



**Sub. H.B. 529**

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

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**Sens.** Carey, Lehner, Padgett, Seitz, Wilson

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**ACT SUMMARY**

- Enacts into Ohio law the Revised Uniform Anatomical Gift Act (RUAGA) and specifies that this law applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

**DONORS, RECIPIENTS, AND PROCUREMENT ORGANIZATIONS**

- Specifies who can be donors and recipients, the purposes for which an anatomical gift may be made, and the means by which an anatomical gift may be made, amended, revoked, or refused.
- Specifies what happens when an anatomical gift does not pass to a recipient or is not used for transplantation, therapy, research, or education.
- Permits a technician, in addition to a qualified physician, to remove a donated part if an appropriate organization regulated under federal or state law determines that the technician is qualified.
- Prohibits (1) the sale of body parts, (2) a person from accepting an anatomical gift if the person knows that the gift was not effectively made under the law governing anatomical gifts, (3) a person from intentionally

falsifying, forging, concealing, defacing, or obliterating a document of gift, an amendment or revocation of a document of gift, or a refusal in order to obtain a financial gain, or (4) measures necessary to ensure the medical suitability of an organ for transplantation or therapy from being withheld or withdrawn from a prospective donor unless the donor's declaration (living will) expressly provides for the contrary.

- Provides immunity from administrative proceedings to a person who acts in accordance with the law governing anatomical gifts or attempts to act in good faith with this law.

### **DONOR REGISTRY AND SECOND CHANCE TRUST FUND**

- Includes anatomical gifts made through a state identification card in the donor registry maintained by the Bureau of Motor Vehicles.
- Eliminates obsolete provisions that pertain to (1) the use of Second Chance Trust Fund money for the initial implementation of the donor registry and (2) the appointment of initial members of the Second Chance Trust Fund Advisory Committee.

### **CORONERS**

- Generally requires a coroner to cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.
- Requires a coroner and procurement organization to enter into an agreement establishing protocols and procedures governing the relations between them, and specifies what happens when they have failed to do so.
- On the request of a coroner or coroner's designee, requires the coroner's office to be reimbursed for the additional costs incurred in the coroner's attendance at a removal procedure if the coroner or the designee is required to be present at the removal procedure.
- Requires any recovery or removal procedure that involves a coroner's participation to be conducted within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

- Specifies that a coroner or designee is not subject to liability in tort or other civil action for denying recovery of a part from a decedent whose body is under the coroner's jurisdiction.
- Eliminates provisions of law that expressly authorize a coroner to remove and donate a decedent's corneas, eyes, or pituitary gland when an autopsy is performed.

## **FUNERAL DIRECTORS**

- Specifies that a funeral director acting in good faith is not liable in damages for injury resulting from acting or attempting to act in accordance with the law governing anatomical gifts.

## **FEDERAL AND STATE ELECTRONIC SIGNATURES LAW**

- Describes how the RUAGA interacts with the federal Electronic Signatures in Global and National Commerce Act.
- Specifies that the act does not alter the applicability of Ohio's laws governing electronic records and signatures.

## **TECHNICAL OR CONFORMING CHANGES**

- Makes technical changes and corrects statutory cross-references.

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## CONTENT AND OPERATION

### *Uniform Anatomical Gift Act*

(R.C. 2108.01 to 2108.09 (former law))

The Uniform Anatomical Gift Act was originally promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL)<sup>1</sup> in 1968. The Act sought to clarify issues associated with body and organ availability for research and transplantation, including who has rights to a dead body, whether a person can exercise control over a body through a will, and whether a body belongs to the closest relatives of a dead person. In Ohio, the 108th General

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<sup>1</sup> NCCUSL is a non-profit unincorporated association comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners actually appointed. All commissioners must be attorneys. While some commissioners serve as state legislators, most are practitioners, judges, and law professors. They serve for specific terms and receive no salaries or fees for their work with the Conference. (Uniform Law Commission/ NCCUSL, *About NCCUSL: Introduction* (last visited January 26, 2009), available at <<http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=11>>.)

Assembly formally adopted the Act in 1969.<sup>2</sup> By 1972, the Act had been adopted in every state.

At its July 2006 annual meeting, the NCCUSL approved a Revised Uniform Anatomical Gift Act (RUAGA).<sup>3</sup> As of January 2009, 33 states and the District of Columbia had adopted the RUAGA.<sup>4</sup>

### **Adoption of Revised Uniform Anatomical Gift Act**

(R.C. 2108.02 and 2108.03)

The act replaces Ohio's laws reflecting the 1968 version of the Uniform Anatomical Gift Act with the 2006 revised version. The act specifies that its changes apply to an anatomical gift<sup>5</sup> or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

### **Application and construction of RUAGA**

(R.C. 2108.28 (former R.C. 2108.09))

Former law, specified that the previously existing Uniform Anatomical Gift Act was to be construed so as to effectuate its general purpose to make uniform the law of those states which enacted it. The act specifies, instead, that in applying and construing the RUAGA, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

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<sup>2</sup> H.B. 51 of the 108th General Assembly enacted Revised Code 2108.01 to 2108.09. These sections have been amended a number of times since enactment, most recently by Sub. H.B. 392 of the 125th General Assembly, which provides for donation as part of a living will.

<sup>3</sup> Sheldon F. Kurtz, *The 2006 Revised Uniform Anatomical Gift Act--A Law to Save Lives*, HEALTH LAWYERS NEWS (Feb. 2007), pp. 44-49, available at <<http://www.anatomicalgiftact.org/Uploads/kurtzarticle.pdf>>.

<sup>4</sup> NCCUSL, *Enactment Status Map: Revised Uniform Anatomical Gift Act (2006)*, available at <<http://www.anatomicalgiftact.org/DesktopDefault.aspx?tabindex=2&tabid=72>>.

<sup>5</sup> The act defines an "anatomical gift" as a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education (R.C. 2108.01(C)).

## DONORS, RECIPIENTS, AND PROCUREMENT ORGANIZATIONS

### Who may make an anatomical gift

(R.C. 2108.04, 2108.09, and 2108.21 (former R.C. 2108.02(A) and (B)))

The table below compares who is authorized to make an anatomical gift under former law and the act.

BEFORE DONOR'S DEATH	
FORMER LAW	THE ACT
An adult donor of sound mind.	An adult donor. <sup>6</sup>
A minor donor of sound mind whose parent or guardian signed either (a) a document expressing the individual's intention to make an anatomical gift, or (b) a statement included with the minor's application for a driver's or commercial driver's license, endorsement, or identification card.	A donor who is an emancipated minor or who is authorized by state law to apply for a temporary driving instruction permit because the donor is at least age 15½.
	An agent of the donor, unless the donor's durable power of attorney for health care or other record prohibits the agent from making an anatomical gift. <sup>7</sup>
	A parent of a donor, if the donor is an unemancipated minor. <sup>8</sup>
	A donor's guardian. <sup>9</sup>

<sup>6</sup> The act defines "adult" as a person who is at least age 18 (R.C. 2108.01(A)).

<sup>7</sup> The act defines a "record" as information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form (R.C. 2108.01(Z)).

<sup>8</sup> The act defines a "parent" as a parent whose parental rights have not been terminated (R.C. 2108.01(R)).

