited, the judge may dispose of 317  
the will in any manner the judge considers feasible. The judge 318  
shall retain an electronic copy of the will prior to its 319  
disposal after one hundred years under this section. 320

Every will that is so deposited shall be enclosed in a 321  
sealed envelope that shall be indorsed with the name of the 322  
testator. The judge shall indorse on the envelope the date of 323  
delivery and the person by whom the will was delivered. The 324  
envelope may be indorsed with the name of a person to whom it is 325  
to be delivered after the death of the testator. The will shall 326  
not be opened or read until delivered to a person entitled to 327  
receive it, until the testator files a complaint in the probate 328  
court for a declaratory judgment of the validity of the will 329  
pursuant to section ~~2107.081~~5817.02 of the Revised Code, or 330  
until otherwise disposed of as provided in section 2107.08 of 331  
the Revised Code. Subject to section 2107.08 of the Revised 332  
Code, the deposited will shall not be a public record until the 333  
time that an application is filed to probate it. 334

**Sec. 2107.08.** During the lifetime of a testator, the 335  
testator's will, deposited according to section 2107.07 of the 336  
Revised Code, shall be delivered only to the testator, to some 337  
person authorized by the testator by a written order, or to a 338  
probate court for a determination of its validity when the 339  
testator so requests. After the testator's death, the will shall 340  
be delivered to the person named in the indorsement on the 341

envelope of the will, if there is a person named who demands it. 342  
If the testator has filed a complaint in the probate court for a 343  
judgment declaring the validity of the will pursuant to section 344  
~~2107.081-5817.02~~ of the Revised Code and ~~the court has rendered~~ 345  
~~the a judgment~~ is rendered pursuant to division (A) (1) of 346  
section 5817.10 of the Revised Code declaring the will valid, 347  
~~the probate judge with possession of the court who rendered the~~ 348  
~~judgment~~ shall deliver the will to the proper probate court as 349  
determined under section 2107.11 of the Revised Code, upon the 350  
death of the testator, for probate. 351

If no person named in the indorsement demands the will and 352  
it is not one that has been declared valid pursuant to division 353  
(A) (1) of section ~~2107.084-5817.10~~ of the Revised Code, it shall 354  
be publicly opened in the probate court within one month after 355  
notice of the testator's death and retained in the office of the 356  
probate judge until offered for probate. If the jurisdiction 357  
belongs to any other probate court, the will shall be delivered 358  
to the person entitled to its custody, to be presented for 359  
probate in the other court. If the probate judge who opens the 360  
will has jurisdiction of it, the probate judge immediately shall 361  
give notice of its existence to the executor named in the will 362  
or, if any, to the persons holding a power to nominate an 363  
executor as described in section 2107.65 of the Revised Code, 364  
or, if it is the case, to the executor named in the will and to 365  
the persons holding a power to nominate a coexecutor as 366  
described in that section. If no executor is named and no 367  
persons hold a power to nominate an executor as described in 368  
that section, the probate judge shall give notice to other 369  
persons immediately interested. 370

**Sec. 2107.09.** (A) If real property is devised or personal 371  
property is bequeathed by a will, the executor or any interested 372

person may cause the will to be brought before the probate court 373  
of the county in which the decedent was domiciled. By judicial 374  
order, the court may compel the person having the custody or 375  
control of the will to produce it before the court for the 376  
purpose of being proved. 377

If the person having the custody or control of the will 378  
intentionally conceals or withholds it or neglects or refuses to 379  
produce it for probate without reasonable cause, the person may 380  
be committed to the county jail and kept in custody until the 381  
will is produced. The person also shall be liable to any party 382  
aggrieved for the damages sustained by that neglect or refusal. 383

Any judicial order issued pursuant to this section may be 384  
issued into any county in the state and shall be served and 385  
returned by the officer to whom it is delivered. 386

The officer to whom the process is delivered shall be 387  
liable for neglect in its service or return in the same manner 388  
as sheriffs are liable for neglect in not serving or returning a 389  
capias issued upon an indictment. 390

(B) In the case of a will that has been declared valid 391  
pursuant to division (A) (1) of section 2107.084-5817.10 of the 392  
Revised Code, the ~~probate~~ judge of the probate court or of the 393  
general division of the court of common pleas to which the 394  
proceeding was transferred pursuant to division (A) of section 395  
5817.04 of the Revised Code who made the declaration ~~or who has~~ 396  
~~possession of the will~~ shall cause ~~the will and the judgment~~ 397  
~~declaring validity~~ the will valid to be brought before the 398  
proper probate court as determined by section 2107.11 of the 399  
Revised Code at a time after the death of the testator. If the 400  
death of the testator is brought to the attention of the ~~probate~~ 401  
applicable judge by an interested party, the judge shall cause 402

the judgment declaring the will valid to be brought before the 403  
proper probate court at that time. 404

**Sec. 2107.10.** (A) No property or right, testate or 405  
intestate, shall pass to a beneficiary named in a will who knows 406  
of the existence of the will for one year after the death of the 407  
testator and has the power to control it and, without reasonable 408  
cause, intentionally conceals or withholds it or neglects or 409  
refuses within that one year to cause it to be offered for or 410  
admitted to probate. The property devised or bequeathed to that 411  
beneficiary shall pass as if the beneficiary had predeceased the 412  
testator. 413

(B) No property or right, testate or intestate, passes to 414  
a beneficiary named in a will when the will was declared valid 415  
~~and filed with a probate judge by a court pursuant to division~~ 416  
~~(A) (1) of section 2107.084-5817.10~~ of the Revised Code, the 417  
declaration ~~and filing~~ took place in a county different from the 418  
county in which the will of the testator would be probated under 419  
section 2107.11 of the Revised Code, and the named beneficiary 420  
knew of the declaration ~~and filing~~ and of the death of the 421  
testator and did not notify the ~~probate judge with whom of the~~ 422  
~~court in which the will was filed~~ declared valid. This division 423  
does not preclude a named beneficiary from acquiring property or 424  
rights from the estate of the testator for failing to notify a 425  
~~probate judge of that court~~ if the named beneficiary reasonably 426  
believes that the judge has previously been notified of the 427  
testator's death. 428

**Sec. 2107.11.** (A) A will shall be admitted to probate: 429

(1) In the county in this state in which the testator was 430  
domiciled at the time of the testator's death; 431

(2) In any county of this state where any real property or 432  
personal property of the testator is located if, at the time of 433  
the testator's death, the testator was not domiciled in this 434  
state, and provided that the will has not previously been 435  
admitted to probate in this state or in the state of the 436  
testator's domicile; 437

(3) In the county of this state in which a ~~probate~~ court 438  
rendered a judgment declaring that the will was valid ~~and in~~ 439  
~~which the will was filed with the probate court pursuant to~~ 440  
division (A) (1) of section 5817.10 of the Revised Code. 441

(B) For the purpose of division (A) (2) of this section, 442  
intangible personal property is located in the place where the 443  
instrument evidencing a debt, obligation, stock, or chose in 444  
action is located or if there is no instrument of that nature 445  
where the debtor resides. 446

**Sec. 2107.12.** When a will is presented for probate or for 447  
a declaratory judgment of its validity pursuant to ~~section~~ 448  
~~2107.081 Chapter 5817.~~ of the Revised Code, persons interested 449  
in its outcome may contest the jurisdiction of the court to 450  
entertain the application. Preceding a hearing of a contest as 451  
to jurisdiction, all parties named in such will as legatees, 452  
devisees, trustees, or executors shall have notice ~~thereof of~~ 453  
the hearing in such manner as may be ordered by the court. 454

When ~~such that~~ contest is made, the parties may call 455  
witnesses and shall be heard upon the question involved. The 456  
decision of the court as to its jurisdiction may be reviewed on 457  
error. 458

**Sec. 2107.16.** (A) When offered for probate, a will may be 459  
admitted to probate and allowed upon such proof as would be 460



satisfactory, and in like manner as if an absent or incompetent witness were dead: 461  
462

(1) If it appears to the probate court that a witness to such will has gone to parts unknown; 463  
464

(2) If the witness was competent at the time of attesting its execution and afterward became incompetent; 465  
466

