

**As Passed by the House**

**125th General Assembly  
Regular Session  
2003-2004**

**Sub. H. B. No. 392**

**Representatives Wagner, Williams, McGregor, Latta, Hoops, Price, Seitz,  
Aslanides, G. Smith, Hollister, Kearns, Harwood, Perry, Raga, Walcher,  
Distel, DeGeeter, Collier, Schmidt, C. Evans, Faber, Ujvagi, Gilb, Reidelbach,  
Barrett, Allen, Willamowski, Beatty, Book, Brown, Carano, Chandler, Cirelli,  
Core, Daniels, Domenick, D. Evans, Flowers, Gibbs, Hagan, Hartnett, Hughes,  
Key, Mason, Miller, Niehaus, Otterman, Raussen, Redfern, Schlichter,  
Schneider, Sferra, Skindell, Slaby, D. Stewart, J. Stewart, Sykes, Taylor,  
Webster, Wilson, Woodard**

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**A B I L L**

To amend sections 2108.04, 2108.10, 2108.17, 2108.18, 1  
and 2133.07 and to enact section 2133.16 of the 2  
Revised Code to permit a declarant of a 3  
declaration or living will to make an anatomical 4  
gift in the declaration and to make changes to the 5  
membership of the Second Chance Trust Fund 6  
Advisory Committee. 7

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2108.04, 2108.10, 2108.17, 2108.18, 8  
and 2133.07 be amended and section 2133.16 of the Revised Code be 9  
enacted to read as follows: 10

**Sec. 2108.04.** (A) An individual eighteen years of age or 11  
older may make an anatomical gift by will under division (A) of 12  
section 2108.02 of the Revised Code. The anatomical gift becomes 13

effective upon the death of the testator without waiting for 14  
probate. If the will is not probated or if it is declared invalid 15  
for testamentary purposes, the anatomical gift, to the extent that 16  
it has been acted upon in good faith, is nevertheless valid and 17  
effective. 18

(B)(1) An individual may also make an anatomical gift under 19  
division (A) of section 2108.02 of the Revised Code by a document 20  
other than a will. The anatomical gift becomes effective upon the 21  
death of the donor. The document, which may be a card designed to 22  
be carried on the person, shall be signed by the donor in the 23  
presence of two witnesses who shall sign the document in the 24  
donor's presence. If the donor cannot sign, the document may be 25  
signed for the donor at the donor's direction and in the presence 26  
of two witnesses, having no affiliation with the donee, who shall 27  
sign the document in the donor's presence. Delivery of the 28  
document of gift during the donor's lifetime is not necessary to 29  
make the anatomical gift valid. 30

(2) If a person less than eighteen years of age wishes to 31  
make an anatomical gift under division (B)(1) of this section, one 32  
of the witnesses who signs the document shall be a parent or 33  
guardian of that person. 34

(3) An individual who is a declarant may make an anatomical 35  
gift under division (A) of section 2108.02 of the Revised Code by 36  
specifying in the declaration the intent of the declarant to make 37  
an anatomical gift as provided in section 2133.16 of the Revised 38  
Code. A declaration that specifies the intent of a declarant to 39  
make an anatomical gift and satisfies the requirements of section 40  
2133.02 of the Revised Code is considered as having satisfied the 41  
requirements of division (B)(1) of this section. The declaration 42  
is subject to sections 2108.01 to 2108.12 of the Revised Code to 43  
the extent that the declaration specifies the intent of the 44

declarant to make an anatomical gift.

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As used in division (B)(3) of this section, "declarant" and "declaration" have the same meanings as in section 2133.01 of the Revised Code.

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(C) An anatomical gift under division (A) of section 2108.02 of the Revised Code may also be made by a designation, to be provided for on all Ohio driver's or commercial driver's licenses and motorcycle operator's licenses or endorsements, and on all identification cards. The anatomical gift becomes effective upon the death of the donor. The holder of the driver's or commercial driver's license or endorsement, or the holder of the identification card must sign a statement at the time of application or renewal of the license, endorsement, or identification card; except that when the holder of the license or card is less than eighteen years of age, the statement also shall be signed by a parent or guardian of the holder. Delivery of the license or identification card during the donor's lifetime is not necessary to make the anatomical gift valid. Revocation, suspension, or expiration of the license or endorsement will not invalidate the anatomical gift. The anatomical gift must be renewed upon renewal of each license, endorsement, or identification card.

