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Substitute Bill Comparative Synopsis

Sub. H.B. 339

134th General Assembly

House Civil Justice

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This table summarizes how the latest substitute version of the bill differs from the immediately preceding version. It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same.

Previous Version (As Introduced)	Latest Version (I_134_1517-2)
Certification of electronic will by acknowledgment before notary public	
No provision.	Requires an electronic will to be acknowledged before a notary public who must make the certification by taking an acknowledgment under the Notaries Public Law and must attest that the testator appears to be of sound mind and not subject to duress, fraud, or undue influence (<i>R.C. 2107.03(C)(4)(a)</i>).
No provision.	Requires the notary public to perform the certification and attestation above through an electronic notarization, pursuant to the provision on electronic notarization of electronic documents in the Notary Public Modernization Act, or as an online notarization pursuant to the laws on online notarizations and online notaries public (<i>R.C. 2107.03(C)(4)(a)</i>).
No provision	Requires the notary public to terminate the certification proceedings if the notary public has reasonable cause to believe during the course of the certification proceedings that the testator does not appear to be of sound mind or is subject to duress, fraud, or undue influence (<i>R.C. 2107.03(C)(4)(b)</i>).

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Credential analysis and identity proofing of testator and witnesses	
No provision.	Requires the notary public, prior to the acknowledgment of the will as described above, to require the presentation of a government-issued identification credential by, and to perform the credential analysis and identity proofing of, the testator and the witnesses, in accordance with the procedures for such credential analysis and identity proofing under the Notary Public Modernization Act and the standards adopted by the Secretary of State (<i>R.C. 2107.03(C)(5)</i>).
Recording of procedures	
<p>Requires the procedures for the signing of an electronic will by the testator or another individual in the testator’s name, and by the witnesses, be recorded by electronic media containing both audio and visual components, and requires the format of the recording to be preserved and stored in a safe, secure, and appropriate manner (<i>R.C. 2107.03(D)(1)</i>).</p> <p>Requires the process of recording to ensure the following: (a) that the person executing the electronic will is the testator of the will, and (b) that the persons signing the electronic will verbally acknowledge that they have signed that will, that they recognize the consequences of their signing the will, and that they understand the significance of the electronic will (<i>R.C. 2107.03(D)(2)</i>).</p>	<p>Same provision, and additionally requires the procedures described above under “Certification of electronic will by acknowledgment before notary public” and “Credential analysis and identity proofing of testator and witnesses,” to be recorded in the same manner as the recording in the As Introduced version (<i>R.C. 2107.03(D)(1)</i>).</p> <p>Provides that the recording may be cited as evidence of both (a) and (b) in the As Introduced version (<i>R.C. 2107.03(D)(2)</i>).</p>
Review contents of electronic will	
No provision.	Permits the testator of an electronic will or the individual who will sign the will in the testator’s name and the witnesses to the will to review the contents of the electronic will prior to signing the will (<i>R.C. 2107.03(C)(1)(b)</i>).
Copy of electronic will sent to testator	
Requires a copy of the electronic will to be provided to the testator of that will (<i>R.C. 2107.03(E)</i>).	Provides that the testator of an electronic will may request that a copy of the certified electronic will be sent to the testator and any other person

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	designated by the testator in either of the following forms and manners: (1) in paper form, by certified mail, return receipt requested, to the respective residence addresses, or (2) in portable document format or PDF, by electronic mail, to the respective electronic mail addresses <i>(R.C. 2107.03(E))</i> .
Deposit of electronic will	
<p>Requires a copy of an electronic will to be deposited by the testator or by some other person for the testator, in the office of the judge of the probate court in the county in which the testator lives, before or after the death of the testator; and permits a copy of an electronic will to be deposited after the death of the testator with or without applying for its probate <i>(R.C. 2107.07(A)(2))</i>.</p> <p>If a copy of an electronic will is deposited by some person for the testator, requires that person to attach with that copy an affidavit attested to by the testator authorizing the person to deposit the copy of the electronic will <i>(R.C. 2107.07(A)(2))</i>.</p> <p>Requires every electronic will so deposited to be stored in a separate file in the court's records and contain information analogous to that required for wills in writing <i>(R.C. 2107.07(C))</i>.</p>	<p>Permits an electronic will to be deposited by the testator, or by some person for the testator, in the office of the judge of the probate court in the county in which the testator lives, before or after the death of the testator, and if deposited after the death of the testator, with or without applying for its probate <i>(R.C. 2107.07(A))</i>.¹</p> <p>No provision.</p> <p>No provision.</p>
Admission of will to probate	
Modifies current law by requiring the probate court to admit a will to probate if it appears from the face of the will or from the testimony of the witnesses to a will that the execution of the will complies with the law in force at the time of its execution in the jurisdiction in which "the testator	Retains current law by reinstating "the testator was physically present when" which is removed by the As Introduced version <i>(R.C. 2107.18, not in the bill)</i> .

¹ The permissive deposit, rather than mandatory deposit under the As Introduced version, of an electronic will is similar to the permissive deposit of a will in writing, and the provisions in continuing law on the deposit of a will in writing pertaining to the fee for the deposit, safekeeping of the will, and its disposal, apply to the deposit of an electronic will *(R.C. 2107.07(A))*.

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<p>was physically present when” (removed by the As Introduced version) it was executed, with the law in force in Ohio at the time of the testator’s death, or with the law in force in the jurisdiction in which the testator was domiciled at the time of the testator’s death (R.C. 2107.18).</p>	
<p>Recording of electronic execution of durable power of attorney for health care</p>	
<p>No provision.</p>	<p>Requires that the electronic execution of a durable power of attorney for health care and the witnessing or acknowledgment of the electronic execution of a durable power of attorney for health care, whichever is applicable, be recorded by electronic media containing both audio and visual components; and requires the format of the recording to be preserved and stored in a safe, secure, and appropriate manner (R.C. 1337.12(A)(1)(c)).</p>
<p>No provision.</p>	<p>Provides that the above recording may be cited as evidence of both of the following: (1) that the principal executing the durable power of attorney for health care is an adult of sound mind, and (2) if the durable power of attorney for health care is executed with witnesses, that the persons signing as witnesses verbally acknowledge that they have signed the durable power of attorney for health care and are not ineligible to be witnesses (R.C. 1337.12(A)(1)(c)(i) and (ii)).</p>