

As Reported by the Senate Judiciary--Civil Justice Committee

127th General Assembly

Regular Session

2007-2008

Sub. S. B. No. 157

Senator Buehrer

Cosponsors: Senators Carey, Faber, Goodman, Mason

—

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, 82

administrator de bonis non, or administrator with the will annexed 83
shall be a resident of this state and shall be removed on proof 84
that the administrator is no longer a resident of this state. 85

(B)(1) To qualify for appointment as executor or trustee, an 86
executor or a trustee named in a will or nominated in accordance 87
with any power of nomination conferred in a will, may be a 88
resident of this state or, as provided in this division, a 89
nonresident of this state. To qualify for appointment, a 90
nonresident executor or trustee named in, or nominated pursuant 91
to, a will shall be an individual who is related to the maker of 92
the will by consanguinity or affinity, or a person who resides in 93
a state that has statutes or rules that authorize the appointment 94
of a nonresident person who is not related to the maker of a will 95
by consanguinity or affinity, as an executor or trustee when named 96
in, or nominated pursuant to, a will. No such executor or trustee 97
shall be refused appointment or removed solely because the 98
executor or trustee is not a resident of this state. 99

The court may require that a nonresident executor or trustee 100
named in, or nominated pursuant to, a will assure that all of the 101
assets of the decedent that are in the county at the time of the 102
death of the decedent will remain in the county until distribution 103
or until the court determines that the assets may be removed from 104
the county. 105

(2) In accordance with this division and section 2129.08 of 106
the Revised Code, the court shall appoint as an ancillary 107
administrator a person who is named in the will of a nonresident 108
decedent, or who is nominated in accordance with any power of 109
nomination conferred in the will of a nonresident decedent, as a 110
general executor of the decedent's estate or as executor of the 111
portion of the decedent's estate located in this state, whether or 112
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 guardian. 210
211

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

(3) If a minor or incompetent has not been placed under a guardianship pursuant to division (A) of this section and if an emergency exists, and if it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the minor or incompetent, at any time after it receives notice of the emergency, the court, ex parte, may issue any order that it considers necessary to prevent injury to the person or estate of the minor or incompetent, or may appoint an emergency guardian for a maximum period of seventy-two hours. A written copy of any order issued by a court under this division shall be served upon the incompetent or minor as soon as possible after its issuance. Failure to serve such an order after its issuance or prior to the taking of any action under its authority does not invalidate the order or the actions taken. The powers of an emergency guardian shall be specified in the letters of 227
228
229
230
231
232
233
234
235
236
237
238
239
240
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