

**As Passed by the Senate**

**127th General Assembly  
Regular Session  
2007-2008**

**Sub. S. B. No. 157**

**Senator Buehrer**

**Cosponsors: Senators Carey, Faber, Goodman, Mason, Boccieri, Clancy,  
Fedor, Harris, Miller, R., Morano, Mumper, Niehaus, Padgett, Schuler, Spada,  
Wilson, Miller, D., Smith, Stivers**

—

**A B I L L**

To amend sections 1337.09, 2109.21, 2111.02, 1  
2111.121, 2307.14, 5305.22, 5711.05, 5711.07, 2  
5907.06, and 5907.09 of the Revised Code to 3  
specifically authorize a person to designate a 4  
guardian for the person's incompetent adult child, 5  
to make corrections regarding incompetent and 6  
mentally ill persons, and to declare an emergency. 7

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

**Section 1.** That sections 1337.09, 2109.21, 2111.02, 2111.121, 8  
2307.14, 5305.22, 5711.05, 5711.07, 5907.06, and 5907.09 of the 9  
Revised Code be amended to read as follows: 10

**Sec. 1337.09.** (A) Whenever a principal designates another as 11  
attorney in fact by a power of attorney in writing and the writing 12  
contains the words "This power of attorney shall not be affected 13  
by disability of the principal," "this power of attorney shall not 14  
be affected by disability of the principal or lapse of time," or 15  
words of similar import, the authority of the attorney in fact is 16  
exercisable by the attorney in fact as provided in the written 17

instrument notwithstanding the later disability, incapacity, or 18  
adjudged incompetency of the principal and, unless it states a 19  
time of termination, notwithstanding the lapse of time since the 20  
execution of the instrument. 21

(B) Whenever a principal designates another the principal's 22  
attorney in fact by a power of attorney in writing and the writing 23  
expressly states that the power of attorney shall become effective 24  
at a later time or upon the occurrence of a specified event, 25  
including, but not limited to, the disability, incapacity, or 26  
adjudged incompetency of the principal, the attorney in fact may 27  
exercise the authority provided to the attorney in fact in the 28  
written instrument at the later time or upon the occurrence of the 29  
specified event notwithstanding the later disability, incapacity, 30  
or adjudged incompetency of the principal and, unless the 31  
instrument states a time of termination, notwithstanding the lapse 32  
of time since its execution. 33

(C) All acts done by an attorney in fact pursuant to an 34  
instrument as described in division (A) or (B) of this section 35  
during any period of disability, incapacity, or adjudged 36  
incompetency of the principal shall have the same effect and inure 37  
to the benefit of and bind the principal or the principal's heirs, 38  
devisees, and personal representatives as if the principal were 39  
competent and not disabled or incapacitated. If a guardian 40  
thereafter is appointed for the principal and the guardian is not 41  
the attorney in fact, the attorney in fact, during the continuance 42  
of the appointment, shall account to the guardian rather than the 43  
principal. The guardian has the same power the principal would 44  
have had if not incompetent, to revoke all or any part of the 45  
power and authority of the attorney in fact. 46

(D) In a durable power of attorney as described in division 47  
(A) or (B) of this section, a principal may nominate the attorney 48  
in fact or any other person to be the guardian of the principal's 49

person, estate, or both and may nominate the attorney in fact or 50  
any other person to be the guardian of the person, the estate, or 51  
both of one or more of the principal's minor or incompetent adult 52  
children, whether born at the time of the execution of the durable 53  
power of attorney or afterward. The nomination is for 54  
consideration by a court if proceedings for the appointment of a 55  
guardian for the principal's person, estate, or both or if 56  
proceedings for the appointment of a guardian of the person, the 57  
estate, or both of one or more of the principal's minor or 58  
incompetent adult children are commenced at a later time. The 59  
principal may authorize in a power of attorney of that nature the 60  
person nominated as guardian or the attorney in fact to nominate a 61  
successor guardian for consideration by a court. 62