<sup>9</sup> The act defines "guardian" as a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual (R.C. 2108.01(L)). A guardian does not include a guardian *ad litem*.

AFTER DONOR'S DEATH	
PRIOR LAW	THE ACT
Any of the following persons, in the order of priority stated, when persons in a prior class were not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class: (1) the spouse, (2) an adult son or daughter, (3) either parent, (4) an adult brother or sister, (5) a grandparent, (6) a guardian of the person of the decedent at the time of the decedent's death, or (7) any other person authorized or under obligation to dispose of the body.	Any member of the following classes of persons who is reasonably available, in the order of priority stated and when persons in a prior class are not available at the time of death or do not object to the gift: (1) an agent of the decedent at the time of death (unless the donor's durable power of attorney for health care or other record prohibits the agent from making an anatomical gift), (2) the decedent's surviving spouse, (3) the decedent's surviving adult children, (4) the decedent's surviving parent or parents, (5) the decedent's surviving adult siblings, (6) the decedent's surviving adult grandchildren, (7) the decedent's surviving grandparent or grandparents, (8) a surviving adult who exhibited special care and concern for the decedent, (9) the persons who were acting as the guardians of the person of the decedent at the time of death, (10) the persons, other than those specified above, to whom the right of disposition for the decedent's body has been assigned or who have the right of disposition for the decedent's body. <sup>10</sup>

The act specifies that if there is more than one member of a class, listed in (1), (3), (4), (5), (6), (7), or (9) in the table above, who is entitled to make an anatomical gift, the gift may be made by a single member of the class unless that

<sup>10</sup> The act defines "reasonably available" as able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift (R.C. 2108.01(X)). "Agent" is defined as an individual who is either (1) the principal's attorney in fact under a durable power of attorney for health care, or (2) expressly authorized to make an anatomical gift on the principal's behalf by another other record signed by the principal (R.C. 2108.01(B)). "Decedent" is defined as a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than the RUAGA, a fetus (R.C. 2108.01(D)).

member or a person to which the gift may pass knows of an objection by another member of the class. If an objection is known, a gift may be made only by a majority of the members of the class who are reasonably available.

The act prohibits a person from making an anatomical gift if, at the time of the decedent's death, a person in a prior class is reasonably available to make or object to the making of the gift.

In determining whether an anatomical gift has been made, the act permits a person to rely on representations of an individual listed in (2) through (8), above, relating to the individual's relationship to the donor or prospective donor<sup>11</sup> unless the person knows the representation is untrue.

### **Purpose and recipients of anatomical gifts**

#### **Specified purpose and recipient**

(R.C. 2108.04 and 2108.11(A), (B), (G), and (H) (former R.C. 2108.03))

Under former law, revised in part by the act, an anatomical gift could be made for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science to a hospital, surgeon, physician, or recovery agency.<sup>12</sup> An anatomical gift could be made for education, research, or advancement of medical or dental science to an accredited medical or dental school, college, or university.

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<sup>11</sup> The act defines a "prospective donor" as an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. A "prospective donor" does not include an individual who has made a refusal. (R.C. 2108.01(W).)

<sup>12</sup> Former law (R.C. 2108.01(K)) defined a "recovery agency" as a nonprofit organization incorporated under Ohio law (R.C. Chapter 1702.) that is one of the following: (1) an organ procurement organization designated by the U.S. Secretary of Health and Human Services pursuant to the laws governing the Medicare Program, (2) an eye bank that is accredited by the Eye Bank Association of America or that has applied for accreditation, is in substantial compliance with accreditation standards of the Association, and since applying for accreditation has been in operation for not longer than one year, or (3) a tissue bank that is certified by the American Association of Tissue Banks or that has applied for certification, is in substantial compliance with certification standards of the Association, and since applying for certification has been in operation for not longer than one year.

The act instead permits an anatomical gift of a donor's<sup>13</sup> body or part<sup>14</sup> to be made during the life of the donor for the purpose of transplantation, therapy, research, or education to any of the following persons<sup>15</sup> named in the document of gift:<sup>16</sup>

- (1) A hospital;<sup>17</sup>
- (2) An accredited medical school, dental school, college, or university;
- (3) An organ procurement organization;<sup>18</sup>
- (4) Another appropriate person, for research or education;
- (5) An individual designated by the person making the anatomical gift if the individual is the recipient<sup>19</sup> of the part;
- (6) An eye bank<sup>20</sup> or tissue bank.<sup>21</sup>

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<sup>13</sup> The act defines a "donor" as an individual whose body or part is the subject of an anatomical gift (R.C. 2108.01(G)).

<sup>14</sup> The act defines a "part" as an organ, an eye, or tissue of a human being. "Part" does not include the whole body. (R.C. 2108.01(S).)

<sup>15</sup> The act defines a "person" as an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or government subdivision, agency, or instrumentality, or any other legal or commercial entity (R.C. 2108.01(T)).

<sup>16</sup> The act defines a "document of gift" as a donor card or other record used to make an anatomical gift. "Document of gift" includes a statement or symbol on a driver's license or identification card or in the donor registry (R.C. 2108.01(F)).

<sup>17</sup> The act defines "hospital" as a facility operated as a hospital under the laws of Ohio or any other state or a facility operated as a hospital by the United States, Ohio or any other state, or a political subdivision of Ohio or any other state (R.C. 2108.01(M)).

<sup>18</sup> The act defines an "organ procurement organization" as a person conducting operations in Ohio that is designated by the U.S. Secretary of Health and Human Services as an organ procurement organization (R.C. 2108.01(Q)).

<sup>19</sup> The act defines a "recipient" as an individual into whose body a decedent's part has been or is intended to be transplanted (R.C. 2108.01(Y)).

<sup>20</sup> The act defines an "eye bank" as a person conducting operations in Ohio that is licensed, accredited, or regulated under federal or state law to engage in the recovery,

If an anatomical gift to an individual described in (5), above, cannot be transplanted into the individual, the act requires that the part pass as follows, unless there is an express, contrary indication by the person making the gift:

- In the case of an eye, to the appropriate eye bank.
- In the case of tissue,<sup>22</sup> to the appropriate tissue bank.
- In the case of an organ, to the appropriate organ procurement organization as custodian of the organ.

**Specified purpose, unspecified recipient**

(R.C. 2108.11(C), (D), and (G))

The act specifies that if an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a donee described above, but does identify the purpose for which the gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift shall pass to the appropriate eye bank.

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift shall pass to the appropriate tissue bank.

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift shall pass to the appropriate organ procurement organization as custodian of the organ.

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift shall pass to the appropriate procurement organization.

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screening, testing, processing, storage, or distribution of human eyes or portions of human eyes (R.C. 2108.01(K)).

<sup>21</sup> The act defines a "tissue bank" as a person conducting operations in Ohio that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue (R.C. 2108.01(E)).

<sup>22</sup> The act defines "tissue" as a portion of the human body other than an organ or an eye. "Tissue" does not include blood unless the blood is donated for the purpose of research or education. (R.C. 2108.01(DD).)

The act further specifies that if there is more than one purpose set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the act permits the gift to be used for research or education.

**Unspecified purpose and recipient**

(R.C. 2108.11(E) and (G))

If an anatomical gift of one or more parts is made in a document of gift that neither names a donee nor identifies the purpose of the gift, the act requires that the gift be used only for transplantation or therapy. The act requires that the gift pass as follows:

(1) If the part is an eye, the gift must pass to the appropriate eye bank.