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(D) Except as provided in section 2108.07 of the Revised Code, the donee or other person authorized to accept the anatomical gift may employ or authorize any surgeon or physician to carry out the appropriate procedures.

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(E) Any anatomical gift by a person specified in division (B) of section 2108.02 of the Revised Code shall be made in one of the following ways:

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(1) By a document signed by the person;

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(2) By telegram;

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(3) By a telephone call in which two persons receive the message and one of them prepares written documentation of the message, or by a telephone call that is recorded mechanically or electronically.

(F) A valid declaration of an anatomical gift made under division (A), (B), or (C) of this section prevails over any contrary desires of the donor's family regarding the donor's corpse, but nothing in this section shall be construed as requiring a donee to accept an anatomical gift.

**Sec. 2108.10.** (A) The document of gift provided for in division (B)(1) of section 2108.04 of the Revised Code shall conform substantially to the following form:

"ANATOMICAL GIFT OF

.....  
(Print or type name of living donor)

In the hope that I may help others upon my death, I hereby give the following body parts:

..... for any purpose authorized by law: transplantation, therapy, research, or education.

Signed by the donor and the following two witnesses in the presence of each other:

.....  
Signature of Donor

.....  
Date of Birth of Donor

.....  
Date Signed

.....  
Witness

.....

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| Witness  | 107                      |
| This is a legal document under the Uniform Anatomical Gift Act or similar laws."   | 108<br>109               |
| <u>The statement of an anatomical gift provided for in division (B)(3) of section 2108.04 of the Revised Code and section 2133.16 of the Revised Code shall conform substantially to the form provided in division (B) of section 2133.07 of the Revised Code.</u> | 110<br>111<br>112<br>113 |
| (B) The document of gift provided for in division (E) of section 2108.04 of the Revised Code shall conform substantially to the following form:  | 114<br>115<br>116        |
| "ANATOMICAL GIFT BY A RELATIVE<br>OR THE GUARDIAN OF<br>THE PERSON OF A DECEDENT   | 117<br>118<br>119        |
| I hereby make this anatomical gift from the body of<br>..... (name) who died on .....<br>(date) in ..... (city and state)  | 120<br>121<br>122        |
| The marks in the appropriate squares and the words filled into the blanks below indicate my relationship to the decedent and my desires respecting the anatomical gift.  | 123<br>124<br>125        |
| 1. I survive the decedent as:  | 126                      |
| 1. <input type="checkbox"/> spouse;  | 127                      |
| 2. <input type="checkbox"/> adult son or daughter;   | 128                      |
| 3. <input type="checkbox"/> parent;  | 129                      |
| 4. <input type="checkbox"/> adult brother or sister;   | 130                      |
| 5. <input type="checkbox"/> grandparent;   | 131                      |
| 6. <input type="checkbox"/> guardian of the person;  | 132                      |
| 7. <input type="checkbox"/> person authorized to dispose of the body   | 133<br>134               |
| 2. I hereby give the following body parts:   | 135                      |
| <input type="checkbox"/> heart <input type="checkbox"/> liver <input type="checkbox"/> skin <input type="checkbox"/> middle ear  | 136                      |
| <input type="checkbox"/> kidneys <input type="checkbox"/> lung <input type="checkbox"/> heart valves <input type="checkbox"/> other .....  | 137                      |