The principal may direct, in a power of attorney of that 63  
nature, that bond be waived for a person nominated as guardian in 64  
it or nominated as a successor guardian in accordance with an 65  
authorization in it. 66

Nomination of a person as a guardian or successor guardian of 67  
the person, the estate, or both of one or more of the principal's 68  
minor or incompetent adult children under this division, and any 69  
subsequent appointment of the guardian or successor guardian as 70  
guardian under section 2111.02 of the Revised Code, does not 71  
vacate the jurisdiction of any other court that previously may 72  
have exercised jurisdiction over the person of the minor or 73  
incompetent adult child. 74

The durable power of attorney as described in division (A) or 75  
(B) of this section that contains the nomination of a person to be 76  
the guardian of the person, the estate, or both of one or more of 77  
the principal's minor or incompetent adult children under this 78  
division may be filed with the probate court for safekeeping, and 79  
the probate court shall designate the nomination as the nomination 80  
of a standby guardian. 81

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

(B)(1) To qualify for appointment as executor or trustee, an executor or a trustee named in a will or nominated in accordance with any power of nomination conferred in a will, may be a resident of this state or, as provided in this division, a nonresident of this state. To qualify for appointment, a nonresident executor or trustee named in, or nominated pursuant to, a will shall be an individual who is related to the maker of the will by consanguinity or affinity, or a person who resides in a state that has statutes or rules that authorize the appointment of a nonresident person who is not related to the maker of a will by consanguinity or affinity, as an executor or trustee when named in, or nominated pursuant to, a will. No such executor or trustee shall be refused appointment or removed solely because the executor or trustee is not a resident of this state.

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

(2) In accordance with this division and section 2129.08 of the Revised Code, the court shall appoint as an ancillary administrator a person who is named in the will of a nonresident decedent, or who is nominated in accordance with any power of nomination conferred in the will of a nonresident decedent, as a general executor of the decedent's estate or as executor of the portion of the decedent's estate located in this state, whether or

not the person so named or nominated is a resident of this state. 113

To qualify for appointment as an ancillary administrator, a 114  
person who is not a resident of this state and who is named or 115  
nominated as described in this division, shall be an individual 116  
who is related to the maker of the will by consanguinity or 117  
affinity, or a person who resides in a state that has statutes or 118  
rules that authorize the appointment of a nonresident of that 119  
state who is not related to the maker of a will by consanguinity 120  
or affinity, as an ancillary administrator when the nonresident is 121  
named in a will or nominated in accordance with any power of 122  
nomination conferred in a will. If a person who is not a resident 123  
of this state and who is named or nominated as described in this 124  
division so qualifies for appointment as an ancillary 125  
administrator and if the provisions of section 2129.08 of the 126  
Revised Code are satisfied, the court shall not refuse to appoint 127  
the person, and shall not remove the person, as ancillary 128  
administrator solely because the person is not a resident of this 129  
state. 130

The court may require that an ancillary administrator who is 131  
not a resident of this state and who is named or nominated as 132  
described in this division, assure that all of the assets of the 133  
decedent that are in the county at the time of the death of the 134  
decedent will remain in the county until distribution or until the 135  
court determines that the assets may be removed from the county. 136

(C) A guardian shall be a resident of the county, except that 137  
the court may appoint a nonresident of the county who is a 138  
resident of this state as guardian of the person, the estate, or 139  
both; that a nonresident of the county or of this state may be 140  
appointed a guardian, if named in a will by a parent of a minor or 141  
if selected by a minor over the age of fourteen years as provided 142  
by section 2111.12 of the Revised Code; and that a nonresident of 143  
the county or of this state may be appointed a guardian if 144