(3) If testimony of a witness cannot be obtained within a reasonable time. 467  
468

(B) When offered for probate, a will shall be admitted to probate and allowed when there has been a prior judgment by a ~~probate~~ court declaring that the will is valid pursuant to division (A) (1) of section 2107.084-5817.10 of the Revised Code, 469  
470  
471  
472  
if the will ~~has not been removed from the possession of the probate judge and has not been modified or revoked under~~ 473  
474  
475  
~~division (C) or (D) of section 2107.084 of the Revised Code.~~

**Sec. 2107.18.** The probate court shall admit a will to probate if it appears from the face of the will, or if the probate court requires, in its discretion, the testimony of the witnesses to a will and it appears from that testimony, that the execution of the will complies with the law in force at the time of the execution of the will in the jurisdiction in which it was executed, with the law in force in this state at the time of the death of the testator, or with the law in force in the jurisdiction in which the testator was domiciled at the time of the testator's death. 476  
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The probate court shall admit a will to probate when there has been a prior judgment by a ~~probate~~ court declaring that the will is valid, rendered pursuant to division (A) (1) of section 2107.084-5817.10 of the Revised Code, if the will ~~has not been~~ 486  
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~~removed from the possession of the probate judge and has not 490  
been modified or revoked under division (C) or (D) of section 491  
2107.084 of the Revised Code. 492~~

**Sec. 2107.20.** When admitted to probate every will shall be 493  
filed in the office of the probate judge and recorded, together 494  
with any testimony or prior judgment of a ~~probate~~ court 495  
declaring the will valid pursuant to division (A) (1) of section 496  
5817.10 of the Revised Code, by the judge or the clerk of the 497  
probate court in a book to be kept for that purpose. 498

A copy of the recorded will, with a copy of the order of 499  
probate annexed to the copy of the recorded will, certified by 500  
the judge under seal of the judge's court, shall be as effectual 501  
in all cases as the original would be, if established by proof. 502

**Sec. 2107.22.** (A) (1) (a) When a will has been admitted to 503  
probate by a probate court and another will of later date is 504  
presented to the same court for probate, notice of the will of 505  
later date shall be given to those persons required to be 506  
notified under section 2107.19 of the Revised Code, and to the 507  
fiduciaries and beneficiaries under the will of earlier date. 508  
The probate court may admit the will of later date to probate 509  
the same as if no earlier will had been so admitted if it 510  
appears from the face of the will of later date, or if an 511  
interested person makes a demand as described in division (A) (1) 512  
(b) of this section and it appears from the testimony of the 513  
witnesses to the will given in accordance with that division, 514  
that the execution of the will complies with the law in force at 515  
the time of the execution of the will in the jurisdiction in 516  
which it was executed, with the law in force in this state at 517  
the time of the death of the testator, or with the law in force 518  
in the jurisdiction in which the testator was domiciled at the 519

time of the testator's death. 520

(b) Upon the demand of a person interested in having a 521  
will of later date admitted to probate, the probate court shall 522  
cause at least two of the witnesses to the will of later date, 523  
and any other witnesses that the interested person desires to 524  
have appear, to come before the probate court and provide 525  
testimony. If the interested person so requests, the probate 526  
court shall issue a subpoena to compel the presence of any such 527  
witness before the probate court to provide testimony. 528

Witnesses before the probate court pursuant to this 529  
division shall be examined, and may be cross-examined, in open 530  
court, and their testimony shall be reduced to writing and then 531  
filed in the records of the probate court pertaining to the 532  
testator's estate. 533

(2) When an authenticated copy of a will has been admitted 534  
to record by a probate court, and an authenticated copy of a 535  
will of later date that was executed and proved as required by 536  
law, is presented to the same court for record, it shall be 537  
admitted to record in the same manner as if no authenticated 538  
copy of the will of earlier date had been so admitted. 539

(3) If a probate court admits a will of later date to 540  
probate, or an authenticated copy of a will of later date to 541  
record, its order shall operate as a revocation of the order 542  
admitting the will of earlier date to probate, or shall operate 543  
as a revocation of the order admitting the authenticated copy of 544  
the will of earlier date to record. The probate court shall 545  
enter on the record of the earlier will a marginal note "later 546  
will admitted to probate ..." (giving the date admitted). 547

(B) When a will that has been declared valid pursuant to 548

~~division (A) (1) of section 2107.084-5817.10~~ of the Revised Code 549  
has been admitted to probate by a probate court, and an 550  
authenticated copy of another will of later date that was 551  
executed and proved as required by law is presented to the same 552  
court for record, the will of later date shall be admitted the 553  
same as if no other will had been admitted and the proceedings 554  
shall continue as provided in this section. 555

**Sec. 2107.33.** (A) A will shall be revoked in the following 556  
manners: 557

(1) By the testator by tearing, canceling, obliterating, 558  
or destroying it with the intention of revoking it; 559

(2) By some person, at the request of the testator and in 560  
the testator's presence, by tearing, canceling, obliterating, or 561  
destroying it with the intention of revoking it; 562

(3) By some person tearing, canceling, obliterating, or 563  
destroying it pursuant to the testator's express written 564  
direction; 565

(4) By some other written will or codicil, executed as 566  
prescribed by this chapter; 567

(5) By some other writing that is signed, attested, and 568  
subscribed in the manner provided by this chapter. 569

~~(B) A will that has been declared valid and is in the 570  
possession of a probate judge also may be revoked according to 571  
division (C) of section 2107.084 of the Revised Code. 572~~

~~(C) If a testator removes a will that has been declared 573  
valid and is in the possession of a probate judge pursuant to 574  
section 2107.084 of the Revised Code from the possession of the 575  
judge, the declaration of validity that was rendered no longer 576~~

~~has any effect.~~ 577

~~(D)~~—If after executing a will, a testator is divorced, 578  
obtains a dissolution of marriage, has the testator's marriage 579  
annulled, or, upon actual separation from the testator's spouse, 580  
enters into a separation agreement pursuant to which the parties 581  
intend to fully and finally settle their prospective property 582  
rights in the property of the other, whether by expected 583  
inheritance or otherwise, any disposition or appointment of 584  
property made by the will to the former spouse or to a trust 585  
with powers created by or available to the former spouse, any 586  
provision in the will conferring a general or special power of 587  
appointment on the former spouse, and any nomination in the will 588  
of the former spouse as executor, trustee, or guardian shall be 589  
revoked unless the will expressly provides otherwise. 590

~~(E)~~—(C) Property prevented from passing to a former spouse 591  
or to a trust with powers created by or available to the former 592  
spouse because of revocation by this section shall pass as if 593  
the former spouse failed to survive the decedent, and other 594  
provisions conferring some power or office on the former spouse 595  
shall be interpreted as if the spouse failed to survive the 596  
decedent. If provisions are revoked solely by this section, they 597  
shall be deemed to be revived by the testator's remarriage with 598  
the former spouse or upon the termination of a separation 599  
agreement executed by them. 600

~~(F)~~—(D) A bond, agreement, or covenant made by a testator, 601  
for a valuable consideration, to convey property previously 602  
devised or bequeathed in a will does not revoke the devise or 603  
bequest. The property passes by the devise or bequest, subject 604  
to the remedies on the bond, agreement, or covenant, for a 605  
specific performance or otherwise, against the devisees or 606

legatees, that might be had by law against the heirs of the 607  
testator, or the testator's next of kin, if the property had 608  
descended to them. 609

~~(G)~~(E) A testator's revocation of a will shall be valid 610  
only if the testator, at the time of the revocation, has the 611  
same capacity as the law requires for the execution of a will. 612

~~(H)~~(F) As used in this section: 613

(1) "Trust with powers created by or available to the 614  
former spouse" means a trust that is revocable by the former 615  
spouse, with respect to which the former spouse has a power of 616  
withdrawal, or with respect to which the former spouse may take 617  
a distribution that is not subject to an ascertainable standard 618  
but does not mean a trust in which those powers of the former 619  
spouse are revoked by section 5815.31 of the Revised Code or 620  
similar provisions in the law of another state. 621

(2) "Ascertainable standard" means a standard that is 622  
related to a trust beneficiary's health, maintenance, support, 623  
or education. 624

**Sec. 2107.52.** (A) As used in this section: 625

(1) "Class member" means an individual who fails to 626  
survive the testator but who would have taken under a devise in 627  
the form of a class gift had the individual survived the 628  
testator. 629

(2) "Descendant of a grandparent" means an individual who 630  
qualifies as a descendant of a grandparent of the testator or of 631  
the donor of a power of appointment under either of the 632  
following: 633

(a) The rules of construction applicable to a class gift 634

created in the testator's will if the devise or the exercise of  
the power of appointment is in the form of a class gift;

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

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

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

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

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

(c) An appointee under a power of appointment exercised by  
the testator's will.

