



Greg Schwab

*Final Analysis*  
Legislative Service Commission

## **S.B. 302**

127th General Assembly  
(As Passed by the General Assembly)

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

**Reps. Book, DeBose, Domenick, Dyer, Evans, Flowers, Gerberry, Heydinger, Hughes, Letson, Mallory, J. McGregor, Mecklenborg, Oelslager, Okey**

**Effective date: September 11, 2008**

---

### **ACT SUMMARY**

- Requires that a will be attested and subscribed by witnesses in the conscious presence of the testator.
- Requires a court to find that a decedent signed a purported will in the conscious presence of two or more witnesses in order for the purported will to be treated as having been executed in compliance with statutory requirements.

---

### **CONTENT AND OPERATION**

#### **Method of making a will**

Continuing law largely retained by the act 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 act requires that a will 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 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.

For the purposes of the changes made by the act 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**

Continuing law largely retained by the act 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 act 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.

For the purposes of the changes made by the act 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
Passed House (95-0)	05-28-08

08-sb302-127.doc/kl