nominated in or pursuant to a durable power of attorney as 145  
described in division (D) of section 1337.09 of the Revised Code 146  
or a writing as described in division (A) of section 2111.121 of 147  
the Revised Code; ~~and that a nonresident of the county or of this~~ 148  
~~state may be appointed as a guardian if the nonresident was~~ 149  
~~nominated as a guardian in or pursuant to a durable power of~~ 150  
~~attorney as described in division (D) of section 1337.09 of the~~ 151  
~~Revised Code or a writing described in division (A) of section~~ 152  
~~2111.121 of the Revised Code.~~ A guardian, other than a guardian 153  
named in a will by a parent of a minor, selected by a minor over 154  
the age of fourteen years, or nominated in or pursuant to such a 155  
durable power of attorney or writing, may be removed on proof that 156  
the guardian is no longer a resident of the county or state in 157  
which the guardian resided at the time of the guardian's 158  
appointment, ~~and shall be removed on proof that the guardian is no~~ 159  
~~longer a resident of this state.~~ 160

(D) Any fiduciary, whose residence qualifications are not 161  
defined in this section, shall be a resident of this state, and 162  
shall be removed on proof that the fiduciary is no longer a 163  
resident of this state. 164

(E) Any fiduciary, in order to assist in the carrying out of 165  
the fiduciary's fiduciary duties, may employ agents who are not 166  
residents of the county or of this state. 167

**Sec. 2111.02.** (A) When found necessary, the probate court on 168  
its own motion or on application by any interested party shall 169  
appoint, subject to divisions (C) and (D) of this section and to 170  
section 2109.21 and division (B) of section 2111.121 of the 171  
Revised Code, a guardian of the person, the estate, or both, of a 172  
minor or incompetent, provided the person for whom the guardian is 173  
to be appointed is a resident of the county or has a legal 174  
settlement in the county and, except in the case of a minor, has 175

had the opportunity to have the assistance of counsel in the 176  
proceeding for the appointment of such guardian. An interested 177  
party includes, but is not limited to, a person nominated in a 178  
durable power of attorney as described in division (D) of section 179  
1337.09 of the Revised Code or in a writing as described in 180  
division (A) of section 2111.121 of the Revised Code. 181

Except when the guardian of an incompetent is an agency under 182  
contract with the department of mental retardation and 183  
developmental disabilities for the provision of protective 184  
services under sections 5123.55 to 5123.59 of the Revised Code, 185  
the guardian of an incompetent, by virtue of such appointment, 186  
shall be the guardian of the minor children of the guardian's 187  
ward, unless the court appoints some other person as their 188  
guardian. 189

When the primary purpose of the appointment of a guardian is, 190  
or was, the collection, disbursement, or administration of moneys 191  
awarded by the veterans administration to the ward, or assets 192  
derived from such moneys, no court costs shall be charged in the 193  
proceeding for the appointment or in any subsequent proceedings 194  
made in pursuance of the appointment, unless the value of the 195  
estate, including the moneys then due under the veterans 196  
administration award, exceeds one thousand five hundred dollars. 197

(B)(1) If the probate court finds it to be in the best 198  
interest of an incompetent or minor, it may appoint pursuant to 199  
divisions (A) and (C) of this section, on its own motion or on 200  
application by an interested party, a limited guardian with 201  
specific limited powers. The sections of the Revised Code, rules, 202  
and procedures governing guardianships apply to a limited 203  
guardian, except that the order of appointment and letters of 204  
authority of a limited guardian shall state the reasons for, and 205  
specify the limited powers of, the guardian. The court may appoint 206  
a limited guardian for a definite or indefinite period. An 207

incompetent or minor for whom a limited guardian has been 208  
appointed retains all of the incompetent's or minor's rights in 209  
all areas not affected by the court order appointing the limited 210  
guardian. 211

