

As Introduced

**127th General Assembly
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S. B. No. 157

Senator Buehrer

Cosponsors: Senators Carey, Faber

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A B I L L

To amend sections 1337.09, 2109.21, 2111.02, and 1
2111.121 of the Revised Code to specifically 2
authorize a person to designate a guardian for the 3
person's incompetent adult child. 4

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

Section 1. That sections 1337.09, 2109.21, 2111.02, and 5
2111.121 of the Revised Code be amended to read as follows: 6

Sec. 1337.09. (A) Whenever a principal designates another as 7
attorney in fact by a power of attorney in writing and the writing 8
contains the words "This power of attorney shall not be affected 9
by disability of the principal," "this power of attorney shall not 10
be affected by disability of the principal or lapse of time," or 11
words of similar import, the authority of the attorney in fact is 12
exercisable by the attorney in fact as provided in the written 13
instrument notwithstanding the later disability, incapacity, or 14
adjudged incompetency of the principal and, unless it states a 15
time of termination, notwithstanding the lapse of time since the 16
execution of the instrument. 17

(B) Whenever a principal designates another the principal's 18
attorney in fact by a power of attorney in writing and the writing 19

expressly states that the power of attorney shall become effective 20
at a later time or upon the occurrence of a specified event, 21
including, but not limited to, the disability, incapacity, or 22
adjudged incompetency of the principal, the attorney in fact may 23
exercise the authority provided to the attorney in fact in the 24
written instrument at the later time or upon the occurrence of the 25
specified event notwithstanding the later disability, incapacity, 26
or adjudged incompetency of the principal and, unless the 27
instrument states a time of termination, notwithstanding the lapse 28
of time since its execution. 29

(C) All acts done by an attorney in fact pursuant to an 30
instrument as described in division (A) or (B) of this section 31
during any period of disability, incapacity, or adjudged 32
incompetency of the principal shall have the same effect and inure 33
to the benefit of and bind the principal or the principal's heirs, 34
devisees, and personal representatives as if the principal were 35
competent and not disabled or incapacitated. If a guardian 36
thereafter is appointed for the principal and the guardian is not 37
the attorney in fact, the attorney in fact, during the continuance 38
of the appointment, shall account to the guardian rather than the 39
principal. The guardian has the same power the principal would 40
have had if not incompetent, to revoke all or any part of the 41
power and authority of the attorney in fact. 42

(D) In a durable power of attorney as described in division 43
(A) or (B) of this section, a principal may nominate the attorney 44
in fact or any other person to be the guardian of the principal's 45
person, estate, or both and may nominate the attorney in fact or 46
any other person to be the guardian of the person, the estate, or 47
both of one or more of the principal's minor or incompetent adult 48
children, whether born at the time of the execution of the durable 49
power of attorney or afterward. The nomination is for 50
consideration by a court if proceedings for the appointment of a 51

guardian for the principal's person, estate, or both or if 52
proceedings for the appointment of a guardian of the person, the 53
estate, or both of one or more of the principal's minor or 54
incompetent adult children are commenced at a later time. The 55
principal may authorize in a power of attorney of that nature the 56
person nominated as guardian or the attorney in fact to nominate a 57
successor guardian for consideration by a court. 58

The principal may direct, in a power of attorney of that 59
nature, that bond be waived for a person nominated as guardian in 60
it or nominated as a successor guardian in accordance with an 61
authorization in it. 62

Nomination of a person as a guardian or successor guardian of 63
the person, the estate, or both of one or more of the principal's 64
minor or incompetent adult children under this division, and any 65
subsequent appointment of the guardian or successor guardian as 66
guardian under section 2111.02 of the Revised Code, does not 67
vacate the jurisdiction of any other court that previously may 68
have exercised jurisdiction over the person of the minor or 69
incompetent adult child. 70

The durable power of attorney as described in division (A) or 71
(B) of this section that contains the nomination of a person to be 72
the guardian of the person, the estate, or both of one or more of 73
the principal's minor or incompetent adult children under this 74
division may be filed with the probate court for safekeeping, and 75
the probate court shall designate the nomination as the nomination 76
of a standby guardian. 77

Sec. 2109.21. (A) An administrator, special administrator, 78
administrator de bonis non, or administrator with the will annexed 79
shall be a resident of this state and shall be removed on proof 80
that the administrator is no longer a resident of this state. 81