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| [ ] pancreas  | [ ] eyes                           | [ ] bone/ligament | 138 |
|   |                                    |                   | 139 |
| for:  | [ ] any purpose authorized by law  |                   | 140 |
|   | [ ] transplantation                |                   | 141 |
|   | [ ] therapy                        |                   | 142 |
|   | [ ] medical research and education |                   | 143 |
|   |                                    |                   | 144 |
| 3. After the donated organs, tissues, or eyes are removed, the                  |                                    |                   | 145 |
| remains of the body shall be disposed of in the following manner:               |                                    |                   | 146 |
| .....; at the expense of the following person:                                  |                                    |                   | 147 |
| .....   |                                    |                   | 148 |
| Date .....  | City and State .....               |                   | 149 |
| .....   |                                    |                   | 150 |
| Witness   | Signature of Survivor              |                   | 151 |
| .....   |                                    |                   | 152 |
| Witness   | Address of Survivor"               |                   | 153 |
| (C) The statement of gift provided for in division (C) of                       |                                    |                   | 154 |
| section 2108.04 of the Revised Code shall state the following:                  |                                    |                   | 155 |
| "Upon my death, I make an anatomical gift of organs, tissues, and               |                                    |                   | 156 |
| eyes for any purpose authorized by law."  |                                    |                   | 157 |
| The statement may be included on an application for a                           |                                    |                   | 158 |
| driver's license, commercial driver's license, motorcycle                       |                                    |                   | 159 |
| operator's license or endorsement, or state identification card.                |                                    |                   | 160 |
| The donor shall sign the statement or the application containing                |                                    |                   | 161 |
| the statement. If the donor is under eighteen years of age, a                   |                                    |                   | 162 |
| parent or guardian of the donor also must sign the statement or                 |                                    |                   | 163 |
| the application containing the statement.                                       |                                    |                   | 164 |
| <b>Sec. 2108.17.</b> (A) There is hereby created within the                     |                                    |                   | 165 |
| department of health the second chance trust fund advisory                      |                                    |                   | 166 |
| committee, consisting of <del>eleven</del> <u>thirteen</u> members. The members |                                    |                   | 167 |

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| shall include the following:   | 168               |
| (1) The chairs of the standing committees of the house of representatives and senate with primary responsibilities for health legislation;   | 169<br>170<br>171 |
| (2) One representative of each of the following appointed by the director of health:   | 172<br>173        |
| (a) An Ohio organ procurement organization that is a member of the Organ Procurement and Transplantation Network;  | 174<br>175        |
| (b) An Ohio tissue bank that is an accredited member of the American association of tissue banks <del>and is not affiliated with an organ procurement organization;</del>          | 176<br>177<br>178 |
| (c) An Ohio eye bank that is certified by the eye bank association of America <del>and is not affiliated with an organ procurement organization;</del>                             | 179<br>180<br>181 |
| (d) The Ohio solid organ transplantation consortium;   | 182               |
| (e) <u>The A hospital to which both of the following apply:</u>  | 183               |
| <u>(i) It is a member of the Ohio hospital association.</u>  | 184               |
| <u>(ii) It has a transplant program or a facility that has been verified as a level I or level II trauma center by the American college of surgeons.</u>                           | 185<br>186<br>187 |
| (f) The department of health.  | 188               |
| (3) Except as provided in division <del>(D)</del> <u>(C)</u> of this section, three members of the public appointed by the director who are not affiliated with recovery agencies; | 189<br>190<br>191 |
| <u>(4) Two members appointed by the director who are either affiliated with recovery agencies or members of the public.</u>  | 192<br>193        |
| <del>(B) No two members appointed under divisions (A)(2)(a), (b), and (c) of this section shall be from the same organ procurement</del>   | 194<br>195        |

~~and distribution service area designated by the United States  
secretary of health and human services.~~ 196  
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~~(C)~~ Of the members first appointed under division (A)(2) of 198  
this section, the representatives of the organ procurement 199  
organization, tissue procurement organization, and eye bank shall 200  
serve terms of three years; the representatives of the department 201  
of health and Ohio solid organ transplantation consortium shall 202  
serve terms of two years; and the member representing the Ohio 203  
hospital association shall serve a term of one year. Thereafter, 204  
all members shall serve terms of three years. 205

~~(D)~~(C) The members initially appointed under division (A)(3) 206  
of this section shall be representatives of the following: 207

(1) An organ procurement organization in Ohio designated by 208  
the United States secretary of health and human services that is 209  
not represented by the appointment under division (A)(2)(a) of 210  
this section; 211

(2) An Ohio tissue bank that is an accredited member of the 212  
American association of tissue banks, not affiliated with an organ 213  
procurement organization, and not represented by the appointment 214  
under division (A)(2)(b) of this section; 215