(2) If the part is tissue, the gift must pass to the appropriate tissue bank.

(3) If the part is an organ, the gift must pass to the appropriate organ procurement organization as custodian of the organ.

**General intent of gift**

(R.C. 2108.11(F) and (G))

If an anatomical gift is made by a document of gift that specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the act requires that the gift be used only for transplantation or therapy. The act requires that the gift pass as follows:

(1) If the part is an eye, the gift must pass to the appropriate eye bank.

(2) If the part is tissue, the gift must pass to the appropriate tissue bank.

(3) If the part is an organ, the gift must pass to the appropriate organ procurement organization as custodian of the organ.

**Means by which an anatomical gift may be made**

(R.C. 2108.05 and 2108.10(A) (former R.C. 2108.04))

The tables below compare the process for making an anatomical gift under former law and the act.

GIFT MADE BY DONOR	
FORMER LAW	THE ACT
<p>By will, if the individual was at least age 18.</p> <p>--Gift became effective on the testator's death without waiting for probate.</p> <p>--If the will was not probated or declared invalid for testamentary purposes, the anatomical gift, to the extent that it had been acted on in good faith, would be valid and effective.</p>	<p>Same as former law, except may be made by any of the donors listed in the table above (see "<u><i>Who may make an anatomical gift</i></u>--AFTER DONOR'S DEATH--THE ACT").</p>
<p>By a document other than a will (such as a card).</p> <p>--Gift became effective on the donor's death.</p> <p>--The document had to be signed by the donor in the presence of two witnesses who also had to sign the document at that time.</p> <p>--If the donor could not sign, the document had to be signed for the donor at the donor's direction and in the presence of two witnesses, having no affiliation with the donee, who also had to sign the document at that time.</p> <p>--Delivery of the document of gift during the donor's lifetime was not necessary to make the anatomical gift valid.</p>	<p>By a donor card or other record signed by the donor, or by authorizing that a statement or symbol indicating that the donor has certified a willingness to make an anatomical gift be included in a donor registry.</p>
<p>In a declaration (living will), made by an adult who specifies intent to make an anatomical gift and satisfies the requirements of the living will law (R.C. 2133.02).<sup>23</sup></p>	<p>Same as former law.</p>

<sup>23</sup> A "declaration," commonly referred to as a "living will," is an advance directive an individual (the "declarant") can execute to establish the kind of medical treatment the

GIFT MADE BY DONOR	
FORMER LAW	THE ACT
<p>By designating on an individual's driver's license, commercial driver's license, motorcycle operator's license or endorsement, or state identification card.</p> <p>--The individual had to sign a statement at the time of application or renewal of the license, endorsement, or identification card. If the individual was under age 18, a parent or guardian also had to sign.</p> <p>--Delivery of the license or identification card during the donor's lifetime was not necessary to make the anatomical gift valid.</p> <p>--Revocation, suspension, or expiration of the license or endorsement did not invalidate the anatomical gift.</p> <p>--The anatomical gift had to be renewed upon renewal of each license, endorsement, or identification card.</p>	<p>By authorizing a statement or symbol to be imprinted on the donor's driver's license<sup>24</sup> or identification card<sup>25</sup> indicating that the donor has certified a willingness to make an anatomical gift.</p> <p>--Revocation, suspension, expiration, or cancellation of a driver's license or identification card on which a gift is indicated does not invalidate the gift.</p>
	<p>During a terminal illness or injury of the donor, communicating in any manner to a minimum of two adults, at least one of whom is a disinterested witness,<sup>26</sup> that the donor intends to make an anatomical gift.</p>

declarant wants to receive when he or she (1) becomes permanently unconscious or (2) is terminally ill and unable to express wishes regarding treatment (R.C. 2133.02).

<sup>24</sup> The act defines "driver's license" as a license or permit issued by the Registrar of Motor Vehicles, or a deputy registrar, to operate a vehicle, whether or not conditions are attached to the license or permit and includes a driver's license, commercial driver's license, and a motorcycle operator's license or endorsement (R.C. 2108.01(I)).

<sup>25</sup> The act defines "identification card" as an identification card issued by the Registrar of Motor Vehicles or a deputy registrar (R.C. 2108.01(N)).

<sup>26</sup> The act defines a "disinterested witness" as a witness other than a spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes an anatomical

<b>GIFT MADE BY OTHER AUTHORIZED PERSON</b> (see persons listed in table above: " <u><i>Who may make an anatomical gift</i></u> --AFTER DONOR'S DEATH")	
<b>FORMER LAW</b>	<b>THE ACT</b>
<p>By any of the following means after the donor's death:</p> <ul style="list-style-type: none"> <li>--A document signed by the other person authorized to make a gift;</li> <li>--A telegram from the authorized person;</li> <li>--A telephone call initiated by the authorized person and received by two persons, one of whom was to prepare written documentation of the message;</li> <li>--A telephone call initiated by the authorized person recorded mechanically or electronically.</li> </ul>	<p>After the donor's death, by a document of gift signed by the person making the gift or by that person's electronically recorded oral communication or such communication that is contemporaneously reduced to a record and signed by the individual receiving the oral communication.</p>
	<p>Prior to the donor's death, by a donor card or other record signed<sup>27</sup> by the other person, or by authorizing that a statement or symbol indicating that the donor has certified a willingness to make an anatomical gift be included in a donor registry.<sup>28</sup></p>

gift, or another adult who exhibited special care and concern for the individual. "Disinterested witness" does not include a person to which an anatomical gift could pass under the act (R.C. 2108.01(E)).

<sup>27</sup> Under the act, to "sign" means to do either of the following with the present intent to authenticate or adopt a record: (1) execute or adopt a tangible symbol or (2) attach to or logically associate with the record an electronic symbol, sound, or process (R.C. 2108.01(BB)).

<sup>28</sup> The act defines "donor registry" as a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts (R.C. 2108.01(H)).

Under the act, if a donor or other authorized person is physically unable to sign a record authorizing that a statement or symbol indicating that the donor has certified a willingness to make an anatomical gift be included in a donor registry, the act permits the record to be signed by another individual at the direction of the donor or other person. When the record is signed by another individual, both of the following conditions must be met: (1) the signature must be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or other person, and (2) the record must state that it has been signed and witnessed as described in (1).

### **Gift by declaration**

(R.C. 2133.07)

As described in the table above, continuing law permits an individual to make an anatomical gift of all or part of the individual's body by specifying the intent to make an anatomical gift in a space provided in the individual's declaration (a living will).<sup>29</sup> When an individual declares the intent to make an anatomical gift in a declaration, the declaration serves as a document other than a will in which a declarant makes an anatomical gift, the declaration is considered as having satisfied the requirements for making an anatomical gift in a document other than a will, and the declaration is subject to the anatomical gift law to the extent the declaration specifies the intent of the individual to make an anatomical gift. A printed declaration form must include a section, before the signature line, specifically designed for an individual to declare the individual's intent to make an anatomical gift. The anatomical gift section of the declaration must conform substantially to the form specified in law (R.C. 2133.07(B)).