(B)(1) To qualify for appointment as executor or trustee, an 82

executor or a trustee named in a will or nominated in accordance 83
with any power of nomination conferred in a will, may be a 84
resident of this state or, as provided in this division, a 85
nonresident of this state. To qualify for appointment, a 86
nonresident executor or trustee named in, or nominated pursuant 87
to, a will shall be an individual who is related to the maker of 88
the will by consanguinity or affinity, or a person who resides in 89
a state that has statutes or rules that authorize the appointment 90
of a nonresident person who is not related to the maker of a will 91
by consanguinity or affinity, as an executor or trustee when named 92
in, or nominated pursuant to, a will. No such executor or trustee 93
shall be refused appointment or removed solely because the 94
executor or trustee is not a resident of this state. 95

The court may require that a nonresident executor or trustee 96
named in, or nominated pursuant to, a will assure that all of the 97
assets of the decedent that are in the county at the time of the 98
death of the decedent will remain in the county until distribution 99
or until the court determines that the assets may be removed from 100
the county. 101

(2) In accordance with this division and section 2129.08 of 102
the Revised Code, the court shall appoint as an ancillary 103
administrator a person who is named in the will of a nonresident 104
decedent, or who is nominated in accordance with any power of 105
nomination conferred in the will of a nonresident decedent, as a 106
general executor of the decedent's estate or as executor of the 107
portion of the decedent's estate located in this state, whether or 108
not the person so named or nominated is a resident of this state. 109

To qualify for appointment as an ancillary administrator, a 110
person who is not a resident of this state and who is named or 111
nominated as described in this division, shall be an individual 112
who is related to the maker of the will by consanguinity or 113
affinity, or a person who resides in a state that has statutes or 114

rules that authorize the appointment of a nonresident of that 115
state who is not related to the maker of a will by consanguinity 116
or affinity, as an ancillary administrator when the nonresident is 117
named in a will or nominated in accordance with any power of 118
nomination conferred in a will. If a person who is not a resident 119
of this state and who is named or nominated as described in this 120
division so qualifies for appointment as an ancillary 121
administrator and if the provisions of section 2129.08 of the 122
Revised Code are satisfied, the court shall not refuse to appoint 123
the person, and shall not remove the person, as ancillary 124
administrator solely because the person is not a resident of this 125
state. 126

The court may require that an ancillary administrator who is 127
not a resident of this state and who is named or nominated as 128
described in this division, assure that all of the assets of the 129
decedent that are in the county at the time of the death of the 130
decedent will remain in the county until distribution or until the 131
court determines that the assets may be removed from the county. 132

(C) A guardian shall be a resident of the county, except that 133
the court may appoint a nonresident of the county who is a 134
resident of this state as guardian of the person, the estate, or 135
both; that a nonresident of the county or of this state may be 136
appointed a guardian, if named in a will by a parent of a minor or 137
if selected by a minor over the age of fourteen years as provided 138
by section 2111.12 of the Revised Code; and that a nonresident of 139
the county or of this state may be appointed a guardian if 140
nominated in or pursuant to a durable power of attorney as 141
described in division (D) of section 1337.09 of the Revised Code 142
or a writing as described in division (A) of section 2111.121 of 143
the Revised Code; ~~and that a nonresident of the county or of this~~ 144
~~state may be appointed as a guardian if the nonresident was~~ 145
~~nominated as a guardian in or pursuant to a durable power of~~ 146

~~attorney as described in division (D) of section 1337.09 of the Revised Code or a writing described in division (A) of section 2111.121 of the Revised Code. A guardian, other than a guardian named in a will by a parent of a minor, selected by a minor over the age of fourteen years, or nominated in or pursuant to such a durable power of attorney or writing, may be removed on proof that the guardian is no longer a resident of the county or state in which the guardian resided at the time of the guardian's appointment, and shall be removed on proof that the guardian is no longer a resident of this state.~~

(D) Any fiduciary, whose residence qualifications are not defined in this section, shall be a resident of this state, and shall be removed on proof that the fiduciary is no longer a resident of this state.

(E) Any fiduciary, in order to assist in the carrying out of the fiduciary's fiduciary duties, may employ agents who are not residents of the county or of this state.

Sec. 2111.02. (A) When found necessary, the probate court on its own motion or on application by any interested party shall appoint, subject to divisions (C) and (D) of this section and to section 2109.21 and division (B) of section 2111.121 of the Revised Code, a guardian of the person, the estate, or both, of a minor or incompetent, provided the person for whom the guardian is to be appointed is a resident of the county or has a legal settlement in the county and, except in the case of a minor, has had the opportunity to have the assistance of counsel in the proceeding for the appointment of such guardian. An interested party includes, but is not limited to, a person nominated in a durable power of attorney as described in division (D) of section 1337.09 of the Revised Code or in a writing as described in division (A) of section 2111.121 of the Revised Code.