(3) An Ohio eye bank that is certified by the eye bank 216  
association of America, not affiliated with an organ procurement 217  
organization, and not represented by the appointment under 218  
division (A)(2)(c) of this section. 219

The three members shall serve until the proposed rules under 220  
section 2108.18 of the Revised Code are formulated. After the 221  
initial appointments, the director shall appoint three members of 222  
the public who are not affiliated with recovery agencies to serve 223  
terms of three years. 224

~~(E)~~ No (D) Members appointed under division (A)(2), (3), or 225  
(4) of this section shall be geographically and demographically 226



representative of the state. No more than a total of three members 227  
appointed under divisions (A)(2), (3), and (4) of this section 228  
shall be affiliated with the same recovery agency or group of 229  
recovery agencies. Recovery agencies that recover only one type of 230  
organ, tissue, or part, as well as recovery agencies that recover 231  
more than one type of organ, tissue, or part, shall be 232  
represented. 233

No individual appointed under division (A)(2) ~~or~~, (3), or (4) 234  
of this section shall serve more than two consecutive terms, 235  
regardless of whether the terms were full or partial terms. Each 236  
member shall serve from the date of appointment until the member's 237  
successor is appointed. All vacancies on the committee shall be 238  
filled for the balance of the unexpired term in the same manner as 239  
the original appointment. 240

~~(F)~~(E) The committee shall annually elect a chairperson from 241  
among its members and shall establish procedures for the 242  
governance of its operations. The committee shall meet at least 243  
semiannually. It shall submit an annual report of its activities 244  
and recommendations to the director of health. 245

~~(G)~~(F) Committee members shall serve without compensation, 246  
but shall be reimbursed from the second chance trust fund for all 247  
actual and necessary expenses incurred in the performance of 248  
official duties. 249

~~(H)~~(G) The committee shall do all of the following: 250

(1) Make recommendations to the director of health for 251  
projects for funding from the second chance trust fund; 252

(2) Consult with the registrar of motor vehicles in 253  
formulating proposed rules under division (C)(1) of section 254  
2108.18 of the Revised Code; 255

(3) As requested, consult with the registrar or director on 256  
other matters related to organ donation; 257

(4) Approve brochures, written materials, and electronic media regarding anatomical gifts and anatomical gift procedures for use in driver training schools pursuant to section 4508.021 of the Revised Code.

~~(I)~~(H) The committee is not subject to section 101.84 of the Revised Code.

**Sec. 2108.18.** (A)(1) The bureau of motor vehicles shall develop and maintain a donor registry that identifies each individual who has agreed to make an anatomical gift by a designation on a driver's or commercial driver's license or motorcycle operator's license or endorsement as provided in division (C) of section 2108.04 of the Revised Code. The registry shall be fully operational not later than July 1, 2002.

(2) Any person who provides to the bureau the form set forth in division (C)(2) of section 2133.07 of the Revised Code requesting to be included in the donor registry shall be included.

(B) The bureau shall maintain the registry in a manner that provides to organ procurement organizations, tissue banks, and eye banks immediate access to the information in the registry twenty-four hours a day and seven days a week.

(C)(1) The registrar of motor vehicles, in consultation with the director of health and the second chance trust fund advisory committee created under section 2108.17 of the Revised Code, shall formulate proposed rules that specify all of the following:

(a) The information to be included in the registry;

(b) A process, in addition to that provided for in section 2108.06 of the Revised Code, for an individual to revoke the individual's intent to make an anatomical gift and for updating information in the registry;