Former law required a printed declaration form to include a donor registry enrollment form. The enrollment form had to be a separate page or a portion of a page that the individual could detach and send to the Bureau of Motor Vehicles (BMV) to be included in the donor registry maintained by the BMV. The donor registry enrollment form had to conform substantially to the form specified in law (R.C. 2133.07(C)).

The act eliminates the requirement that the donor registry enrollment form conform substantially to the form specified in law and instead permits the form to be in any form as long as the form is signed by the donor or another person

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<sup>29</sup> A "declaration," commonly referred to as a "living will," is an advance directive an individual (the "declarant") can execute to establish the kind of medical treatment the declarant wants to receive when he or she (1) becomes permanently unconscious or (2) is terminally ill and unable to express wishes regarding treatment (R.C. 2133.02).

authorized to make the gift or, if the donor or authorized person is unable to sign, the form (1) is witnessed and signed by at least two adults, at least one of whom is a disinterested witness, and (2) states that it has been witnessed and signed in this manner. The act maintains the requirement that the form be forwarded to the BMV on completion.

**Standardized form and statement for making anatomical gifts**

(R.C. 2108.10 (repealed))

The act eliminates from statute the standardized form for making an anatomical gift when a gift was made through a document other than a will, and the statement to be signed when an anatomical gift is made through a driver's license or identification card.

**Prior gifts**

(R.C. 2108.101 (repealed))

The act repeals former law that specified that an anatomical gift would be valid regardless of whether it had been witnessed, if the gift was made before November 21, 2001, the effective date of Sub. S.B. 158 of the 124th General Assembly, by an adult and included the donor's signature.

**Amendment of an anatomical gift**

(R.C. 2108.06 and 2108.10(B))

If a will, card, or other document indicating an anatomical gift has been delivered to a specified donee, former law permitted the donor to amend the anatomical gift by any of the following means:

- (1) By the execution and delivery to the donee of a signed statement;
- (2) By an oral statement made in the presence of two persons and communicated to the donee;
- (3) By a statement during a terminal illness or injury addressed to the physician attending the donor and communicated to the donee;
- (4) By a signed card or document found on the donor or in the donor's effects;
- (5) If made by a will, in the manner provided for amendment of wills.

The act, subject to the exceptions discussed below, instead specifies that an anatomical gift made during the donor's lifetime may be amended by any of the following means:

- (1) By a record signed by the donor or other person authorized to make an anatomical gift;
- (2) By a record signed by another individual acting at the direction of the donor or other person authorized to make an anatomical gift if the donor or other person is physically unable to sign;
- (3) By a later-executed document of gift that amends a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency;
- (4) By any form of communication during a terminal illness or injury addressed to at least two adults;
- (5) By a parent of an unemancipated minor who has died if the parent is reasonably available;
- (6) If made in a will, by the manner provided for amendment of wills or by any of the applicable means described above.

If an anatomical gift is amended through the means described in (2), above, the record must (a) be witnessed by a minimum of two adults who have signed at the request of the donor or other person, and (b) state that it has been signed and witnessed.

With respect to an anatomical gift made after a person's death by a member of any of the classes of persons the act authorizes to make the gift, the act permits the gift to be amended orally or in a record by any member of a prior class who is reasonably available. However, if more than one member of a prior class is reasonably available, the act permits the gift to be amended only if a majority of the reasonably available members agree to the amendment.

### **Exceptions**

(R.C. 2108.08(A) and (C))

In the absence of an express, contrary indication by a donor, the act prohibits a person other than the donor from amending an anatomical gift. In addition, if a person other than the donor makes an unrevoked gift or an amendment to a gift, the act prohibits another person from amending the gift.

### **Representations of family members**

(R.C. 2108.21)

In determining whether an anatomical gift has been amended, the act permits a person to rely on representations of a family member or surviving adult authorized to make a gift after a person's death relating to the individual's relationship to the donor or prospective donor unless the person knows the representation is untrue. The act does not authorize reliance on representations made by an agent or guardian of the decedent.

### **Revocation of an anatomical gift**

(R.C. 2108.06(B) and (C), 2108.08(A) and (C), 2108.10(B) and (C), and 2108.21)

If a will, card, or other document indicating an anatomical gift has been delivered to a specified donee, former law permitted the donor to revoke the anatomical gift in the same manner described under "**Amendment of an anatomical gift**" (above).

The act instead specifies that an anatomical gift made either during a donor's lifetime, or after the person's death, may be revoked in the same manner as it would be if it is amended. However, the act further specifies that a revocation of an anatomical gift made after a donor's death is effective only if the procurement organization, transplant hospital,<sup>30</sup> physician, or technician<sup>31</sup> knows of the revocation before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient. Revocation of an anatomical gift is also subject to the exceptions discussed under "**Amendment of an anatomical gift--Exceptions**" above.

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<sup>30</sup> The act defines a "transplant hospital" as a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients (R.C. 2108.01(FF)).

<sup>31</sup> The act defines a "technician" as an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. "Technician" includes an enucleator and an embalmer licensed in Ohio who has completed a course in eye enucleation and has received a certificate of competency to that effect from a school of medicine recognized by the State Medical Board or from an eye bank that is a member of the Eye Bank Association of America (R.C. 2108.01(CC)). The portion of the definition pertaining to embalmers reflects the substance of a statutory provision that the act repeals pertaining to the authority of embalmers to enucleate eyes (R.C. 2108.071).

The act authorizes a person to rely on the representations of a family member as is allowed when an anatomical gift is amended. Similarly, the act does not authorize reliance on representations made by an agent or guardian of the decedent.

**Revocation does not constitute refusal**

(R.C. 2108.08(B) and (D))

The act specifies that a donor's revocation of an anatomical gift is not a refusal to make a gift and does not bar another authorized person from making a gift. It also specifies that a revocation by another authorized person does not bar a different authorized person from making a gift.

**Refusal to make an anatomical gift**

(R.C. 2108.07(A) and (B) and 2133.16(E))

Under continuing law, an individual may refuse to make an anatomical gift of all or part of the individual's body by specifying the intent of the individual to refuse to make the anatomical gift in a space provided in the individual's declaration (living will).

In addition to continuing the authority to make a refusal through a living will, the act permits an individual to refuse to make an anatomical gift by doing any of the following:<sup>32</sup>

- (1) Indicating a refusal in a record signed by either (a) the individual or (b) another individual acting at the direction of the individual, if the individual is physically unable to sign;
- (2) Indicating a refusal in the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death;
- (3) Indicating a refusal by any form of communication made by the individual during the individual's terminal illness or injury addressed to a minimum of two adults.

If an individual is unable to sign a refusal and has another person sign the refusal record, as described in (1)(b), above, the act requires that the record (a) be

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<sup>32</sup> The act defines "refusal" as a record that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part (R.C. 2108.01(AA)).

witnessed by a minimum of two adults who have signed at the individual's request, and (b) state that it has been signed and witnessed.

**Amendment or revocation of a refusal**

(R.C. 2108.07(C) and (E))

The act permits an individual to amend or to revoke a refusal by doing any of the following:

- (1) Amending or revoking the refusal as described above;
- (2) Making a subsequent anatomical gift that is inconsistent with the refusal;
- (3) Destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

In addition, the act permits the parent of a deceased unemancipated minor who is reasonably available to revoke a refusal made by the minor.