(2) If a guardian appointed pursuant to division (A) of this 212  
section is temporarily or permanently removed or resigns, and if 213  
the welfare of the ward requires immediate action, at any time 214  
after the removal or resignation, the probate court may appoint, 215  
ex parte and with or without notice to the ward or interested 216  
parties, an interim guardian for a maximum period of fifteen days. 217  
If the court appoints the interim guardian ex parte or without 218  
notice to the ward, the court, at its first opportunity, shall 219  
enter upon its journal with specificity the reason for acting ex 220  
parte or without notice, and, as soon as possible, shall serve 221  
upon the ward a copy of the order appointing the interim guardian. 222  
For good cause shown, after notice to the ward and interested 223  
parties and after hearing, the court may extend an interim 224  
guardianship for a specified period, but not to exceed an 225  
additional thirty days. 226

(3) If a minor or incompetent has not been placed under a 227  
guardianship pursuant to division (A) of this section and if an 228  
emergency exists, and if it is reasonably certain that immediate 229  
action is required to prevent significant injury to the person or 230  
estate of the minor or incompetent, at any time after it receives 231  
notice of the emergency, the court, ex parte, may issue any order 232  
that it considers necessary to prevent injury to the person or 233  
estate of the minor or incompetent, or may appoint an emergency 234  
guardian for a maximum period of seventy-two hours. A written copy 235  
of any order issued by a court under this division shall be served 236  
upon the incompetent or minor as soon as possible after its 237  
issuance. Failure to serve such an order after its issuance or 238  
prior to the taking of any action under its authority does not 239



invalidate the order or the actions taken. The powers of an 240  
emergency guardian shall be specified in the letters of 241  
appointment, and shall be limited to those powers that are 242  
necessary to prevent injury to the person or estate of the minor 243  
or incompetent. If the court acts ex parte or without notice to 244  
the minor or incompetent, the court, at its first opportunity, 245  
shall enter upon its journal a record of the case and, with 246  
specificity, the reason for acting ex parte or without notice. For 247  
good cause shown, after notice to the minor or incompetent and 248  
interested parties, and after hearing, the court may extend an 249  
emergency guardianship for a specified period, but not to exceed 250  
an additional thirty days. 251

(C) Prior to the appointment of a guardian or limited 252  
guardian under division (A) or (B)(1) of this section, the court 253  
shall conduct a hearing on the matter of the appointment. The 254  
hearing shall be conducted in accordance with all of the 255  
following: 256

(1) The proposed guardian or limited guardian shall appear at 257  
the hearing and, if appointed, shall swear under oath that the 258  
proposed guardian or limited guardian has made and will continue 259  
to make diligent efforts to file a true inventory in accordance 260  
with section 2111.14 of the Revised Code and find and report all 261  
assets belonging to the estate of the ward and that the proposed 262  
guardian or limited guardian faithfully and completely will 263  
fulfill the other duties of guardian, including the filing of 264  
timely and accurate reports and accountings; 265

(2) If the hearing is conducted by a referee, the procedures 266  
set forth in Civil Rule 53 shall be followed; 267

(3) If the hearing concerns the appointment of a guardian or 268  
limited guardian for an alleged incompetent, the burden of proving 269  
incompetency shall be by clear and convincing evidence; 270

(4) Upon request of the applicant, the alleged incompetent	271
for whom the appointment is sought or the alleged incompetent's	272
counsel, or any interested party, a recording or record of the	273
hearing shall be made;	274
(5) Evidence of a less restrictive alternative to	275
guardianship may be introduced, and when introduced, shall be	276
considered by the court;	277
(6) The court may deny a guardianship based upon a finding	278
that a less restrictive alternative to guardianship exists;	279
(7) If the hearing concerns the appointment of a guardian or	280
limited guardian for an alleged incompetent, the alleged	281
incompetent has all of the following rights:	282
(a) The right to be represented by independent counsel of his	283
choice;	284
(b) The right to have a friend or family member of his choice	285
present;	286
(c) The right to have evidence of an independent expert	287
evaluation introduced;	288
(d) If the alleged incompetent is indigent, upon his request:	289
(i) The right to have counsel and an independent expert	290
evaluator appointed at court expense;	291
(ii) If the guardianship, limited guardianship, or standby	292
guardianship decision is appealed, the right to have counsel	293
appointed and necessary transcripts for appeal prepared at court	294
expense.	295
(D)(1) When a person has been nominated to be a guardian of	296
the estate of a minor in or pursuant to a durable power of	297
attorney as described in division (D) of section 1337.09 of the	298
Revised Code or a writing as described in division (A) of section	299
2111.121 of the Revised Code, the person nominated has preference	300