(c) How the registry will be made available to organ

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| procurement organizations, tissue banks, and eye banks;   | 288   |
| (d) Limitations on the use of and access to the registry;   | 289   |
| (e) How information on organ, tissue, and eye donation will be developed and disseminated to the public by the bureau and the department of health;   | 290<br>291<br>292   |
| (f) Anything else the registrar considers appropriate.  | 293   |
| (2) In formulating the proposed rules under this division, the registrar may consult with any person or entity that expresses an interest in the matters to be dealt with in the rules.   | 294<br>295<br>296   |
| (3) Following formulation of the proposed rules, but not later than January 1, 2002, the registrar shall adopt rules in accordance with Chapter 119. of the Revised Code.   | 297<br>298<br>299   |
| (D) The costs of developing and initially implementing the registry shall be paid from the second chance trust fund created in section 2108.15 of the Revised Code.   | 300<br>301<br>302   |
| <b>Sec. 2133.07. (A)</b> A printed form of a declaration may be sold or otherwise distributed in this state for use by adults who are not advised by an attorney. By use of a printed form of that nature, a declarant may authorize the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the declarant be in a terminal condition, a permanently unconscious state, or either a terminal condition or a permanently unconscious state, may authorize the withholding or withdrawal of nutrition or hydration should the declarant be in a permanently unconscious state as described in division (A)(3)(a) of section 2133.02 of the Revised Code, and may designate one or more persons who are to be notified by the declarant's attending physician at any time that life-sustaining treatment would be withheld or withdrawn pursuant to the declaration. The printed form shall not be used as an instrument for granting any other type of authority or for making | 303<br>304<br>305<br>306<br>307<br>308<br>309<br>310<br>311<br>312<br>313<br>314<br>315<br>316<br>317 |

any other type of designation, except that the printed form may be 318  
used as a DNR identification if the declarant specifies on the 319  
form that the declarant wishes to use it as a DNR identification 320  
and except as provided in division (B) of this section. 321

(B) A printed form of a declaration under division (A) of 322  
this section shall include, before the signature of the declarant 323  
or another individual at the direction of the declarant, 324  
statements that conform substantially to the following form: 325

"ANATOMICAL GIFT (optional) 326

Upon my death, the following are my directions regarding 327  
donation of all or part of my body: 328

... YES, in the hope that I may help others upon my death, I 329  
hereby give the following body parts: 330

..... 331  
..... 332

for any purpose authorized by law: transplantation, therapy, 333  
research, or education. 334

OR 335

... NO, I do not wish to donate all or any part of my body as 336  
an anatomical gift. (If this revokes a prior anatomical gift that 337  
I have made to a designated donee, I will attempt to notify the 338  
donee to which or to whom I agreed to donate all or part of my 339  
body.) 340

If I do not check either of the lines indicated above, no 341  
presumption is created about my desire to make or refuse to make 342  
an anatomical gift." 343

(C)(1) A printed form of a declaration under division (A) of 344  
this section shall include, as a separate page or as a portion of 345  
a page that can be detached from the declaration, a donor registry 346  
enrollment form that permits the donor to be included in the donor 347

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| <u>registry created under section 2108.18 of the Revised Code.</u>       | 348 |
| <u>(2) The donor registry enrollment form shall conform</u>              | 349 |
| <u>substantially to the following form:</u>                              | 350 |
| <u>"DONOR REGISTRY ENROLLMENT FORM (optional)</u>                        | 351 |
| <u>To register for the Donor Registry, please complete this form</u>     | 352 |
| <u>and send it to the Ohio Bureau of Motor Vehicles. This form must</u>  | 353 |
| <u>be signed by two witnesses. If the donor is under age eighteen,</u>   | 354 |
| <u>one witness must be the donor's parent or legal guardian.</u>         | 355 |
| <u>... Please include me in the donor registry.</u>                      | 356 |
| <u>... Please remove me from the donor registry.</u>                     | 357 |
| <u>Full Name (please print) .....</u>                                    | 358 |
| <u>Mailing address .....</u>   | 359 |
| <u>.....</u>   | 360 |
| <u>.....</u>   | 361 |
| <u>Phone ..... Date of Birth .....</u>                                   | 362 |
| <u>Driver License or ID Card No. ....</u>                                | 363 |
| <u>Social Security No. ....</u>  | 364 |
| <u>... On my death, I make an anatomical gift of my organs, tissues,</u> | 365 |
| <u>and eyes for any purpose authorized by law.</u>                       | 366 |
| <u>OR</u>  | 367 |
| <u>... On my death, I make an anatomical gift of the following</u>       | 368 |
| <u>specified organs, tissues, or eyes for any purposes indicated</u>     | 369 |
| <u>below.</u>  | 370 |
| <u>.....</u>   | 371 |
| <u>.....</u>   | 372 |
| <u>.....</u>   | 373 |
| <u>Purposes:</u>   | 374 |
| <u>... Any purpose authorized by law</u>                                 | 375 |
| <u>... Transplantation</u>   | 376 |
| <u>... Therapy</u>   | 377 |