**Unrevoked refusal bars others from making a gift**

(R.C. 2108.07(D) and (E))

The act specifies that in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift bars all other persons from making an anatomical gift. This provision, however, does not bar a reasonably available parent of deceased unemancipated minor from revoking a refusal made by the minor.

**Anatomical gifts that do not pass or are not used**

(R.C. 2108.11(I) and 2108.15 (former 2108.02(G)))

Former law specified that the law governing anatomical gifts cannot be construed as requiring a donee to accept an anatomical gift. It did not specify what happens when a gift was rejected.

The act also specifies that a donee can reject an anatomical gift in whole or in part. Unlike former law, however, the act specifies what happens when an anatomical gift does not pass to a donee or the decedent's body or part is not used for transplantation, therapy, research, or education. Under the act, custody of the body or part must pass to the person to whom the right of disposition for the decedent's body has been assigned or to the person who has the right of disposition

for the decedent's body in law governing disposition of a person's remains (R.C. 2108.70 and 2108.81).

**Further anatomical gifts and purposes for using the gifts**

(R.C. 2108.08(E) and (F))

The act specifies that in the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person. It also specifies that in the absence of an express, contrary indication, an anatomical gift of a part for one or more of the purposes authorized under the act is not a limitation on the making of an anatomical gift of the part for any of the other authorized purposes.

**Allocation of organs for transplantation or therapy**

(R.C. 2108.11(K))

The act specifies that nothing in the law governing anatomical gifts affects the allocation of organs for transplantation or therapy.

**Delivery of document of gift; examination and copying**

(R.C. 2108.13 (former R.C. 2108.05))

Former law specified that delivery of a will, card, or other document of gift was not necessary for the gift to be valid. It also required a person in possession of a document of gift to allow any interested person, on or after a donor's death, to examine or copy the document.

Similar to former law, the act specifies that a document of gift need not be delivered during the donor's lifetime to be effective. It also requires that a person in possession of a document of gift or a refusal to make an anatomical gift allow, on or after an individual's death, examination and copying of the document of gift or refusal by (1) a person authorized to make or object to the making of an anatomical gift or (2) a person to which the gift could pass.

**Reasonable search for document of gift**

(R.C. 2108.12)

The act requires certain persons to make a reasonable search of the body of an individual who the person finds and reasonably believes is dead or near death

for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal. The requirement applies to all of the following persons, while acting in the course of the person's official duties:

- (1) A law enforcement officer;<sup>33</sup>
- (2) A member of a fire department;<sup>34</sup>
- (3) A holder of a certificate issued by the State Board of Emergency Medical Services to practice as a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or paramedic.

If a document of gift or refusal to make an anatomical gift is located by a search and the individual to whom the document or refusal relates is taken to a hospital, the act requires the person responsible for conducting the search to send the document or refusal to the hospital.

The act exempts a person who is required to make a reasonable search from criminal or civil liability for failing to do a search or sending a document of gift or refusal to a hospital as described above, but specifies that such a person may be subject to any of the following:

- (1) Disciplinary action under a collective bargaining agreement, if the person is covered by an agreement governed by the public employees' collective bargaining law (R.C. Chapter 4117.).
- (2) Disciplinary action under the law governing classified civil service employees (R.C. 124.34) if the person is an officer or employee in the classified service of the state or the counties, civil service townships, cities, city health districts, general health districts, or city school districts of Ohio.
- (3) Disciplinary action by the person's employer.

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<sup>33</sup> The act defines a "law enforcement officer" consistent with the definition of this term used for purposes of Ohio criminal law (R.C. 2901.01).

<sup>34</sup> The act defines "member of a fire department" consistent with the definition of this term used in the law governing public employees' collective bargaining (R.C. 4117.01) to mean a person who is in the employ of a fire department of a municipal corporation or a township as a fire cadet, full-time regular fire fighter, or promoted rank as the result of an appointment from a duly established civil service eligibility list or under R.C. 505.38, 709.012, or 737.22.

**Procurement organization duties when hospitals refer potential donors**

**Reasonable search of BMV records**

(R.C. 2108.14(A))

The act requires a procurement organization, when a hospital employee or agent refers an individual at or near death to the organization, to make a reasonable search of the records of the Bureau of Motor Vehicles (BMV) and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift. The BMV must allow the procurement organization reasonable access to its records for purposes of ascertaining whether the individual is a donor.

**Reasonable search for persons authorized to make an anatomical gift**

(R.C. 2108.14(F))

The act requires a procurement organization, on referral by a hospital as described above, to make a reasonable search for any person who is authorized to make an anatomical gift on behalf of an individual after the individual's death. The act requires a procurement organization that receives information that an anatomical gift to any other person was made, amended, or revoked to promptly advise the other person of all relevant information.

**Medical suitability examinations**

(R.C. 2108.14(B) to (D) (former R.C. 2108.02(D)))

Former law specified that an anatomical gift authorized any examination necessary to ensure medical acceptability of the anatomical gift for the purpose intended.

Similarly, the act permits a procurement organization, when a hospital employee or agent refers an individual at or near death to the organization, to conduct any reasonable examination necessary to ensure the medical suitability of the part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or prospective donor. The act prohibits measures necessary to ensure the medical suitability of the part from being withdrawn during the examination period unless the hospital or procurement organization knows that the individual expressed a contrary intent.

The act also permits an examination, unless prohibited by law other than the law governing anatomical gifts, to include an examination of all medical and dental records of the donor or prospective donor.

Unless prohibited by law other than state law governing anatomical gifts, the act also permits the person to which a part passes to conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose. This examination may be done at any time after the donor's death and may include an examination of all medical and dental records of the donor.

**Procurement organization duty to search for deceased minor's parents**

(R.C. 2108.14(E))

The act generally requires a procurement organization, on the death of a minor who was a donor or had signed a refusal, to conduct a reasonable search for the parents of the minor and to provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal. The requirement to conduct the search does not apply if the procurement organization knows the minor was emancipated.

**Hospital agreements or affiliations with procurement organizations**

(R.C. 2108.17 (former R.C. 2108.021))

Under former law, every hospital was required to develop a protocol consistent with federal regulations (42 C.F.R. 482.45) for facilitating procurement of anatomical gifts. The federal regulations require each hospital to have and implement written protocols that do all of the following:

(1) Incorporate an agreement with a procurement organization designated under federal regulations under which the procurement organization must notify, in a timely manner, the procurement organization or a third party designated by the procurement organization of individuals whose death is imminent or who have died in the hospital;

(2) Incorporate an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes, as may be appropriate to assure that all usable tissues and eyes are obtained from potential donors, insofar as such an agreement does not interfere with organ procurement;

(3) Ensure, in collaboration with the designated procurement organization, that the family of each potential donor is informed of its options to donate organs, tissues, or eyes or to decline to donate;

(4) Encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential donors;

(5) Ensure that the hospital works cooperatively with the designated procurement organization, tissue bank, and eye bank in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes take place.

The act instead requires every hospital in Ohio to enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

**Donee's superior right to anatomical gifts**

(R.C. 2108.15 (former R.C. 2108.02(E) and (F) and 2108.07(A))

In general, former law specified that a donee's rights created by an anatomical gift were paramount to the rights of all others. The primary exception to this rule was when a coroner had taken charge of a decedent's body and decided that an autopsy was necessary. In such cases, the rights of the coroner were paramount to the rights of the donee, although the coroner could waive this right and permit the donee to take a donated part if the part was or would be unnecessary for successful completion of the autopsy or for evidence. If the coroner did not waive this paramount right and later determined, while performing the autopsy, that the donated part was or would be unnecessary for successful completion of the autopsy or for evidence, the coroner could waive the paramount right and permit the donee to take the donated part, either during the autopsy or after its completion.