in appointment over a person selected by the minor. A person who 301  
has been nominated to be a guardian of the person of a minor in or 302  
pursuant to a durable power of attorney or writing of that nature 303  
does not have preference in appointment over a person selected by 304  
the minor, but the probate court may appoint the person named in 305  
the durable power of attorney or the writing, the person selected 306  
by the minor, or another person as guardian of the person of the 307  
minor. 308

(2) A person nominated as a guardian of an incompetent adult 309  
child pursuant to section 1337.09 or 2111.121 of the Revised Code 310  
shall have preference in appointment over a person applying to be 311  
guardian if the person nominated is competent, suitable, and 312  
willing to accept the appointment, and if the incompetent adult 313  
child does not have a spouse or an adult child and has not 314  
designated a guardian prior to the court finding the adult child 315  
incompetent. 316

**Sec. 2111.121.** (A) A person may nominate in a writing, as 317  
described in this division, another person to be the guardian of 318  
the nominator's person, estate, or both or the guardian of the 319  
person, the estate, or both, of one or more of the nominator's 320  
minor or incompetent adult children, whether born at the time of 321  
the execution of the writing or afterward, subject to notice and a 322  
hearing pursuant to section 2111.02 of the Revised Code. The 323  
nomination is for consideration by a court if proceedings for the 324  
appointment of a guardian of the person, the estate, or both, for 325  
the person making the nomination or if proceedings for the 326  
appointment of a guardian as the guardian of the person, the 327  
estate, or both of one or more of the nominator's minor or 328  
incompetent adult children are commenced at a later time. The 329  
person may authorize, in a writing of that nature, the person 330  
nominated as guardian to nominate a successor guardian for 331  
consideration by a court. The person also may direct, in a writing 332

of that nature, that bond be waived for a person nominated as 333  
guardian in it or nominated as a successor guardian in accordance 334  
with an authorization in it. 335

To be effective as a nomination, the writing shall be signed 336  
by the person making the nomination in the presence of two 337  
witnesses; signed by the witnesses; contain, immediately prior to 338  
their signatures, an attestation of the witnesses that the person 339  
making the nomination signed the writing in their presence; and be 340  
acknowledged by the person making the nomination before a notary 341  
public. 342

(B) If a person has nominated, in a writing as described in 343  
division (A) of this section or in a durable power of attorney as 344  
described in division (D) of section 1337.09 of the Revised Code, 345  
another person to be the guardian of the nominator's person, 346  
estate, or both, and proceedings for the appointment of a guardian 347  
for the person are commenced at a later time, the court involved 348  
shall appoint the person nominated as guardian in the writing or 349  
durable power of attorney most recently executed if the person 350  
nominated is competent, suitable, and willing to accept the 351  
appointment. If the writing or durable power of attorney contains 352  
a waiver of bond, the court shall waive bond of the person 353  
nominated as guardian unless it is of the opinion that the 354  
interest of the trust demands it. 355

(C) Nomination of a person as a guardian or successor 356  
guardian of the person, the estate, or both of one or more of the 357  
nominator's minor or incompetent adult children under division (A) 358  
of this section, and any subsequent appointment of the guardian or 359  
successor guardian as guardian under section 2111.02 of the 360  
Revised Code, does not vacate the jurisdiction of any other court 361  
that previously may have exercised jurisdiction over the person of 362  
the minor or incompetent adult child. 363

(D) The writing containing the nomination of a person to be 364

the guardian of the person, the estate, or both of one or more of 365  
the nominator's minor or incompetent adult children under division 366  
(A) of this section may be filed with the probate court for 367  
safekeeping, and the probate court shall designate the nomination 368  
as the nomination of a standby guardian. 369