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| ... <u>Research</u>  | 378 |
| ... <u>Education</u>   | 379 |
| ... <u>Advancement of medical science</u>                                | 380 |
| ... <u>Advancement of dental science</u>                                 | 381 |
| .....  | 382 |
| <u>Signature of donor registrant</u> <u>Date</u>                         | 383 |
| .....  | 384 |
| <u>Witness signature</u>   | 385 |
| .....  | 386 |
| <u>Witness signature"</u>  | 387 |
| (D) <u>As used in this section:</u>                                      | 388 |
| (1) <u>"Anatomical gift" has the same meaning as in section</u>          | 389 |
| <u>2108.01 of the Revised Code.</u>                                      | 390 |
| (2) <u>"DNR identification" has the same meaning as in section</u>       | 391 |
| <u>2133.21 of the Revised Code.</u>                                      | 392 |
| <b><u>Sec. 2133.16. (A) As used in this section:</u></b>                 | 393 |
| (1) <u>"Anatomical gift" and "donor" have the same meanings as</u>       | 394 |
| <u>in section 2108.01 of the Revised Code.</u>                           | 395 |
| (2) <u>"Declarant" and "declaration" have the same meanings as</u>       | 396 |
| <u>in section 2133.01 of the Revised Code.</u>                           | 397 |
| (B) <u>A declarant may make an anatomical gift of all or part of</u>     | 398 |
| <u>the declarant's body by specifying the intent of the declarant to</u> | 399 |
| <u>make the anatomical gift in a space provided in the declaration.</u>  | 400 |
| <u>All of the following apply to a declaration that specifies the</u>    | 401 |
| <u>intent of the declarant to make an anatomical gift:</u>               | 402 |
| (1) <u>The declaration serves as a document other than a will in</u>     | 403 |
| <u>which a declarant makes an anatomical gift as provided in</u>         | 404 |
| <u>divisions (B)(1) and (3) of section 2108.04 of the Revised Code.</u>  | 405 |

(2) The declaration is considered as having satisfied the requirements specified in divisions (B)(1) and (3) of section 2108.04 of the Revised Code to make an anatomical gift by a document other than a will. 406  
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(3) The declaration is subject to sections 2108.01 to 2108.12 of the Revised Code to the extent that the declaration specifies the intent of the declarant to make an anatomical gift. 410  
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(C) A declarant who makes an anatomical gift in the manner described in division (B) of this section may amend the anatomical gift under the circumstances and by any of the means provided in division (A) of section 2108.06 of the Revised Code. 413  
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(D) A declarant who makes an anatomical gift in the manner described in division (B) of this section may revoke the anatomical gift under the circumstances and by any of the means provided in division (A) of section 2108.06 of the Revised Code or by cancellation of the declarant's intent to make the anatomical gift as specified in the declaration. 417  
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(E) A declarant may refuse to make an anatomical gift of all or part of the declarant's body by specifying the intent of the declarant to refuse to make the anatomical gift in a space provided in the declaration. 423  
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(F) Nothing in this section requires a declarant to make, amend, or refuse to make an anatomical gift in a space provided in a declaration or otherwise limits a declarant from making, amending, or refusing to make an anatomical gift. The failure of a declarant to indicate in the space provided in the declaration the intent of the declarant to make an anatomical gift or to refuse to make an anatomical gift does not create a presumption of the intent of the declarant in regard to the matter of making or refusing to make an anatomical gift. 427  
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**Section 2.** That existing sections 2108.04, 2108.10, 2108.17, 436  
2108.18, and 2133.07 of the Revised Code are hereby repealed. 437

**Section 3.** Section 2133.07 of the Revised Code, as amended by 438  
this act, shall take effect ninety days after the effective date 439  
of this act. 440

**Section 4.** The amendments made by this act to section 2133.07 441  
of the Revised Code do not affect an otherwise valid declaration 442  
governing the use, continuation, withholding, or withdrawal of 443  
life-sustaining treatment that was executed before the effective 444  
date of section 2133.07 of the Revised Code as amended by this 445  
act. 446