Former law also specified that a donee had a property right in an anatomical gift and was permitted to enforce this right in an action for a declaratory judgment in the common pleas court of the county where the donor last resided or died or the county where the donee resides. The court was required to give such an action precedence over other pending actions.

The act eliminates the provisions of former law specifying that the donee has a property right in an anatomical gift. Instead, the act generally specifies that the rights of the person to whom an anatomical gift passes are superior to the rights of all others. The donee's superior right to the anatomical gift, however, is subject to both of the following:

(1) Any rights a coroner holds under the act (see "**CORONERS**," below);<sup>35</sup>

(2) Any rights of disposition of the decedent's body that are held by or assigned to a person, as specified under continuing law (R.C. 2108.70 and 2108.81), in cases where an anatomical gift fails to pass under a document of gift or is not used for transplantation, therapy, research, or education.

**Acceptance and rejection of gifts and embalming, burial, or cremation**

(R.C. 2108.15 (former R.C. 2108.07(A)))

Former law permitted a donee to accept or reject an anatomical gift of an entire body or a part of a body. If a donee accepted a gift of an entire body, only the surviving spouse or next of kin, after consultation with the donee and subject to the terms of the anatomical gift, were permitted to allow the embalming and use of the body in funeral services. If a donee accepted a gift of a part, former law required the donee, on the death of the donor and prior to embalming, to cause the part to be removed "without unnecessary disfigurement."

Instead, the act permits the person (rather than just the spouse or next of kin) that accepts the gift of an entire body to allow embalming, burial, or cremation, and use of the remains in a funeral service. The act specifies that these actions are subject to the terms of the document of gift and the other laws governing anatomical gifts. If the gift is of a part, the act requires that the person accepting the gift cause the part to be removed "without unnecessary mutilation" before embalming, burial, or cremation. After removal of the part, custody of the remainder of the decedent's body passes to the persons who have, or have been assigned, the right of disposition of the body as specified under continuing law.

**Persons authorized and prohibited from removing donated parts**

(R.C. 2108.16 (former R.C. 2108.07(B)))

Former law prohibited the physician attending to a donor at death or, if none, the physician certifying an individual's death from participating in the procedures for removing or transplanting a part.

The act similarly prohibits the attending physician or the physician who determines the time of an individual's death from participating in the procedures

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<sup>35</sup> The act eliminates provisions from R.C. 313.13 that refer to the authority of a coroner to waive the coroner's paramount right to any donated part of a body, since this right and the authority to waive it do not exist under the act.

for removing or transplanting a part. Unlike former law, however, the act specifies who can remove a donated part: any physician (other than one described above) or technician, as long as the physician or technician is qualified<sup>36</sup> to remove the part.

### **Sale of body parts**

(R.C. 2108.18 (former R.C. 2108.12) and 2108.99)

Former law prohibited a person from knowingly acquiring, receiving, or otherwise transferring a human organ, tissue, or eye for transplantation in exchange for valuable consideration. Valuable consideration did not include reasonable payments for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part of a body. A person who violated the prohibition was guilty of a felony of the fifth degree.

The act similarly prohibits a person, for valuable consideration, from knowingly purchasing or selling a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death. Also like former law, the act permits a person to charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part. However, the act establishes a higher penalty for violating its prohibition than under former law--a person who violates the prohibition is guilty of a felony of the third degree rather than a felony of the fifth degree.

### **Improper acceptance of an anatomical gift**

(R.C. 2108.11(J) (former R.C. 2108.02(C)))

Former law prohibited a donee from accepting an anatomical gift if the donee had actual notice of contrary indications by the decedent or if the anatomical gift was made by a person authorized to make the gift on behalf of the donor and a member of a prior or same class as the authorized person opposes the gift.

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<sup>36</sup> While the act does not describe what is meant by "qualified," it defines "technician" as an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The definition also specifies that "technician" includes an enucleator and an embalmer licensed in Ohio who has completed a course in eye enucleation and has received a certificate of competency to that effect from a school of medicine recognized by the State Medical Board or from an eye bank that is a member of the Eye Bank Association of America (R.C. 2108.01(CC)).

The act prohibits a person from accepting an anatomical gift if the person knows that the gift was not effectively made under the law governing the making of anatomical gifts or if the person knows that the decedent made a refusal that was not revoked. The act specifies that if a person knows that an anatomical gift was made in a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift in the same document of gift.

**Falsification, forgery, concealment, defacement, or obliteration of documents**

(R.C. 2108.19 and 2108.99)

The act prohibits a person from intentionally falsifying, forging, concealing, defacing, or obliterating a document of gift, an amendment or revocation of a document of gift, or a refusal in order to obtain a financial gain. A person who violates the prohibition is guilty of a felony of the third degree.

**Conflict between an advance directive and anatomical gift**

(R.C. 2108.24)

If a prospective donor has a declaration<sup>37</sup> or advance health-care directive<sup>38</sup> and its terms conflict with the express or implied terms of a potential anatomical gift regarding administration of measures necessary to ensure suitability of a part for transplantation or therapy, the act requires the following depending on the situation:

(1) If the donor is *capable* of resolving the conflict, the attending physician must confer with the donor to resolve the conflict.

(2) If the donor is *incapable* of resolving the conflict and has an agent,<sup>39</sup> the agent must resolve the conflict.

(3) If the donor is *incapable* of resolving the conflict and does not have an agent, the individual or class of individuals determined in the following

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<sup>37</sup> See footnote 29.

<sup>38</sup> The act defines an "advance health-care directive" as a durable power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health-care decision (R.C. 2108.24(A)(1)). A "health care decision" is any decision regarding the health care of the prospective donor (R.C. 2108.24(A)(3)).

<sup>39</sup> See footnote 10.

descending order of priority must act for the prospective donor to resolve the conflict:

- (a) The prospective donor's surviving spouse;
- (b) The prospective donor's surviving adult children;
- (c) The prospective donor's surviving parent or parents;
- (d) The prospective donor's surviving adult siblings;
- (e) The prospective donor's surviving adult grandchildren;
- (f) The prospective donor's surviving grandparent or grandparents;
- (g) A surviving adult who exhibited special care and concern for the prospective donor;
- (h) The prospective donor's guardians of the person;
- (i) The persons, other than those listed above, to whom the prospective donor has assigned the right of disposition for the prospective donor's body pursuant to current law (R.C. 2108.70) or who have the right of disposition for the prospective donor's body at the time of death as described in current law (R.C. 2108.81).

The act specifies that if an appropriate individual or class of individuals is not reasonably available to resolve the conflict, is incapacitated, or declines to resolve the conflict, the next individual or class in the priority list is authorized to resolve the conflict. Additionally, if at least one individual in a class is not reasonably available, is incapacitated, or declines to resolve the conflict, the conflict must be resolved by the individual or individuals in the class who are reasonably available, not incapacitated, and willing to resolve the conflict.

The act also specifies that if individuals in a class disagree on how a conflict should be resolved, the opinion of the majority of individuals who are reasonably available, not incapacitated, and willing to resolve the conflict must prevail.