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

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

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

(8) "Testator" includes the donee of a power of 662  
appointment if the power is exercised in the testator's will. 663

(B) (1) As used in "surviving descendants" in divisions (B) 664  
(2) (a) and (b) of this section, "descendants" means the 665  
descendants of a deceased devisee or class member under the 666  
applicable division who would take under a class gift created in 667  
the testator's will. 668

(2) Unless a contrary intent appears in the will, if a 669  
devisee fails to survive the testator and is a grandparent, a 670  
descendant of a grandparent, or a stepchild of either the 671  
testator or the donor of a power of appointment exercised by the 672  
testator's will, either of the following applies: 673

(a) If the devise is not in the form of a class gift and 674  
the deceased devisee leaves surviving descendants, a substitute 675  
gift is created in the devisee's surviving descendants. The 676  
surviving descendants take, per stirpes, the property to which 677  
the devisee would have been entitled had the devisee survived 678  
the testator. 679

(b) If the devise is in the form of a class gift, other 680  
than a devise to "issue," "descendants," "heirs of the body," 681  
"heirs," "next of kin," "relatives," or "family," or a class 682  
described by language of similar import that includes more than 683  
one generation, a substitute gift is created in the surviving 684  
descendants of any deceased devisee. The property to which the 685  
devisees would have been entitled had all of them survived the 686  
testator passes to the surviving devisees and the surviving 687  
descendants of the deceased devisees. Each surviving devisee 688  
takes the share to which the surviving devisee would have been 689  
entitled had the deceased devisees survived the testator. Each 690  
deceased devisee's surviving descendants who are substituted for 691



the deceased devisee take, per stirpes, the share to which the 692  
deceased devisee would have been entitled had the deceased 693  
devisee survived the testator. For purposes of division (B) (2) 694  
(b) of this section, "deceased devisee" means a class member who 695  
failed to survive the testator by at least one hundred twenty 696  
hours and left one or more surviving descendants. 697

(C) For purposes of this section, each of the following 698  
applies: 699

(1) Attaching the word "surviving" or "living" to a 700  
devise, such as a gift "to my surviving (or living) children," 701  
is not, in the absence of other language in the will or other 702  
evidence to the contrary, a sufficient indication of an intent 703  
to negate the application of division (B) of this section. 704

(2) Attaching other words of survivorship to a devise, 705  
such as "to my child, if my child survives me," is, in the 706  
absence of other language in the will or other evidence to the 707  
contrary, a sufficient indication of an intent to negate the 708  
application of division (B) of this section. 709

(3) A residuary clause is not a sufficient indication of 710  
an intent to negate the application of division (B) of this 711  
section unless the will specifically provides that upon lapse or 712  
failure the nonresiduary devise, or nonresiduary devises in 713  
general, pass under the residuary clause. 714

(4) Unless the language creating a power of appointment 715  
expressly excludes the substitution of the descendants of an 716  
appointee for the appointee, a surviving descendant of a 717  
deceased appointee of a power of appointment may be substituted 718  
for the appointee under this section, whether or not the 719  
descendant is an object of the power of appointment. 720

(D) Except as provided in division (A), (B), or (C) of 721  
this section, each of the following applies: 722

(1) A devise, other than a residuary devise, that fails 723  
for any reason becomes a part of the residue. 724

(2) If the residue is devised to two or more persons, the 725  
share of a residuary devisee that fails for any reason passes to 726  
the other residuary devisee, or to other residuary devisees in 727  
proportion to the interest of each in the remaining part of the 728  
residue. 729

(3) If a residuary devise fails for any reason in its 730  
entirety, the residue passes by intestate succession. 731

(E) This section applies only to outright devises and 732  
appointments. Devises and appointments in trust, including to a 733  
testamentary trust, are subject to section 5808.19 of the 734  
Revised Code. 735

(F) This section applies to wills of decedents who die on 736  
or after ~~the effective date of this section~~ March 22, 2012. 737

**Sec. 2107.71.** (A) A person interested in a will or codicil 738  
admitted to probate in the probate court that has not been 739  
declared valid by judgment of a ~~probate~~ court pursuant to 740  
division (A)(1) of section 2107.084-5817.10 of the Revised Code 741  
~~or that has been declared valid by judgment of a probate court~~ 742  
~~pursuant to section 2107.084 of the Revised Code but has been~~ 743  
~~removed from the possession of the probate judge,~~ may contest 744  
its validity by filing a complaint in the probate court in the 745  
county in which the will or codicil was admitted to probate. 746

(B) Except as otherwise provided in this division, no 747  
person may contest the validity of any will or codicil as to 748  
facts decided if it was submitted to a probate court by the 749

testator during the testator's lifetime and declared valid by 750  
judgment of ~~the probate a court and filed with the judge of the~~ 751  
~~probate court~~ pursuant to division (A) (1) of section 2107.084- 752  
5817.10 of the Revised Code ~~and if the will was not removed from~~ 753  
~~the possession of the probate judge.~~ A person may contest the 754  
validity of that will, ~~modification,~~ or codicil as to those 755  
facts if the person is one who should have been named a party 756  
defendant in the action in which the will, ~~modification,~~ or 757  
codicil was declared valid, pursuant to division (A) of section 758  
2107.081 or 2107.084-5817.05 of the Revised Code, and if the 759  
person was not named a defendant and properly served in that 760  
action. Upon the filing of a complaint contesting the validity 761  
of a will or codicil that is authorized by this division, the 762  
court shall proceed with the action ~~in the same manner as if the~~ 763  
~~will, modification, or codicil had not been previously declared~~ 764  
~~valid under sections 2107.081 to 2107.085 of the Revised Code.~~ 765

(C) No person may introduce, as evidence in an action 766  
authorized by this section contesting the validity of a will, 767  
the fact that the testator of the will did not file a complaint 768  
for a judgment declaring its validity under ~~section 2107.081-~~ 769  
Chapter 5817. of the Revised Code. 770

Sec. 2111.182. If a minor is entitled to money or property 771  
whether by settlement or judgment for personal injury or damage 772  
to tangible or intangible property, inheritance or otherwise, 773  
the probate court may order that all or a portion of the amount 774  
received by the minor be deposited into a trust for the benefit 775  
of that beneficiary until the beneficiary reaches twenty-five 776  
years of age, and order the distribution of the amount in 777  
accordance with the provisions of the trust. Prior to the 778  
appointment as a trustee of a trust created pursuant to this 779  
section, the person to be appointed shall be approved by a 780

parent or guardian of the minor beneficiary of the trust, unless 781  
otherwise ordered by the probate court. 782

Sec. 2111.52. (A) The probate court may accept funds or 783  
other program assistance from, or charge fees for services 784  
described in division (C) of this section rendered to, 785  
individuals, corporations, agencies, or organizations, including 786  
a county board of alcohol, drug addiction, and mental health 787  
services or a county board of developmental disabilities. Any 788  
funds or fees received by the probate court under this division 789  
shall be paid into the county treasury and credited to a fund to 790  
be known as the county probate court guardianship services fund. 791

(B) The probate courts of two or more counties may accept 792  
funds for other program assistance from, or charge fees for 793  
services described in division (C) of this section rendered to, 794  
individuals, corporations, agencies, or organizations, including 795  
a county board of alcohol, drug addiction, and mental health 796  
services or a county board of developmental disabilities. Any 797  
funds or fees received by the probate courts of two or more 798  
counties under this division shall be paid into the county 799  
treasury of one or more of the counties and credited to a fund 800  
to be known as the multicounty probate court guardianship 801  
services fund. 802