**Sec. 2307.14.** ~~As used in this section, "incompetent person"~~ 370  
~~means a person who is so mentally impaired as a result of a mental~~ 371  
~~or physical illness or disability, or mental retardation, or as a~~ 372  
~~result of chronic substance abuse, that the person is incapable of~~ 373  
~~taking proper care of the person's self or property or fails to~~ 374  
~~provide for the person's family or other persons for whom the~~ 375  
~~person is charged by law to provide.~~ 376

The court shall require a guardian ad litem, or a trustee 377  
appointed under section ~~2307.13~~ or 2307.131 of the Revised Code, 378  
faithfully to discharge the guardian ad litem's or trustee's duty, 379  
and upon failure to do so, may remove the guardian ad litem or 380  
trustee, and appoint another. The court may fix a compensation for 381  
the guardian ad litem's or trustee's services, which shall be 382  
taxed in the costs against the minor, ~~the incompetent person,~~ or 383  
the unborn persons. 384

**Sec. 5305.22.** (A) Any real estate or interest ~~therein~~ in real 385  
estate coming to a person by purchase, inheritance, or otherwise, 386  
after the spouse of ~~such the~~ person is adjudged ~~an incompetent a~~ 387  
mentally ill person subject to hospitalization by court order and 388  
admitted to either a hospital for persons with mental illness in 389  
this or any other state of the United States or the psychiatric 390  
department of any hospital of the United States, may be conveyed 391  
by ~~such the~~ person while ~~such the person's~~ spouse who is ~~an~~ 392  
~~incompetent a mentally ill~~ person subject to hospitalization by 393  
court order remains a patient ~~thereof~~ of that hospital, free and 394  
clear from any dower right or expectancy of ~~such the person's~~ 395

spouse who is ~~an incompetent~~ a mentally ill person subject to 396  
hospitalization by court order. Dower shall not attach to any real 397  
estate so acquired and conveyed during the time described in this 398  
section in favor of such spouse who is ~~an incompetent~~ a mentally 399  
ill person subject to hospitalization by court order. The 400  
indorsement upon the instrument of conveyance, by the 401  
superintendent of the hospital to which the spouse was admitted, 402  
that ~~such~~ the spouse of the person conveying the real estate is an 403  
~~incompetent~~ a mentally ill person thereof subject to 404  
hospitalization by court order who has been admitted to that 405  
hospital, stating when received ~~therein~~ in that hospital and 406  
signed officially by the superintendent, shall be sufficient 407  
evidence of the fact that ~~such~~ the spouse of the person conveying 408  
the real estate is ~~such incompetent~~ a mentally ill person subject 409  
to hospitalization by court order. This indorsement shall be a 410  
part of the instrument of conveyance. 411

(B) As used in this section, "mentally ill person subject to 412  
hospitalization by court order" has the same meaning as in section 413  
5122.01 of the Revised Code. 414

**Sec. 5711.05.** As used in this section ~~and~~, "legal disability" 415  
has the same meaning as in section 5711.07 2131.02 of the Revised 416  
Code, ~~"incompetent person" means a person who is so mentally~~ 417  
~~impaired as a result of a mental or physical illness or~~ 418  
~~disability, or mental retardation, or as a result of chronic~~ 419  
~~substance abuse, that the person is incapable of taking proper~~ 420  
~~care of the person's self or property or fails to provide for the~~ 421  
~~person's family or other persons for whom the person is charged by~~ 422  
~~law to provide.~~ 423

