



David M. Gold

Bill Analysis
Legislative Service Commission

S.B. 302

127th General Assembly
(As Reported by H. Judiciary)

Sens. Goodman, Schuler, Seitz, Kearney, Fedor, Carey, Grendell, Harris, Padgett, Roberts, Sawyer, Schaffer, Wagoner, Buehrer

BILL SUMMARY

- Requires that a will be attested and subscribed by witnesses in the conscious presence of the testator.
- Provides that a decedent who signs a document that is a purported will sign the purported will in the conscious presence of the witnesses.

CONTENT AND OPERATION

Method of making a will

Existing law provides that, except oral wills, every last will and testament must be in writing, but may be handwritten or typewritten. The will must be signed at the end by the party making it or by some other person in the party's presence and at his express direction and must be attested and subscribed in the presence of that party by two or more competent witnesses who saw the testator subscribe or heard him acknowledge his signature. The bill requires that the will must be signed at the end by the *testator* making it or by some other person in *the testator's conscious* presence and that the will must be attested and subscribed in the *conscious* presence of the testator by two or more competent witnesses who saw the testator subscribe or heard the testator acknowledge the testator's signature. (R.C. 2107.03.)

For the purposes of the changes made to existing law by the bill as discussed above, "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 (R.C. 2107.03).

Treatment of a document as a will notwithstanding noncompliance with the requirements under Ohio law

Existing law provides that if a document that is executed that purports to be a will is not executed in compliance with the requirements described in "**Method of making a will**," above, that document must be treated as if it had been executed as a will in compliance with those requirements 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 (R.C. 2107.24):

- (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 decedent sign the document.

The bill modifies (3) above by requiring the probate court to find that the decedent signed the document in the *conscious presence* of two or more witnesses (R.C. 2107.24(A)(3)).

For the purposes of the changes made to existing law by the bill as discussed above, "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 (R.C. 2107.24(A)(3)).

HISTORY

ACTION	DATE
Introduced	03-06-08
Reported, S. Judiciary--Civil Justice	04-16-08
Passed Senate (32-0)	04-30-08
Reported, H. Judiciary	05-23-08

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