(C) The moneys in a county or multicounty probate court 803  
guardianship services fund shall be used for services to help 804  
ensure the treatment of any person who is subject to a 805  
guardianship, whether or not that person is under the care of a 806  
county board of alcohol, drug addiction, and mental health 807  
services or a county board of developmental disabilities. These 808  
services include involuntary commitment proceedings and the 809  
establishment and management of adult guardianships, including 810

all associated expenses, for wards who are under the care of a 811  
county board of alcohol, drug addiction, and mental health 812  
services, a county board of developmental disabilities, or any 813  
other guardianships. 814

(D) If a judge of a probate court determines that some of 815  
the moneys in the county or multicounty probate court 816  
guardianship services fund are needed for the efficient 817  
operation of the probate court, the moneys may be used for the 818  
acquisition of equipment, the hiring and training of staff, 819  
community services programs, volunteer guardianship training 820  
services, the employment of magistrates, and other related 821  
services. 822

(E) The moneys in the county or multicounty probate court 823  
guardianship services fund that may be used in part for the 824  
establishment and management of adult guardianships under 825  
division (C) of this section may be utilized to establish a 826  
county or multicounty guardianship services board. 827

(F) (1) A county or multicounty guardianship services board 828  
under division (E) of this section may be established by the 829  
appointment of the board. The judge of the probate court shall 830  
appoint at least one member. Other appointing entities may 831  
include a board of directors of the county board of 832  
developmental disabilities or a board of directors of the county 833  
board of alcohol, drug addiction, and mental health services. 834  
The appointing entities shall determine the size of the 835  
guardianship services board. The term of appointment of each 836  
member is four years. Initial appointments may be staggered for 837  
two, three, and four years, upon agreement of the appointing 838  
entities. 839

(2) The county or multicounty guardianship services board 840

may appoint a director of the board. The board shall determine 841  
the compensation of the director based on the availability of 842  
funds contained in the county or multicounty probate court 843  
guardianship services fund. 844

(3) The county or multicounty guardianship services board 845  
may receive appointments from one or more county probate courts 846  
to serve as guardians of both the person and estate of a ward. 847  
The director or any designee of a county or multicounty 848  
guardianship services board may act on behalf of the board in 849  
relation to all guardianship matters. 850

(4) The director of a county or multicounty guardianship 851  
services board may hire employees subject to available funds in 852  
the county or multicounty probate court guardianship services 853  
fund. 854

(5) The county or multicounty guardianship services board 855  
may charge a reasonable fee for services provided to a ward. A 856  
probate judge shall approve any fees charged by the board under 857  
this division. 858

(6) The county or multicounty guardianship services board 859  
that is created under division (F)(1) of this section shall 860  
promulgate all rules and regulations necessary for the efficient 861  
operation of the board and its administration of guardianship 862  
services. 863

**Sec. 2137.01.** As used in this chapter: 864

(A) "Account" means an arrangement under a terms-of- 865  
service agreement in which a custodian carries, maintains, 866  
processes, receives, or stores a digital asset of the user or 867  
provides goods or services to the user. 868

(B) "Agent" means a person granted authority to act for a 869

principal under a power of attorney, whether denominated as 870  
agent, attorney in fact, or otherwise. 871

(C) "Carries" means engages in the transmission of an 872  
electronic communication. 873

(D) "Catalogue of electronic communications" means 874  
information that identifies each person with which a user has 875  
had an electronic communication, the time and date of the 876  
communication, and the electronic address of the person. 877

(E) "Content of an electronic communication" means 878  
information concerning the substance or meaning of the 879  
communication that meets all of the following conditions: 880

(1) It has been sent or received by a user. 881

(2) It is in electronic storage by a custodian providing 882  
an electronic-communication service to the public or is carried 883  
or maintained by a custodian providing a remote-computing 884  
service to the public. 885

(3) It is not readily accessible to the public. 886

(F) "Court" means the probate court for all matters in 887  
which the court has exclusive jurisdiction under section 2101.24 888  
of the Revised Code. "Court" also includes the probate court or 889  
the general division of the court of common pleas for matters in 890  
which such courts have concurrent jurisdiction under section 891  
2101.24 of the Revised Code. 892

(G) "Custodian" means a person that carries, maintains, 893  
processes, receives, or stores a digital asset of a user. 894

(H) "Designated recipient" means a person chosen by a user 895  
using an online tool to administer digital assets of the user. 896

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

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

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

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

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

(N) (1) "Guardian" means any person, association, or corporation appointed by the probate court to have the care and management of the person, the estate, or the person and the estate of an incompetent or minor. When applicable, "guardian" includes, but is not limited to, a limited guardian, an interim guardian, a standby guardian, and an emergency guardian appointed pursuant to division (B) of section 2111.02 of the Revised Code. "Guardian" also includes both of the following:

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

(b) A conservator appointed by the probate court in an order of conservatorship issued pursuant to section 2111.021 of



the Revised Code.	926
(2) "Guardian" does not include a guardian under sections 5905.01 to 5905.19 of the Revised Code.	927 928
(O) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.	929 930 931
(P) "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.	932 933 934 935 936
(Q) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental agency or instrumentality, public corporation, or any other legal or commercial entity.	937 938 939 940 941
(R) "Personal representative" means an executor, administrator, special administrator, or other person acting under the authority of the probate court to perform substantially the same function under the law of this state. "Personal representative" also includes a commissioner in a release of assets from administration under section 2113.03 of the Revised Code and an applicant for summary release from administration under section 2113.031 of the Revised Code.	942 943 944 945 946 947 948 949
(S) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal.	950 951 952
(T) "Principal" means an individual who grants authority to an agent in a power of attorney.	953 954

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

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

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

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

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

(Z) "Ward" means any person for whom a guardian is acting or for whom the probate court is acting pursuant to section 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 984  
affected by a constitutional provision, statute, rule as defined 985  
in section 119.01 of the Revised Code, municipal ordinance, 986  
township resolution, contract, or franchise may have determined 987  
any question of construction or validity arising under the 988  
instrument, constitutional provision, statute, rule, ordinance, 989  
resolution, contract, or franchise and obtain a declaration of 990  
rights, status, or other legal relations under it. 991

The testator of a will may have the validity of the will 992  
determined at any time during the testator's lifetime pursuant 993  
to ~~sections 2107.081 to 2107.085~~ Chapter 5817. of the Revised 994  
Code. The settlor of a trust may have the validity of the trust 995  
determined at any time during the settlor's lifetime pursuant to 996  
Chapter 5817. of the Revised Code. 997

**Sec. 5802.03.** ~~The~~ (A) Except as otherwise provided in 998  
division (B) of this section, the probate division of the court 999  
of common pleas has concurrent jurisdiction with, and the same 1000  
powers at law and in equity as, the general division of the 1001  
court of common pleas to issue writs and orders and to hear and 1002  
determine any action that involves an inter vivos trust. 1003

(B) The probate division of the court of common pleas has 1004  
exclusive jurisdiction to render declaratory judgments under 1005  
Chapter 5817. of the Revised Code. However, the probate division 1006  
of the court of common pleas may transfer a declaratory judgment 1007  
proceeding under that chapter to the general division of the 1008  
court of common pleas pursuant to division (A) of section 1009  
5817.04 of the Revised Code. 1010

**Sec. 5802.05.** (A) A provision in the terms of a trust, 1011  
excluding a testamentary trust, that requires the arbitration of 1012  
disputes, other than disputes of the validity of all or a part 1013

of a trust instrument, between or among the beneficiaries and a 1014  
fiduciary under the trust, or a combination of those persons or 1015  
entities, is enforceable. 1016

(B) Unless otherwise specified in the terms of the trust, 1017  
a trust provision requiring arbitration as described in division 1018  
(A) of this section shall be presumed to require binding 1019  
arbitration under Chapter 2711. of the Revised Code. 1020