The act further requires that a conflict between an advance health-care directive or living will and a potential anatomical gift be resolved as expeditiously as possible and permits information relevant to the conflict's resolution to be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor after the donor's death. Measures necessary to ensure the medical suitability of a part must not be

withheld or withdrawn from a prospective donor before resolution of the conflict unless the withholding or withdrawal is necessary for appropriate end-of-life care.

### **Immunity**

(R.C. 2108.20 (former R.C. 2108.08))

Under former law, a person who in good faith acted, or attempted to act, in accordance with the law governing anatomical gifts or the anatomical gift laws of another state, was not be liable for damages in any civil action or subject to prosecution in any criminal proceeding for the person's actions.

The act similarly grants immunity from liability to a person who acts in accordance with the laws governing anatomical gifts in Ohio or another state, or attempts in good faith to act in accordance with those laws. As under former law, the immunity applies in a civil action or criminal prosecution, but the act adds that the immunity also applies in an administrative proceeding. The act further specifies that neither the person making the anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or using of the gift.

### **Validity of anatomical gifts**

(R.C. 2108.22)

The act specifies that a document of gift is valid if executed in accordance with the law governing anatomical gifts; the laws of the state or country where the document is executed; or the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a resident or national at the time the document was executed.

If a document of gift is valid, the act provides that the law governing anatomical gifts in Ohio governs the interpretation of the document of gift. The act also permits a person to presume that a document of gift or amendment of an anatomical gift is valid unless the person knows that it was not validly executed or was revoked.

## **DONOR REGISTRY AND SECOND CHANCE TRUST FUND**

### **BMV donor registry**

(R.C. 2108.23 (former R.C. 2108.18))

Continuing law revised in part by the act, requires the Bureau of Motor Vehicles (BMV) to maintain a donor registry that identifies each individual who

has agreed to make an anatomical gift by a designation on a driver's license, commercial driver's license, or motorcycle operator's license or endorsement.

The act requires that BMV's donor registry also identify each individual who has made an anatomical gift by a designation on a state identification card. The act removes references to commercial driver's licenses and motorcycle licenses or endorsements from the donor registry statutes, since the act's definition of "driver's license" includes these other forms of licenses.

### **Second Chance Trust Fund**

(R.C. 2108.34 (former R.C. 2108.15))

The Second Chance Trust Fund, created in 1997, receives \$1 contributions made by persons applying for or renewing an Ohio driver's license or identification card. The Second Chance Trust Fund Advisory Committee makes recommendations to the Director of Health for projects that should receive money from the Fund. Continuing law limits the purposes for which money in the Fund may be used; one of these purposes is the development and initial implementation of the BMV's donor registry. The registry was required to be fully operational by July 1, 2002.

The act eliminates the provision that required the Director to use money in the Fund to develop and initially implement the donor registry maintained by the BMV.

### **Advisory committee**

(R.C. 2108.35 (former R.C. 2108.17))

The Second Chance Trust Fund Advisory Committee is comprised of 13 members, three of whom must be appointed by the Director to represent the public. Except for the initial public member appointees, the members cannot be affiliated with recovery organizations, which the act refers to as procurement organizations.

The act eliminates provisions that required the initial public member appointees to be representatives of the following:

(1) An Ohio organ procurement organization designated by the U.S. Secretary of Health and Human Services that was not represented by another

initial appointee who represented the Organ Procurement and Transplantation Network;<sup>40</sup>

(2) An Ohio tissue bank accredited by the American Association of Tissue Banks, not affiliated with an organ procurement organization, and not represented by another initial appointee who represented the Association;

(3) An Ohio eye bank certified by the Eye Bank Association of America, not affiliated with an organ procurement organization, and not represented by another initial appointee who represented the Association.

## **CORONERS**

### **Cooperation with procurement organizations**

(R.C. 2108.25 (former R.C. 313.30))

Under former law, a coroner was permitted to designate in writing an eye bank, tissue bank, or both with which the coroner would cooperate concerning retrieval of usable eyes and tissues that had been donated. An eye or tissue bank designated by a coroner had a property right in the gift.

The act eliminates these provisions and instead requires a coroner<sup>41</sup> to cooperate with procurement organizations<sup>42</sup> in accordance with the act's provisions to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

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<sup>40</sup> The Organ Procurement and Transplantation Network (OPTN) is the unified transplant network established by Congress under the National Organ Transplant Act of 1984. It is a private, non-profit organization that operates under federal contract. Its purpose is to link all of the professionals involved in the donation and transplantation system and its primary goals are to (1) increase the effectiveness and efficiency of organ sharing and equity in the national system of organ allocation, and (2) increase the supply of donated organs available for transplantation. (Organ Procurement and Transplantation Network, *About OPTN* (last visited November 12, 2008), available at <<http://www.optn.org/optn/>>.)

<sup>41</sup> The act specifies that the term "coroner" includes a medical examiner (R.C. 2108.25 and 2108.26).

<sup>42</sup> The act defines a "procurement organization" as an eye bank, organ procurement organization, or tissue bank (R.C. 2108.01(V)).

### **Release of information to procurement organizations**

(R.C. 313.10(A) (continuing law); R.C. 2108.26 (the act))

Continuing law specifies that medical and psychiatric records provided to a coroner are not public records. Detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations filed in the office of the coroner, made personally by the coroner or by anyone acting under the coroner's direction or supervision, are, however, public records.

The act does not alter the provision that specifies that medical and psychiatric records provided to a coroner are not public records. However, it requires a coroner, on the request of a procurement organization, to release the name, contact information, and medical and social history of a decedent whose body is under the jurisdiction of the coroner to the procurement organization if that information is available.

The act also requires a coroner, if the decedent's body or a part is medically suitable for life-saving organ transplantation or therapy, to release post-mortem examination results to the procurement organization. The procurement organization is authorized to make a subsequent disclosure of these results or other information received from the coroner only if relevant to life-saving organ transplantation or therapy.

### **Medicolegal examination**

(R.C. 2108.261 and 2108.262)

The act permits a coroner to conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the coroner that the coroner determines may be relevant to the investigation. The act also requires a person that has information requested by a coroner to provide that information as expeditiously as possible to allow the coroner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of life-saving organ transplantation or therapy.

### **When recovery of a part will not interfere with an autopsy**

(R.C. 2108.263)

The act requires a coroner and procurement organization to cooperate, for the purpose of life-saving organ transplantation or therapy, in the timely removal

of a part from a decedent if an anatomical gift has been or might be made of the part and either of the following is the case:

(1) The decedent's body is under the jurisdiction of the coroner and a post-mortem examination or autopsy is not required;

(2) The decedent has been referred to the coroner for post-mortem examination, it is determined that an autopsy is required, and after consultation with the prosecuting attorney, if a consultation is necessary, it is determined that the recovery of the part will not interfere with the autopsy.

**When recovery of a part could interfere with an autopsy**

(R.C. 2108.264)

If an anatomical gift of a part from a decedent under the jurisdiction of a coroner has been or might be made, and after any necessary consultation with the prosecuting attorney it is determined that the recovery of the part could interfere with the determination of the decedent's cause or manner of death, the act requires the coroner to communicate with a procurement organization or physician or technician designated by the procurement organization about the proposed recovery. The act requires the procurement organization to provide the coroner with all information the procurement organization has that could relate to the cause or manner of death. The coroner must allow the recovery unless the coroner reasonably believes that the part or the decedent's intact body is needed for law enforcement purposes.