Each person shall return all the taxable property of which 424  
the person is the owner, except property required by this section 425  
or the regulations of the tax commissioner to be returned for the 426

person by a fiduciary; but this section does not authorize any 427  
person to omit from the person's return of taxable property the 428  
person's interest in investments and other taxable intangible 429  
property yielding income owned or held for the person's benefit by 430  
a fiduciary and not taxed at the source, or other taxable property 431  
so owned or held by a nonresident fiduciary. The return of all the 432  
taxable property of a corporation shall be made by the president, 433  
a vice-president, or the secretary and by the principal accounting 434  
officer, that of a partnership, by a partner, and that of an 435  
association, by the managing agent in this state. 436

All taxable property belonging to the persons named or 437  
indicated shall be returned by the fiduciaries named, as follows: 438

(A) That of a ward, by the ward's guardian; 439

(B) That of a ~~minor or an incompetent~~ person under a legal 440  
disability having no guardian, by the ~~minor's or incompetent~~ 441  
person's father, if living, if not, by the ~~minor's or incompetent~~ 442  
person's mother, if living, and if neither father nor mother is 443  
living, by the person having such property in charge; 444

(C) That of an estate of a deceased person, by the deceased 445  
person's executor, administrator, or personal representative; 446

(D) That of persons whose assets are in the hands of 447  
receivers, assignees for the benefit of creditors, trustees in 448  
bankruptcy, or official custodians, by such receivers, assignees, 449  
trustees in bankruptcy, or official custodians. 450

Personal property used in business and taxable property of a 451  
nonresident used in and arising out of a business transacted for 452  
the nonresident or on the nonresident's behalf in any of the cases 453  
mentioned in section 5709.03 of the Revised Code, in the 454  
possession or custody of any agent, factor, bailee, or other 455  
similar fiduciary, shall be returned by such fiduciary, except as 456  
is provided by regulation of the commissioner; but as to such 457

property in the possession, custody, or legal ownership of a 458  
trustee the next succeeding paragraph of this section shall be 459  
exclusive; provided that a warehouseperson shall not be required 460  
to return for taxation personal property consigned to the 461  
warehouseperson for the sole purpose of being stored or forwarded, 462  
if such warehouseperson has no interest in such property other 463  
than a warehouseperson's lien, or any profit to be derived from 464  
its sale. 465

All the taxable property, except investments and other 466  
taxable intangible property yielding income, of a person for whose 467  
benefit property is held in trust shall be returned by the 468  
trustee, and if any beneficiary of such a trust is a ~~minor or an~~ 469  
~~incompetent~~ person under a legal disability residing in this 470  
state, and for whom there is no other fiduciary in this state, the 471  
commissioner may require such a trustee to return also the 472  
investments and other taxable intangible property yielding income 473  
held for the benefit of any such beneficiary and not taxed at the 474  
source. 475

All returns made as fiduciaries' returns shall be separate 476  
from the fiduciary's return as an individual, firm, association, 477  
or corporation and shall set forth the names of all persons toward 478  
whom the relation of fiduciary is borne or on whose behalf the 479  
returns are made, together with the capacity in which the 480  
fiduciary so acts for each of such persons. 481

The commissioner may adopt and promulgate regulations 482  
covering the making of returns not inconsistent with this section 483  
or sections 5711.01 to 5711.36 of the Revised Code, so that all 484  
property taxable in this state shall be returned for taxation. 485

**Sec. 5711.07.** Personal property used in business shall be 486  
listed and assessed in the taxing district in which such business 487  
is carried on. If such business is carried on in more than one 488