**Sec. 5806.04.** (A) Any Subject to division (E) of this 1021  
section, any of the following actions pertaining to a revocable 1022  
trust that is made irrevocable by the death of the settlor of 1023  
the trust shall be commenced by the earlier of the date that is 1024  
two years after the date of the death of the settlor of the 1025  
trust or that is six months from the date on which the trustee 1026  
sends the person bringing the action a copy of the trust 1027  
instrument and a notice informing the person of the trust's 1028  
existence, of the trustee's name and address, and of the time 1029  
allowed under this division for commencing an action: 1030

(1) An action to contest the validity of the trust; 1031

(2) An action to contest the validity of any amendment to 1032  
the trust that was made during the lifetime of the settlor of 1033  
the trust; 1034

(3) An action to contest the revocation of the trust 1035  
during the lifetime of the settlor of the trust; 1036

(4) An action to contest the validity of any transfer made 1037  
to the trust during the lifetime of the settlor of the trust. 1038

(B) Upon the death of the settlor of a revocable trust 1039  
that was made irrevocable by the death of the settlor, the 1040  
trustee, without liability, may proceed to distribute the trust 1041  
property in accordance with the terms of the trust unless either 1042

of the following applies: 1043

(1) The trustee has actual knowledge of a pending action 1044  
to contest the validity of the trust, any amendment to the 1045  
trust, the revocation of the trust, or any transfer made to the 1046  
trust during the lifetime of the settlor of the trust. 1047

(2) The trustee receives written notification from a 1048  
potential contestant of a potential action to contest the 1049  
validity of the trust, any amendment to the trust, the 1050  
revocation of the trust, or any transfer made to the trust 1051  
during the lifetime of the settlor of the trust, and the action 1052  
is actually filed within ninety days after the written 1053  
notification was given to the trustee. 1054

(C) If a distribution of trust property is made pursuant 1055  
to division (B) of this section, a beneficiary of the trust 1056  
shall return any distribution to the extent that it exceeds the 1057  
distribution to which the beneficiary is entitled if the trust, 1058  
an amendment to the trust, or a transfer made to the trust later 1059  
is determined to be invalid. 1060

(D) This section applies only to revocable trusts that are 1061  
made irrevocable by the death of the settlor of the trust if the 1062  
grantor dies on or after July 23, 2002. 1063

(E) Except as otherwise provided in this division, no 1064  
person may contest the validity of any trust as to facts decided 1065  
if the trust was submitted to a probate court by the settlor 1066  
during the settlor's lifetime and declared valid by the judgment 1067  
of a court pursuant to division (B)(1) of section 5817.10 of the 1068  
Revised Code. A person may contest the validity of that trust as 1069  
to those facts if the person is one who should have been named a 1070  
party defendant in the action in which the trust was declared 1071

valid, pursuant to division (A) of section 5817.06 of the 1072  
Revised Code, and if the person was not named a defendant and 1073  
properly served in that action. 1074

**Sec. 5808.19.** (A) As used in this section, unless 1075  
otherwise provided in any other provision in this section: 1076

(1) "Beneficiary" means the beneficiary of a future 1077  
interest and includes a class member if the future interest is 1078  
in the form of a class gift. 1079

(2) "Class member" means an individual who fails to 1080  
survive the distribution date by at least one hundred twenty 1081  
hours but who would have taken under a future interest in the 1082  
form of a class gift had the individual survived the 1083  
distribution date by at least one hundred twenty hours. 1084

(3) "Descendant of a grandparent of the transferor" means 1085  
an individual who would qualify as a descendant of a grandparent 1086  
of the transferor under the rules of construction that would 1087  
apply to a class gift under the transferor's will to the 1088  
descendants of the transferor's grandparent. 1089

(4) "Distribution date," with respect to a future 1090  
interest, means the time when the future interest is to take 1091  
effect in possession or enjoyment. The distribution date need 1092  
not occur at the beginning or end of a calendar day but may 1093  
occur at a time during the course of a day. 1094

(5) "Future interest" means an alternative future interest 1095  
or a future interest in the form of a class gift. 1096

(6) "Future interest under the terms of a trust" means a 1097  
future interest that was created by a transfer creating a trust 1098  
or a transfer to an existing trust, or by an exercise of a power 1099  
of appointment to an existing trust, that directs the 1100

continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust. 1101  
1102

(7) "Per stirpes" means that the shares of the descendants of a beneficiary who does not survive the distribution date by at least one hundred twenty hours are determined in the same way they would have been determined under division (A) of section 2105.06 of the Revised Code if the beneficiary had died intestate and unmarried on the distribution date. 1103  
1104  
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(8) "Revocable trust" means a trust that was revocable immediately before the settlor's death by the settlor alone or by the settlor with the consent of any person other than a person holding an adverse interest. A trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a power of attorney, or a guardian of the person or estate of the settlor, was serving. 1109  
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(9) "Stepchild" means a child of the surviving, deceased, or former spouse of the transferor and not of the transferor. 1117  
1118

(10) "Transferor" means any of the following: 1119

(a) The donor and donee of a power of appointment, if the future interest was in property as a result of the exercise of a power of appointment; 1120  
1121  
1122

(b) The testator, if the future interest was devised by will; 1123  
1124

(c) The settlor, if the future interest was conveyed by inter vivos trust. 1125  
1126

(B) (1) (a) As used in "surviving descendants" in divisions 1127

(B) (2) (b) (i) and (ii) of this section, "descendants" means the 1128

descendants of a deceased beneficiary or class member who would 1129  
take under a class gift created in the trust. 1130

(b) As used in divisions (B) (2) (b) (i) and (ii) of this 1131  
section, "surviving beneficiaries" or "surviving descendants" 1132  
means beneficiaries or descendants, whichever is applicable, who 1133  
survive the distribution date by at least one hundred twenty 1134  
hours. 1135

(2) Unless a contrary intent appears in the instrument 1136  
creating a future interest under the terms of a trust, each of 1137  
the following applies: 1138

(a) A future interest under the terms of a trust is 1139  
contingent on the beneficiary's surviving the distribution date 1140  
by at least one hundred twenty hours. 1141

(b) If a beneficiary of a future interest under the terms 1142  
of a trust does not survive the distribution date by at least 1143  
one hundred twenty hours and if the beneficiary is a grandparent 1144  
of the transferor, a descendant of a grandparent of the 1145  
transferor, or a stepchild of the transferor, either of the 1146  
following applies: 1147

(i) If the future interest is not in the form of a class 1148  
gift and the deceased beneficiary leaves surviving descendants, 1149  
a substitute gift is created in the beneficiary's surviving 1150  
descendants. The surviving descendants take, per stirpes, the 1151  
property to which the beneficiary would have been entitled had 1152  
the beneficiary survived the distribution date by at least one 1153  
hundred twenty hours. 1154

(ii) If the future interest is in the form of a class 1155  
gift, other than a future interest to "issue," "descendants," 1156  
"heirs of the body," "heirs," "next of kin," "relatives," or 1157



"family," or a class described by language of similar import 1158  
that includes more than one generation, a substitute gift is 1159  
created in the surviving descendants of the deceased beneficiary 1160  
or beneficiaries. The property to which the beneficiaries would 1161  
have been entitled had all of them survived the distribution 1162  
date by at least one hundred twenty hours passes to the 1163  
surviving beneficiaries and the surviving descendants of the 1164  
deceased beneficiaries. Each surviving beneficiary takes the 1165  
share to which the surviving beneficiary would have been 1166  
entitled had the deceased beneficiaries survived the 1167  
distribution date by at least one hundred twenty hours. Each 1168  
deceased beneficiary's surviving descendants who are substituted 1169  
for the deceased beneficiary take, per stirpes, the share to 1170  
which the deceased beneficiary would have been entitled had the 1171  
deceased beneficiary survived the distribution date by at least 1172  
one hundred twenty hours. For purposes of division (B) (2) (b) (ii) 1173  
of this section, "deceased beneficiary" means a class member who 1174  
failed to survive the distribution date by at least one hundred 1175  
twenty hours and left one or more surviving descendants. 1176