Except when the guardian of an incompetent is an agency under 178
contract with the department of mental retardation and 179
developmental disabilities for the provision of protective 180
services under sections 5123.55 to 5123.59 of the Revised Code, 181
the guardian of an incompetent, by virtue of such appointment, 182
shall be the guardian of the minor children of the guardian's 183
ward, unless the court appoints some other person as their 184
guardian. 185

When the primary purpose of the appointment of a guardian is, 186
or was, the collection, disbursement, or administration of moneys 187
awarded by the veterans administration to the ward, or assets 188
derived from such moneys, no court costs shall be charged in the 189
proceeding for the appointment or in any subsequent proceedings 190
made in pursuance of the appointment, unless the value of the 191
estate, including the moneys then due under the veterans 192
administration award, exceeds one thousand five hundred dollars. 193

(B)(1) If the probate court finds it to be in the best 194
interest of an incompetent or minor, it may appoint pursuant to 195
divisions (A) and (C) of this section, on its own motion or on 196
application by an interested party, a limited guardian with 197
specific limited powers. The sections of the Revised Code, rules, 198
and procedures governing guardianships apply to a limited 199
guardian, except that the order of appointment and letters of 200
authority of a limited guardian shall state the reasons for, and 201
specify the limited powers of, the guardian. The court may appoint 202
a limited guardian for a definite or indefinite period. An 203
incompetent or minor for whom a limited guardian has been 204
appointed retains all of the incompetent's or minor's rights in 205
all areas not affected by the court order appointing the limited 206
guardian. 207

(2) If a guardian appointed pursuant to division (A) of this 208
section is temporarily or permanently removed or resigns, and if 209

the welfare of the ward requires immediate action, at any time 210
after the removal or resignation, the probate court may appoint, 211
ex parte and with or without notice to the ward or interested 212
parties, an interim guardian for a maximum period of fifteen days. 213
If the court appoints the interim guardian ex parte or without 214
notice to the ward, the court, at its first opportunity, shall 215
enter upon its journal with specificity the reason for acting ex 216
parte or without notice, and, as soon as possible, shall serve 217
upon the ward a copy of the order appointing the interim guardian. 218
For good cause shown, after notice to the ward and interested 219
parties and after hearing, the court may extend an interim 220
guardianship for a specified period, but not to exceed an 221
additional thirty days. 222

(3) If a minor or incompetent has not been placed under a 223
guardianship pursuant to division (A) of this section and if an 224
emergency exists, and if it is reasonably certain that immediate 225
action is required to prevent significant injury to the person or 226
estate of the minor or incompetent, at any time after it receives 227
notice of the emergency, the court, ex parte, may issue any order 228
that it considers necessary to prevent injury to the person or 229
estate of the minor or incompetent, or may appoint an emergency 230
guardian for a maximum period of seventy-two hours. A written copy 231
of any order issued by a court under this division shall be served 232
upon the incompetent or minor as soon as possible after its 233
issuance. Failure to serve such an order after its issuance or 234
prior to the taking of any action under its authority does not 235
invalidate the order or the actions taken. The powers of an 236
emergency guardian shall be specified in the letters of 237
appointment, and shall be limited to those powers that are 238
necessary to prevent injury to the person or estate of the minor 239
or incompetent. If the court acts ex parte or without notice to 240
the minor or incompetent, the court, at its first opportunity, 241
shall enter upon its journal a record of the case and, with 242

specificity, the reason for acting ex parte or without notice. For 243
good cause shown, after notice to the minor or incompetent and 244
interested parties, and after hearing, the court may extend an 245
emergency guardianship for a specified period, but not to exceed 246
an additional thirty days. 247

(C) Prior to the appointment of a guardian or limited 248
guardian under division (A) or (B)(1) of this section, the court 249
shall conduct a hearing on the matter of the appointment. The 250
hearing shall be conducted in accordance with all of the 251
following: 252

(1) The proposed guardian or limited guardian shall appear at 253
the hearing and, if appointed, shall swear under oath that the 254
proposed guardian or limited guardian has made and will continue 255
to make diligent efforts to file a true inventory in accordance 256
with section 2111.14 of the Revised Code and find and report all 257
assets belonging to the estate of the ward and that the proposed 258
guardian or limited guardian faithfully and completely will 259
fulfill the other duties of guardian, including the filing of 260
timely and accurate reports and accountings; 261

(2) If the hearing is conducted by a referee, the procedures 262
set forth in Civil Rule 53 shall be followed; 263

(3) If the hearing concerns the appointment of a guardian or 264
limited guardian for an alleged incompetent, the burden of proving 265
incompetency shall be by clear and convincing evidence; 266