taxing district in the same county, the return shall set forth the 489  
amount of the property used therein which is situated in each 490  
taxing district in such county, and the value of all the personal 491  
property used in business shall be apportioned to and assessed in 492  
each of such taxing districts in proportion to the value of the 493  
personal property situated therein. Domestic animals not used in 494  
business shall be listed and assessed in the taxing district where 495  
kept. Ships, vessels, boats, and aircraft, and shares and 496  
interests therein, shall be listed and assessed in the taxing 497  
district in which the owner resides. All other taxable property 498  
shall be listed and assessed in the municipal corporation in which 499  
the owner resides, or, if the owner resides outside a municipal 500  
corporation, then in the county in which the owner resides except 501  
as provided in sections 5711.01 to 5711.36, ~~inclusive~~, of the 502  
Revised Code. Whenever, under such sections, taxable property 503  
required by this section to be listed and assessed in the taxing 504  
district or county in which the owner resides is required to be 505  
listed by a fiduciary, such property shall be listed and assessed 506  
by such fiduciary in the taxing district or county in which such 507  
fiduciary resides, or, in the case of joint fiduciaries, in which 508  
either such fiduciary resides; but such property belonging to the 509  
estate of a deceased resident of this state shall be listed and 510  
assessed in the taxing district or county in which the deceased 511  
resident resided at the time of death, regardless of the residence 512  
of the deceased resident's executors, administrators, or personal 513  
representatives, and such property belonging to a ward, minor, 514  
incompetent person, or beneficiary of a trust residing in this 515  
state, title, custody, or possession of which is vested in a 516  
nonresident fiduciary, shall be listed and assessed in the taxing 517  
district or county in which such ward, minor, incompetent person, 518  
or beneficiary resides. 519

As used in this section, "incompetent person" means a person 520  
who is so mentally impaired as a result of a mental or physical 521

illness or disability, or mental retardation, or as a result of 522  
chronic substance abuse, that the person is incapable of taking 523  
proper care of the person's self or property or fails to provide 524  
for the person's family or other persons for whom the person is 525  
charged by law to provide. 526

**Sec. 5907.06.** (A) A mentally ill person ~~with a mental illness~~ 527  
~~that~~ subject to hospitalization by court order whose mental 528  
condition causes the person to be dangerous to the community shall 529  
not be admitted to a veterans' home. ~~In case~~ If a mentally ill 530  
person ~~with such a mental illness~~ subject to hospitalization by 531  
court order, through misrepresentation as to the person's 532  
condition, is sent to a home, the person shall be returned to, and 533  
the expense of the return shall be borne by, the county from which 534  
the person came. 535

(B) As used in this section, "mentally ill person subject to 536  
hospitalization by court order" has the same meaning as in section 537  
5122.01 of the Revised Code. 538

**Sec. 5907.09.** (A) When the affidavit referred to in section 539  
5907.08 of the Revised Code is filed, the probate judge shall 540  
forthwith determine whether the ~~competence of the~~ resident is a 541  
mentally ill person subject to hospitalization by court order. 542  
Insofar as applicable, the laws governing in cases of admission to 543  
a state hospital for persons with mental illness shall apply. The 544  
probate judge shall have the same authority, and may receive and 545  
order paid the same fees and costs, as the probate judge would 546  
have in the county in which the veteran was a resident at the time 547  
of entering the veterans' home. 548

(B) As used in this section, "mentally ill person subject to 549  
hospitalization by court order" has the same meaning as in section 550  
5122.01 of the Revised Code. 551

**Section 2.** That existing sections 1337.09, 2109.21, 2111.02, 552  
2111.121, 2307.14, 5305.22, 5711.05, 5711.07, 5907.06, and 5907.09 553  
of the Revised Code are hereby repealed. 554

**Section 3.** Sections 1337.09, 2109.21, 2111.02, and 2111.121 555  
of the Revised Code, as amended by Section 1 of this act, shall go 556  
into effect ninety days after the effective date of this act. 557

**Section 4.** Sections 2307.14, 5305.22, 5711.05, 5711.07, 558  
5907.06, and 5907.09 of the Revised Code, as amended by Section 1 559  
of this act, shall go into effect on August 7, 2007. 560

**Section 5.** This act is hereby declared to be an emergency 561  
measure necessary for the immediate preservation of the public 562  
peace, health, and safety. The reason for such necessity is to 563  
ensure that the corrections made regarding incompetent and 564  
mentally ill persons are in effect at the time Am. Sub. H.B. 53 of 565  
the 127th General Assembly goes into effect. Therefore, this act 566  
shall go into immediate effect. 567