(C) For purposes of this section, each of the following 1177  
applies: 1178

(1) Describing a class of beneficiaries as "surviving" or 1179  
"living," without specifying when the beneficiaries must be 1180  
surviving or living, such as a gift "for my spouse for life, 1181  
then to my surviving (or living) children," is not, in the 1182  
absence of other language in the trust instrument or other 1183  
evidence to the contrary, a sufficient indication of an intent 1184  
to negate the application of division (B) (2) (b) of this section. 1185

(2) Subject to division (C) (1) of this section, attaching 1186  
words of survivorship to a future interest under the terms of a 1187

trust, such as "for my spouse for life, then to my children who 1188  
survive my spouse" or "for my spouse for life, then to my then- 1189  
living children" is, in the absence of other language in the 1190  
trust instrument or other evidence to the contrary, a sufficient 1191  
indication of an intent to negate the application of division 1192  
(B) (2) (b) of this section. Words of survivorship under division 1193  
(C) (2) of this section include words of survivorship that relate 1194  
to the distribution date or to an earlier or an unspecified 1195  
time, whether those words of survivorship are expressed as 1196  
condition-precedent, condition-subsequent, or in any other form. 1197

(3) A residuary clause in a will is not a sufficient 1198  
indication of an intent that is contrary to the application of 1199  
this section, whether or not the will specifically provides that 1200  
lapsed or failed devises are to pass under the residuary clause. 1201  
A residuary clause in a revocable trust instrument is not a 1202  
sufficient indication of an intent that is contrary to the 1203  
application of this section unless the distribution date is the 1204  
date of the settlor's death and the revocable trust instrument 1205  
specifically provides that upon lapse or failure the 1206  
nonresiduary devise, or nonresiduary devises in general, pass 1207  
under the residuary clause. 1208

(D) If, after the application of divisions (B) and (C) of 1209  
this section there is no surviving taker of the property, and a 1210  
contrary intent does not appear in the instrument creating the 1211  
future interest, the property passes in the following order: 1212

(1) If the future interest was created by the exercise of 1213  
a power of appointment, the property passes under the donor's 1214  
gift-in-default clause, if any, which clause is treated as 1215  
creating a future interest under the terms of a trust. 1216

(2) If no taker is produced under division (D) (1) of this 1217

section and the trust was created in a nonresiduary devise in 1218  
the transferor's will or in a codicil to the transferor's will, 1219  
the property passes under the residuary clause in the 1220  
transferor's will. For purposes of division (D) (2) of this 1221  
section, the residuary clause is treated as creating a future 1222  
interest under the terms of a trust. 1223

(3) If no taker is produced under divisions (D) (1) and (2) 1224  
of this section, the transferor is deceased, and the trust was 1225  
created in a nonresiduary gift under the terms of a revocable 1226  
trust of the transferor, the property passes under the residuary 1227  
clause in the transferor's revocable trust instrument. For 1228  
purposes of division (D) (3) of this section, the residuary 1229  
clause in the transferor's revocable trust instrument is treated 1230  
as creating a future interest under the terms of a trust. 1231

(4) If no taker is produced under divisions (D) (1), (2), 1232  
and (3) of this section, the property passes to those persons 1233  
who would succeed to the transferor's intestate estate and in 1234  
the shares as provided in the intestate succession law of the 1235  
transferor's domicile if the transferor died on the distribution 1236  
date. Notwithstanding division (A) (10) of this section, for 1237  
purposes of division (D) (4) of this section, if the future 1238  
interest was created by the exercise of a power of appointment, 1239  
"transferor" means the donor if the power is a nongeneral power, 1240  
or the donee if the power is a general power. 1241

(E) This section applies to all trusts that become 1242  
irrevocable on or after ~~the effective date of this section~~ March 1243  
22, 2012. This section does not apply to any trust that was 1244  
irrevocable before ~~the effective date of this section~~ March 22, 1245  
2012, even if property was added to the trust on or after ~~that~~ 1246  
~~effective date~~ March 22, 2012. 1247

<u>Sec. 5817.01. As used in this chapter:</u>	1248
<u>(A) (1) "Beneficiary under a trust" means either of the</u>	1249
<u>following:</u>	1250
<u>(a) Any person that has a present or future beneficial</u>	1251
<u>interest in a trust, whether vested or contingent;</u>	1252
<u>(b) Any person that, in a capacity other than that of</u>	1253
<u>trustee, holds a power of appointment over trust property, but</u>	1254
<u>does not include the class of permitted appointees among whom</u>	1255
<u>the power holder may appoint.</u>	1256
<u>(2) "Beneficiary under a trust" includes a charitable</u>	1257
<u>organization that is expressly designated in the terms of the</u>	1258
<u>trust to receive distributions, but does not include any</u>	1259
<u>charitable organization that is not expressly designated in the</u>	1260
<u>terms of the trust to receive distributions, but to whom the</u>	1261
<u>trustee may in its discretion make distributions.</u>	1262
<u>(B) (1) "Beneficiary under a will" means either of the</u>	1263
<u>following:</u>	1264
<u>(a) Any person designated in a will to receive a</u>	1265
<u>testamentary disposition of real or personal property;</u>	1266
<u>(b) Any person that, in a capacity other than that of</u>	1267
<u>executor, holds a power of appointment over estate assets, but</u>	1268
<u>does not include the class of permitted appointees among whom</u>	1269
<u>the power holder may appoint.</u>	1270
<u>(2) "Beneficiary under a will" includes a charitable</u>	1271
<u>organization that is expressly designated in the terms of the</u>	1272
<u>will to receive testamentary distributions, but does not include</u>	1273
<u>any charitable organization that is not expressly designated in</u>	1274
<u>the terms of the will to receive distributions, but to whom the</u>	1275

executor may in its discretion make distributions. 1276

(C) "Court" means the probate court of the county in which 1277  
the complaint under section 5817.02 or 5817.03 of the Revised 1278  
Code is filed or the general division of the court of common 1279  
pleas to which the probate court transfers the proceeding under 1280  
division (A) of section 5817.04 of the Revised Code. 1281

(D) "Related trust" means a trust for which both of the 1282  
following apply: 1283

(1) The testator is the settlor of the trust. 1284

(2) The trust is named as a beneficiary in the will in 1285  
accordance with section 2107.63 of the Revised Code. 1286

(E) "Related will" means a will for which both of the 1287  
following apply: 1288

(1) The testator is the settlor of a trust. 1289

(2) The will names the trust as a beneficiary in 1290  
accordance with section 2107.63 of the Revised Code. 1291

(F) "Trust" means an inter vivos revocable or irrevocable 1292  
trust instrument to which, at the time the complaint for 1293  
declaration of validity is filed under section 5817.03 of the 1294  
Revised Code, either of the following applies: 1295

(1) The settlor resides in, or is domiciled in, this 1296  
state. 1297

(2) The trust's principal place of administration is in 1298  
this state. 1299

**Sec. 5817.02.** (A) A testator may file a complaint with the 1300  
probate court to determine before the testator's death that the 1301  
testator's will is a valid will subject only to subsequent 1302

revocation or modification of the will. The right to file a 1303  
complaint for a determination of the validity of a testator's 1304  
will under this chapter, or to voluntarily dismiss a complaint 1305  
once filed, is personal to the testator and may not be exercised 1306  
by the testator's guardian or an agent under the testator's 1307  
power of attorney. 1308

(B) A testator who desires to obtain a validity 1309  
determination as to the testator's will shall file a complaint 1310  
to determine the validity of both the will and any related 1311  
trust. 1312

(C) The failure of a testator to file a complaint for a 1313  
judgment declaring the validity of a will shall not be construed 1314  
as evidence or an admission that the will is not valid. 1315

(D) A complaint for a determination of the validity of a 1316  
testator's will shall be accompanied by an express written 1317  
waiver of the testator's physician-patient privilege provided in 1318  
division (B) of section 2317.02 of the Revised Code. 1319

**Sec. 5817.03.** (A) A settlor may file a complaint with the 1320  
probate court to determine before the settlor's death that the 1321  
settlor's trust is valid and enforceable under its terms, 1322  
subject only to a subsequent revocation or modification of the 1323  
trust. The right to file a complaint for a determination of the 1324  
validity of a settlor's trust under this chapter, or to 1325  
voluntarily dismiss a complaint once filed, is personal to the 1326  
settlor and may not be exercised by the settlor's guardian or an 1327  
agent under the settlor's power of attorney. 1328

