

# AN ACT

To amend sections 2107.03 and 2107.24 of the Revised Code to require a will to be attested and subscribed by the witnesses in the conscious presence, instead of in the presence, of the testator and to provide that a decedent who signs a document that is a purported will sign in the conscious presence of the witnesses.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 2107.03 and 2107.24 of the Revised Code be amended to read as follows:

Sec. 2107.03. Except oral wills, every last will and testament shall be in writing, but may be handwritten or typewritten. ~~Such~~ The will shall be signed at the end by the ~~party~~ testator making it or by some other person in ~~such party's~~ the testator's conscious presence and at ~~his~~ the testator's express direction, and be attested and subscribed in the conscious presence of ~~such party~~ the testator, by two or more competent witnesses, who saw the testator subscribe, or heard ~~him~~ the testator acknowledge ~~his~~ the testator's signature.

For purposes of this section, "conscious presence" means within the range of any of the testator's senses, excluding the sense of sight or sound that is sensed by telephonic, electronic, or other distant communication.

Sec. 2107.24. (A) If a document that is executed that purports to be a will is not executed in compliance with the requirements of section 2107.03 of the Revised Code, that document shall be treated as if it had been executed as a will in compliance with the requirements of that section if a probate court, after holding a hearing, finds that the proponent of the document as a purported will has established, by clear and convincing evidence, all of the following:

(1) The decedent prepared the document or caused the document to be prepared.

(2) The decedent signed the document and intended the document to constitute the decedent's will.

(3) ~~Two or more witnesses saw the~~ The decedent ~~sign~~ signed the document under division (A)(2) of this section in the conscious presence of

two or more witnesses. As used in division (A)(3) of this section, "conscious presence" means within the range of any of the witnesses' senses, excluding the sense of sight or sound that is sensed by telephonic, electronic, or other distant communication.

(B) If the probate court holds a hearing pursuant to division (A) of this section and finds that the proponent of the document as a purported will has established by clear and convincing evidence the requirements under divisions (A)(1), (2), and (3) of this section, the executor may file an action in the probate court to recover court costs and attorney's fees from the attorney, if any, responsible for the execution of the document.

SECTION 2. That existing sections 2107.03 and 2107.24 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

S. B. No. 302

127th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_