

As Introduced

127th General Assembly
Regular Session
2007-2008

S. B. No. 302

Senator Goodman

Cosponsor: Senator Schuler

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A BILL

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 20
sense of sight or sound that is sensed by telephonic, electronic, 21
or other distant communication. 22

Sec. 2107.24. (A) If a document that is executed that 23
purports to be a will is not executed in compliance with the 24
requirements of section 2107.03 of the Revised Code, that document 25
shall be treated as if it had been executed as a will in 26
compliance with the requirements of that section if a probate 27
court, after holding a hearing, finds that the proponent of the 28
document as a purported will has established, by clear and 29
convincing evidence, all of the following: 30

(1) The decedent prepared the document or caused the document 31
to be prepared. 32

(2) The decedent signed the document and intended the 33
document to constitute the decedent's will. 34

(3) ~~Two or more witnesses saw the~~ The decedent sign signed 35
the document under division (A)(2) of this section in the 36
conscious presence of two or more witnesses. As used in division 37
(A)(3) of this section, "conscious presence" means within the 38
range of any of the witnesses' senses, excluding the sense of 39
sight or sound that is sensed by telephonic, electronic, or other 40
distant communication. 41

(B) If the probate court holds a hearing pursuant to division 42
(A) of this section and finds that the proponent of the document 43
as a purported will has established by clear and convincing 44
evidence the requirements under divisions (A)(1), (2), and (3) of 45
this section, the executor may file an action in the probate court 46
to recover court costs and attorney's fees from the attorney, if 47
any, responsible for the execution of the document. 48

Section 2. That existing sections 2107.03 and 2107.24 of the 49

Revised Code are hereby repealed.

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