(B) A settlor who desires to obtain a validity 1329  
determination as to the settlor's trust shall file a complaint 1330  
to determine the validity of both the trust and the related 1331

will. 1332

(C) The failure of a settlor to file a complaint for a 1333  
judgment declaring the validity of a trust shall not be 1334  
construed as evidence or an admission that the trust is not 1335  
valid. 1336

(D) A complaint for a determination of the validity of a 1337  
settlor's trust shall be accompanied by an express written 1338  
waiver of the settlor's physician-patient privilege provided in 1339  
division (B) of section 2317.02 of the Revised Code. 1340

**Sec. 5817.04.** (A) A complaint to determine the validity of 1341  
a will or a trust shall be filed with the probate court. The 1342  
probate judge, upon the motion of a party or the judge's own 1343  
motion, may transfer the proceeding to the general division of 1344  
the court of common pleas. 1345

(B) The venue for a complaint under section 5817.02 of the 1346  
Revised Code is either of the following: 1347

(1) The probate court of the county in this state where 1348  
the testator is domiciled; 1349

(2) If the testator is not domiciled in this state, the 1350  
probate court of any county in this state where any real 1351  
property or personal property of the testator is located or, if 1352  
there is no such property, the probate court of any county in 1353  
this state. 1354

(C) The venue for a complaint under section 5817.03 of the 1355  
Revised Code is either of the following: 1356

(1) The probate court of the county in this state where 1357  
the settlor resides or is domiciled; 1358

(2) If the settlor does not reside or is not domiciled in 1359

this state, the probate court of the county in this state in 1360  
which the trust's principal place of administration is located. 1361

Sec. 5817.05. (A) A complaint under section 5817.02 of the 1362  
Revised Code shall name as party defendants all of the 1363  
following, as applicable: 1364

(1) The testator's spouse; 1365

(2) The testator's children; 1366

(3) The testator's heirs who would take property pursuant 1367  
to section 2105.06 of the Revised Code had the testator died 1368  
intestate at the time the complaint is filed; 1369

(4) The testator's beneficiaries under the will; 1370

(5) Any beneficiary under the testator's most recent prior 1371  
will. 1372

(B) A complaint under section 5817.02 of the Revised Code 1373  
may name as a party defendant any other person that the testator 1374  
believes may have a pecuniary interest in the determination of 1375  
the validity of the testator's will. 1376

(C) A complaint under section 5817.02 of the Revised Code 1377  
may contain all or any of the following: 1378

(1) A statement that a copy of the will has been filed 1379  
with the court; 1380

(2) A statement that the will is in writing; 1381

(3) A statement that the will was signed by the testator, 1382  
or was signed in the testator's name by another person in the 1383  
testator's conscious presence and at the testator's express 1384  
direction; 1385

(4) A statement that the will was signed in the conscious 1386



presence of the testator by two or more competent individuals, 1387  
each of whom either witnessed the testator sign the will, or 1388  
heard the testator acknowledge signing the will; 1389

(5) A statement that the will was executed with the 1390  
testator's testamentary intent; 1391

(6) A statement that the testator had testamentary 1392  
capacity; 1393

(7) A statement that the testator executed the will free 1394  
from undue influence, not under restraint or duress, and in the 1395  
exercise of the testator's free will; 1396

(8) A statement that the execution of the will was not the 1397  
result of fraud or mistake; 1398

(9) The names and addresses of the testator and all of the 1399  
defendants and, if any of the defendants are minors, their ages; 1400

(10) A statement that the will has not been revoked or 1401  
modified; 1402

(11) A statement that the testator is familiar with the 1403  
contents of the will. 1404

**Sec. 5817.06.** (A) A complaint under section 5817.03 of the 1405  
Revised Code shall name as party defendants the following, as 1406  
applicable: 1407

(1) The settlor's spouse; 1408

(2) The settlor's children; 1409

(3) The settlor's heirs who would take property pursuant 1410  
to section 2105.06 of the Revised Code had the settlor died 1411  
intestate at the time the complaint is filed; 1412

(4) The trustee or trustees under the trust; 1413

<u>(5) The beneficiaries under the trust;</u>	1414
<u>(6) If the trust amends, amends and restates, or replaces</u>	1415
<u>a prior trust, any beneficiary under the settlor's most recent</u>	1416
<u>prior trust.</u>	1417
<u>(B) A complaint under section 5817.03 of the Revised Code</u>	1418
<u>may name as a party defendant any other person that the settlor</u>	1419
<u>believes may have a pecuniary interest in the determination of</u>	1420
<u>the validity of the settlor's trust.</u>	1421
<u>(C) A complaint under section 5817.03 of the Revised Code</u>	1422
<u>may contain all or any of the following:</u>	1423
<u>(1) A statement that a copy of the trust has been filed</u>	1424
<u>with the court;</u>	1425
<u>(2) A statement that the trust is in writing and was</u>	1426
<u>signed by the settlor;</u>	1427
<u>(3) A statement that the trust was executed with the</u>	1428
<u>intent to create a trust;</u>	1429
<u>(4) A statement that the settlor had the legal capacity to</u>	1430
<u>enter into and establish the trust;</u>	1431
<u>(5) A statement that the trust has a definite beneficiary</u>	1432
<u>or is one of the following:</u>	1433
<u>(a) A charitable trust;</u>	1434
<u>(b) A trust for the care of an animal as provided in</u>	1435
<u>section 5804.08 of the Revised Code;</u>	1436
<u>(c) A trust for a noncharitable purpose as provided in</u>	1437
<u>section 5804.09 of the Revised Code.</u>	1438
<u>(6) A statement that the trustee of the trust has duties</u>	1439
<u>to perform;</u>	1440

(7) A statement that the same person is not the sole trustee and sole beneficiary of the trust; 1441  
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(8) A statement that the settlor executed the trust free from undue influence, not under restraint or duress, and in the exercise of the settlor's free will; 1443  
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(9) A statement that execution of the trust was not the result of fraud or mistake; 1446  
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(10) The names and addresses of the settlor and all of the defendants and, if any of the defendants are minors, their ages; 1448  
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(11) A statement that the trust has not been revoked or modified; 1450  
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(12) A statement that the settlor is familiar with the contents of the trust. 1452  
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**Sec. 5817.07.** (A) Service of process, with a copy of the complaint and the will, and a copy of the related trust, if applicable, shall be made on every party defendant named in the complaint filed under section 5817.02 of the Revised Code, as provided in the applicable Rules of Civil Procedure. 1454  
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(B) Service of process, with a copy of the complaint and the trust, and a copy of the related will, if applicable, shall be made on every party defendant named in the complaint filed under section 5817.03 of the Revised Code, as provided in the applicable Rules of Civil Procedure. 1459  
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**Sec. 5817.08.** (A) After a complaint is filed under section 5817.02 or 5817.03 of the Revised Code, the court shall fix a time and place for a hearing. 1464  
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(B) Notice of the hearing shall be given to the testator or settlor, as applicable, and to all party defendants, as 1467  
1468

provided in the applicable Rules of Civil Procedure. 1469

(C) The hearing shall be adversarial in nature and shall 1470  
be conducted pursuant to sections 2101.31 and 2721.10 of the 1471  
Revised Code, except as otherwise provided in this chapter. 1472

**Sec. 5817.09.** (A) The testator or settlor has the burden 1473  
of establishing prima facie proof of the execution of the will 1474  
or trust, as applicable. A person who opposes the complaint has 1475  
the burden of establishing one or more of the following: 1476

(1) The lack of testamentary intent or the intent to 1477  
create a trust, as the case may be; 1478

(2) The lack of the testator's testamentary capacity, or 1479  
the settlor's legal capacity to enter into and establish the 1480  
trust; 1481

(3) Undue influence, restraint, or duress on the testator 1482  
or settlor; 1483

(4) Fraud or mistake in the execution of the will or 1484  
trust; 1485

(5) Revocation of the will or trust. 1486

(B) A party to the proceeding has the ultimate burden of 1487  
persuasion as to the matters for which the party has the initial 1488  
burden of proof. 1489