(4) Upon request of the applicant, the alleged incompetent 267
for whom the appointment is sought or the alleged incompetent's 268
counsel, or any interested party, a recording or record of the 269
hearing shall be made; 270

(5) Evidence of a less restrictive alternative to 271
guardianship may be introduced, and when introduced, shall be 272
considered by the court; 273

(6) The court may deny a guardianship based upon a finding that a less restrictive alternative to guardianship exists;	274 275
(7) If the hearing concerns the appointment of a guardian or limited guardian for an alleged incompetent, the alleged incompetent has all of the following rights:	276 277 278
(a) The right to be represented by independent counsel of his choice;	279 280
(b) The right to have a friend or family member of his choice present;	281 282
(c) The right to have evidence of an independent expert evaluation introduced;	283 284
(d) If the alleged incompetent is indigent, upon his request:	285
(i) The right to have counsel and an independent expert evaluator appointed at court expense;	286 287
(ii) If the guardianship, limited guardianship, or standby guardianship decision is appealed, the right to have counsel appointed and necessary transcripts for appeal prepared at court expense.	288 289 290 291
(D)(1) When a person has been nominated to be a guardian of the estate of a minor in or pursuant to a durable power of attorney as described in division (D) of section 1337.09 of the Revised Code or a writing as described in division (A) of section 2111.121 of the Revised Code, the person nominated has preference in appointment over a person selected by the minor. A person who has been nominated to be a guardian of the person of a minor in or pursuant to a durable power of attorney or writing of that nature does not have preference in appointment over a person selected by the minor, but the probate court may appoint the person named in the durable power of attorney or the writing, the person selected by the minor, or another person as guardian of the person of the	292 293 294 295 296 297 298 299 300 301 302 303

minor. 304

(2) A person nominated as a guardian of an incompetent adult child pursuant to section 1337.09 or 2111.121 of the Revised Code shall have preference in appointment over a person applying to be guardian if the person nominated is competent, suitable, and willing to accept the appointment, and if the incompetent adult child does not have a spouse or an adult child and has not designated a guardian prior to the court finding the adult child incompetent. 305
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Sec. 2111.121. (A) A person may nominate in a writing, as described in this division, another person to be the guardian of the nominator's person, estate, or both or the guardian of the person, the estate, or both, of one or more of the nominator's minor or incompetent adult children, whether born at the time of the execution of the writing or afterward. The nomination is for consideration by a court if proceedings for the appointment of a guardian of the person, the estate, or both, for the person making the nomination or if proceedings for the appointment of a guardian as the guardian of the person, the estate, or both of one or more of the nominator's minor or incompetent adult children are commenced at a later time. The person may authorize, in a writing of that nature, the person nominated as guardian to nominate a successor guardian for consideration by a court. The person also may direct, in a writing of that nature, that bond be waived for a person nominated as guardian in it or nominated as a successor guardian in accordance with an authorization in it. 313
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To be effective as a nomination, the writing shall be signed by the person making the nomination in the presence of two witnesses; signed by the witnesses; contain, immediately prior to their signatures, an attestation of the witnesses that the person making the nomination signed the writing in their presence; and be 330
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acknowledged by the person making the nomination before a notary public. 335
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(B) If a person has nominated, in a writing as described in 337
division (A) of this section or in a durable power of attorney as 338
described in division (D) of section 1337.09 of the Revised Code, 339
another person to be the guardian of the nominator's person, 340
estate, or both, and proceedings for the appointment of a guardian 341
for the person are commenced at a later time, the court involved 342
shall appoint the person nominated as guardian in the writing or 343
durable power of attorney most recently executed if the person 344
nominated is competent, suitable, and willing to accept the 345
appointment. If the writing or durable power of attorney contains 346
a waiver of bond, the court shall waive bond of the person 347
nominated as guardian unless it is of the opinion that the 348
interest of the trust demands it. 349

(C) Nomination of a person as a guardian or successor 350
guardian of the person, the estate, or both of one or more of the 351
nominator's minor or incompetent adult children under division (A) 352
of this section, and any subsequent appointment of the guardian or 353
successor guardian as guardian under section 2111.02 of the 354
Revised Code, does not vacate the jurisdiction of any other court 355
that previously may have exercised jurisdiction over the person of 356
the minor or incompetent adult child. 357

(D) The writing containing the nomination of a person to be 358
the guardian of the person, the estate, or both of one or more of 359
the nominator's minor or incompetent adult children under division 360
(A) of this section may be filed with the probate court for 361
safekeeping, and the probate court shall designate the nomination 362
as the nomination of a standby guardian. 363

Section 2. That existing sections 1337.09, 2109.21, 2111.02, 364
and 2111.121 of the Revised Code are hereby repealed. 365