**Agreements between coroners and procurement organizations**

(R.C. 2108.265)

The act requires a coroner and procurement organization to enter into an agreement establishing protocols and procedures governing the relations between them when an anatomical gift of a part from a decedent whose body is under the jurisdiction of the coroner has been or might be made, but the coroner believes that the recovery of the part could interfere with the post-mortem investigation into the decedent's cause or manner of death. Decisions regarding the recovery of the part from the decedent must be made in accordance with the agreement. The act also requires that the coroner and procurement organization evaluate the effectiveness of the agreement at regular intervals but not less than every two years.

**If no agreement is made**

(R.C. 2108.266)

If a coroner and procurement organization have failed to enter into an agreement, as described above, and the coroner intends to deny recovery of an organ for transplantation or therapy, the act requires the coroner, at the request of the procurement organization, to attend the removal procedure for the organ before making a final determination not to allow the procurement organization to recover the organ. The act permits a coroner to designate another coroner or employees of another coroner's office to act on the coroner's behalf to fulfill this requirement.

During the removal procedure, the coroner or the coroner's designee is permitted to allow recovery by the procurement organization to proceed. Recovery may be denied if the coroner or designee reasonably believes that the organ may be involved in determining the decedent's cause or manner of death or that the organ or the decedent's intact body is needed for law enforcement purposes.

**If coroner denies recovery**

(R.C. 2108.267)

If a coroner or designee denies recovery of an organ, tissue, or eye, the act requires the coroner or designee to do all of the following:

- (1) Explain in a record the specific reasons for not allowing recovery of the part;
- (2) Include in the records of the coroner the specific reasons for not allowing recovery of the part;
- (3) Provide a record with the specific reasons for not allowing recovery of the part to the procurement organization.

The act specifies that the requirement does not apply when a coroner or designee denies recovery of an organ from a decedent under two years of age.

**If procurement organization refuses to accept a gift**

(R.C. 2108.268)

If a procurement organization refuses to accept an anatomical gift of a part from a decedent whose body is under a coroner's jurisdiction, the act requires the

procurement organization to explain to the coroner, in writing, the organization's reasons for not accepting it.

**If coroner allows recovery**

(R.C. 2108.269)

If a coroner allows recovery, the act requires the procurement organization to cooperate with the coroner, on request, in any documentation of injuries and the preservation and collection of evidence prior to and during the recovery of the part. The act also requires a procurement organization, on request, to provide the coroner with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the post-mortem examination.

**Reimbursement for coroner's attendance at recovery procedure**

(R.C. 2108.27)

If a coroner or coroner's designee attends a removal procedure, the act requires the procurement organization, on the request of the coroner or designee, to reimburse the coroner's office for the additional costs incurred in attending the removal procedure. The act requires that any reimbursement made be applied directly to and be used only for the purpose of offsetting the salary, wages, and expenses of the coroner's office.

**Recovery must be done within time period to preserve parts**

(R.C. 2108.271)

The act requires that any recovery or removal procedure that involves a coroner's participation be conducted within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

**Civil immunity for denial of a recovery**

(R.C. 2108.272)

The act specifies that a coroner or designee is not subject to liability in tort or other civil action for denying recovery of a part from a decedent whose body is under the coroner's jurisdiction.

**Removal of corneas, eyes, and pituitary glands during autopsies**

(R.C. 2108.53 and 2108.60 (repealed))

The act eliminates former law that expressly authorized a county coroner performing an autopsy to remove a decedent's corneas, eyes, and pituitary gland or to have another person remove those anatomical parts from the decedent, and to subsequently donate the anatomical parts.

**FUNERAL DIRECTORS**

**Designation of eye and tissue banks**

(R.C. 4717.17)

Former law permitted a funeral director to designate, in writing, an eye or tissue bank, or both, with which the funeral director will cooperate concerning the retrieval of usable eyes and tissues that have been donated. An eye or tissue bank that is designated by a funeral director in this manner has a property right in the eye or tissue.

The act eliminates these provisions.

**Immunity for acting in accordance with anatomical gift law**

(R.C. 4717.17)

Continuing law, revised in part by the act, specifies that a funeral director acting in good faith is not liable in damages for injury resulting from acting or attempting to act in accordance with an anatomical gift. Specifically, the act removes a reference to the donor's declaration and instead specifies that the funeral director is not liable if the director acts in accordance with the law governing anatomical gifts.

**FEDERAL AND STATE ELECTRONIC SIGNATURES LAW**

**Federal E-Sign Act**

(R.C. 2108.29)

The act declares that Ohio's version of the RUAGA may modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 *et seq.* (E-Sign Act), but the RUAGA may not modify, limit, or supersede section 101(a) of the E-Sign Act or authorize

electronic delivery of any of the notices described in section 103(b) of the E-Sign Act.<sup>43</sup>

### **State laws governing electronic signatures and records**

(R.C. 2108.29)

The act specifies that nothing in the provisions described above regarding the E-Sign Act, or in Ohio's version of the RUAGA, negates the applicability of Ohio's laws governing electronic records and electronic signatures.

## **TECHNICAL OR CONFORMING CHANGES**

### **Technical and cross-reference changes**

The act makes technical changes and corrects statutory cross-references in the following sections: 124.04, 313.23, 2105.35, 2108.30, 2108.31, 2108.32, 2108.33, 2108.34, 2108.40, 2108.78, 2108.99, 2133.01, 2133.16, 2305.37, 2919.16, 3301.07, 4501.024, 4503.721, 4506.07, 4506.081, 4506.11, 4507.06, 4507.231, 4507.501, 4507.51, and 4508.021.

### **"Hospital" definitions**

(R.C. 1337.11, 2133.01, 2305.37, and 2919.16)

The act removes statutory cross-references to the definition of "hospital," as that term is used in the law governing anatomical gifts. In place of these cross-references, the act refers to the definition of "hospital" that is used in the law

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<sup>43</sup> This provision appears to reaffirm state authority over matters of contract by making clear that state law is the controlling law if there is a conflict between the RUAGA and the federal E-sign Act, except that the RUAGA (1) cannot deny legal effect, validity, or enforceability of a signature, contract, or other record just because it is in electronic form or because an electronic signature or record was used in its formation, or (2) authorize electronic delivery of the notices described in section 103(b) of the E-sign Act. These notices are: (a) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings, (b) any notice of the cancellation or termination of utility services (including water, heat, and power); default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual; the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or recall of a product, or material failure of a product, that risks endangering health or safety, or (c) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials (15 U.S.C. 7003(b)).

governing the operation of hospitals in Ohio. The cross-references appear in statutes pertaining to the following: (1) procedures to be followed with respect to a living will or durable power of attorney for health care, (2) immunity from liability for making charitable donations of perishable food, and (3) prohibitions on the performance of post-viability abortions.

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## HISTORY

ACTION	DATE
Introduced	04-08-08
Reported, H. Health	05-15-08
Passed House (96-0)	05-28-08
Reported, S. Health, Human Services & Aging	12-16-08
Passed Senate (31-1)	12-17-08
House concurred in Senate amendments (94-0)	12-17-08

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