**Sec. 5817.10.** (A) (1) The court shall declare the will 1490  
valid if it finds all of the following: 1491

(a) The will was properly executed pursuant to section 1492  
2107.03 of the Revised Code or under any prior law of this state 1493  
that was in effect at the time of execution. 1494

(b) The testator had the requisite testamentary capacity, 1495

was free from undue influence, and was not under restraint or 1496  
duress. 1497

(c) The execution of the will was not the result of fraud 1498  
or mistake. 1499

(2) After the testator's death, unless the will is 1500  
modified or revoked after the court's declaration under division 1501  
(A) (1) of this section, the will has full legal effect as the 1502  
instrument of the disposition of the testator's estate and shall 1503  
be admitted to probate upon request. 1504

(B) (1) The court shall declare the trust valid if it finds 1505  
all of the following: 1506

(a) The trust meets the requirements of section 5804.02 of 1507  
the Revised Code. 1508

(b) The settlor had the legal capacity to enter into and 1509  
establish the trust, was free from undue influence, and was not 1510  
under restraint or duress. 1511

(c) The execution of the trust was not the result of fraud 1512  
or mistake. 1513

(2) Unless the trust is modified or revoked after the 1514  
court's declaration, the trust has full legal effect. 1515

(C) The court may, if it finds the will or trust to be 1516  
valid, attach a copy of the valid document to the court's 1517  
judgment entry, but failure to do so shall not affect the 1518  
determination of validity of the will or trust. 1519

**Sec. 5817.11.** (A) Unless the will or trust is modified or 1520  
revoked, and except as otherwise provided in this section, no 1521  
person may contest the validity of a will or trust that is 1522  
declared valid in a proceeding pursuant to this chapter. 1523

(B) The failure to name a necessary defendant under 1524  
division (A) of section 5817.05 of the Revised Code is not 1525  
jurisdictional. A declaration of a will's validity under this 1526  
chapter shall be binding upon all defendants who were named or 1527  
represented, and properly served pursuant to division (A) of 1528  
section 5817.07 of the Revised Code, notwithstanding the failure 1529  
to name a necessary defendant. However, if a person is one who 1530  
should have been named a party defendant in the action in which 1531  
the will was declared valid and if the person was not named a 1532  
defendant and properly served in that action, that person, after 1533  
the testator's death, may contest the validity of a will 1534  
declared valid. 1535

(C) The failure to name a necessary defendant under 1536  
division (A) of section 5817.06 of the Revised Code is not 1537  
jurisdictional. A declaration of a trust's validity under this 1538  
chapter shall be binding upon all defendants who were named or 1539  
represented, and properly served pursuant to division (B) of 1540  
section 5817.07 of the Revised Code, notwithstanding the failure 1541  
to name a necessary defendant. However, if a person is one who 1542  
should have been named a party defendant in the action in which 1543  
the trust was declared valid and if the person was not named a 1544  
defendant and properly served in that action, that person may 1545  
contest the validity of a trust declared valid. 1546

(D) In determining whether a person was a party defendant 1547  
and properly served in an action to declare a will or trust 1548  
valid under this chapter, the representation rules of Chapter 1549  
5803. of the Revised Code shall be applied, and a person 1550  
represented in the action under those rules is bound by the 1551  
declaration of validity even if, by the time of the testator's 1552  
death, or the challenge to the trust, the representing person 1553  
has died or would no longer be able to represent the person to 1554

be represented in the proceeding under this chapter. 1555

**Sec. 5817.12.** (A) After a declaration of a will's validity 1556  
under division (A) (1) of section 5817.10 of the Revised Code, 1557  
the will may be modified by a later will or codicil executed 1558  
according to the laws of this state or another state, and the 1559  
will may be revoked under section 2107.33 of the Revised Code or 1560  
other applicable law. 1561

(B) The revocation by a later will, or other document 1562  
under section 2107.33 of the Revised Code, of a will that has 1563  
been declared valid under division (A) (1) of section 5817.10 of 1564  
the Revised Code does not affect the will or the prior 1565  
declaration of its validity if the later will or other document 1566  
is found by a court of competent jurisdiction to be invalid due 1567  
to the testator's lack of testamentary capacity, or undue 1568  
influence, restraint, or duress on the testator, or otherwise. 1569

(C) The amendment by a later codicil of a will that has 1570  
been declared valid under division (A) (1) of section 5817.10 of 1571  
the Revised Code does not affect the will or the prior 1572  
declaration of its validity except as provided by the codicil. 1573  
However, the codicil is not considered validated under this 1574  
chapter unless its validity is also declared as provided in this 1575  
chapter. 1576

**Sec. 5817.13.** (A) After a declaration of a trust's 1577  
validity under division (B) (1) of section 5817.10 of the Revised 1578  
Code, the trust may be modified, terminated, revoked, or 1579  
reformed under sections 5804.10 to 5804.16 of the Revised Code, 1580  
or other applicable law. 1581

(B) The modification, termination, revocation, or 1582  
reformation by a new trust or other document of a trust that has 1583

been declared valid under division (B) (1) of section 5817.10 of 1584  
the Revised Code does not affect the trust or the prior 1585  
declaration of its validity if the later trust or other document 1586  
is found by a court of competent jurisdiction to be invalid due 1587  
to the settlor's lack of capacity, or undue influence, 1588  
restraint, or duress on the settlor, or otherwise. 1589

(C) An amendment of a trust that has been declared valid 1590  
under division (B) (1) of section 5817.10 of the Revised Code 1591  
does not affect the trust or the prior declaration of its 1592  
validity except as provided by the amendment. However, the 1593  
amendment is not considered validated under this chapter unless 1594  
its validity is also declared as provided in this chapter. 1595

**Sec. 5817.14.** (A) The finding of facts by a court in a 1596  
proceeding brought under this chapter is not admissible as 1597  
evidence in any proceeding other than a proceeding brought to 1598  
determine the validity of a will or trust. 1599

(B) The determination or judgment rendered in a proceeding 1600  
under this chapter is not binding upon the parties to that 1601  
proceeding in any action that is not brought to determine the 1602  
validity of a will or trust. 1603

(C) The failure of a testator to file a complaint for a 1604  
judgment declaring the validity of a will that the testator has 1605  
executed is not admissible as evidence in any proceeding to 1606  
determine the validity of that will or any other will executed 1607  
by the testator. 1608

(D) The failure of a settlor to file a complaint for a 1609  
judgment declaring the validity of a trust that the settlor has 1610  
executed is not admissible as evidence in any proceeding to 1611  
determine the validity of that trust or any other trust executed 1612



by the settlor. 1613

**Section 2.** That existing sections 313.14, 2101.24, 1614  
2107.01, 2107.05, 2107.07, 2107.08, 2107.09, 2107.10, 2107.11, 1615  
2107.12, 2107.16, 2107.18, 2107.20, 2107.22, 2107.33, 2107.52, 1616  
2107.71, 2137.01, 2721.03, 5802.03, 5806.04, and 5808.19 and 1617  
sections 2107.081, 2107.082, 2107.083, 2107.084, and 2107.085 of 1618  
the Revised Code are hereby repealed. 1619

**Section 3.** This act's amendment of section 2107.05 of the 1620  
Revised Code is intended to abrogate the holdings of the Ohio 1621  
Supreme Court in *Hageman v. Cleveland Trust Company*, 45 Ohio 1622  
St.2d 178 (1976) and the Ohio Second District Court of Appeals 1623  
in *Gehrke v. Senkiw*, 2016 Ohio 2657 (2016). 1624

**Section 4.** Section 2101.24 of the Revised Code is 1625  
presented in this act as a composite of the section as amended 1626  
by both Sub. S.B. 23 of the 130th General Assembly and Sub. H.B. 1627  
158 of the 131st General Assembly. The General Assembly, 1628  
applying the principle stated in division (B) of section 1.52 of 1629  
the Revised Code that amendments are to be harmonized if 1630  
reasonably capable of simultaneous operation, finds that the 1631  
composite is the resulting version of the section in effect 1632  
prior to the effective date of the section as presented in this 1633  
act. 1634