



**H.B. 529**

127th General Assembly  
(As Introduced)

**Reps. Wachtmann, Goodwin, Gardner, Wagner, Sears, Combs, Uecker, Flowers, J. McGregor, Evans, Zehringer, R. McGregor, Hite, Strahorn, Stebelton, Mecklenborg**

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**BILL SUMMARY**

- Enacts into Ohio law the 2006 version of 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, DONEES, AND PROCUREMENT ORGANIZATIONS**

- Specifies the purposes for which an anatomical gift may be made, who can be donees and donors, and the means by which an anatomical gift may be made.
- Specifies the means by which an anatomical gift may be amended, revoked, or refused.
- Permits an individual to amend or to revoke a previously made refusal of an anatomical gift.
- 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.
- Permits a technician, in addition to a qualified physician (other than the physician who determined the time of the decedent's death or who certified the decedent's death), to remove a donated part if an appropriate organization that is licensed, accredited, or regulated under federal or state law determines that the technician is qualified to remove or process parts.

- 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 the making of 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measures necessary to ensure the medical suitability of an organ for transplantation or therapy from being withheld or withdrawn from a prospective donor unless the donor's declaration (living will) expressly provides for the contrary.
- Immunizes a person who acts in accordance with the law governing anatomical gifts, or attempts to act in good faith with this law, from administrative proceedings in addition to civil and criminal actions.

### **SECOND CHANCE TRUST FUND**

- Eliminates provisions of current law that pertain to the use of Second Chance Trust Fund money for the initial implementation of the donor registry maintained by the Bureau of Motor Vehicles.

### **CORONERS**

- Eliminates the reference in current law to a coroner's "paramount right" to a donated part and specifies, instead, that law enacted by the bill controls the recovery of anatomical gifts from a dead body.
- Requires a coroner, on a procurement organization's request, to release the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the coroner to the procurement organization and to release post-mortem examination results if the decedent's body or a part is medically suitable for life-saving organ transplantation or therapy.
- 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.

- Requires a coroner and procurement organization to cooperate in the timely removal of a part from a decedent whose body is under the jurisdiction of the coroner, for the purpose of life-saving organ transplantation or therapy, if certain conditions are present.
- Requires a coroner to consult with the appropriate procurement organization or physician or technician designated by the procurement organization about a proposed recovery if it is determined that the recovery could interfere with the determination of the decedent's cause or manner of death.
- On a coroner's request, 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 coroner's designee is required to be present at the removal procedure.
- Requires 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.

### **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 with respect to an anatomical gift.

### **FEDERAL ELECTRONIC SIGNATURES LAW**

- Describes the relation of the RUAGA to the federal Electronic Signatures in Global and National Commerce Act.

### **TECHNICAL OR CONFORMING CHANGES**

- Makes technical changes and corrects statutory cross-references.

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# CONTENT AND OPERATION

## BACKGROUND

### *Uniform Anatomical Gift Act*

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

The Uniform Anatomical Gift Act was originally promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL)<sup>1</sup> in

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<sup>1</sup> The National Conference of Commissioners on Uniform State Laws (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.

1968. The Act sought to clarify a number of 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. By 1972, the Act had been adopted in every state. In Ohio, the 108th General Assembly enacted Revised Code 2108.01 to 2108.09 in 1969 to formally adopt the Act.<sup>2</sup>

At its July 2006 annual meeting, the NCCUSL approved a Revised Uniform Anatomical Gift Act (RUAGA).<sup>3</sup> As of March 2008, 21 states have adopted the RUAGA.<sup>4</sup>

**Adoption of Revised Uniform Anatomical Gift Act; law applicable to anatomical gifts**

(R.C. 2108.02 and 2108.03)

The bill specifies that R.C. 2108.01 to 2108.28 are enacted to adopt the 2006 version of RUAGA. It also specifies that the RUAGA (R.C. 2108.01 to 2108.28) applies to an anatomical gift<sup>5</sup> or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

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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. NCCUSL, Uniform Law Commission--The National Conference of Commissioners on Uniform State Laws: Organization (last visited March 5, 2008), available at <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=11>.

<sup>2</sup> R.C. § 2108.09. H.B. 51 of the 108th General Assembly enacted R.C. §§ 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), at 44-49, available at <<http://www.anatomicalgiftact.org/Uploads/kurtzarticle.pdf>>.

<sup>4</sup> National Conference of Commissioners on Uniform State Laws, 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 bill 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, DONEES, AND PROCUREMENT ORGANIZATIONS

### *Purposes for which anatomical gifts can be made; who may receive anatomical gifts*

(R.C. 2108.03 (current law); R.C. 2108.04 and 2108.11(A) to (H) (the bill))

#### *Current law*

Under current law, an anatomical gift may 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>6</sup> An anatomical gift may be made for education, research, or advancement of medical or dental science to an accredited medical or dental school, college, or university.

#### *The bill*

*Donee specified in document of gift.* The bill permits an anatomical gift of a donor's<sup>7</sup> body or part<sup>8</sup> to be made during the life of the donor for the purposes of

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<sup>6</sup> Current law (R.C. 2108.01(K)) defines 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 Title XVIII of the "Social Security Act," 42 U.S.C. 301, 1320b-8, as amended;
- (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;
- (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.

<sup>7</sup> The bill defines a "donor" as an individual whose body or part is the subject of an anatomical gift (R.C. 2108.01(G)).

<sup>8</sup> The bill 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).)

transplantation, therapy, research, or education to any of the following persons<sup>9</sup> named in the document of gift:<sup>10</sup>

- (1) A hospital;
- (2) An accredited medical school, dental school, college, or university;
- (3) An organ procurement organization;<sup>11</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>12</sup> of the part;
- (6) An eye bank<sup>13</sup> or tissue bank.<sup>14</sup>

If an anatomical gift to an individual described in (5), above, cannot be transplanted into the individual, the bill requires that the part pass as follows:

- In the case of an eye, to an eye bank.

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<sup>9</sup> The bill 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>10</sup> The bill 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>11</sup> The bill 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>12</sup> The bill 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>13</sup> The bill 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, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes (R.C. 2108.01(K)).

<sup>14</sup> The bill 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)).

- In the case of tissue,<sup>15</sup> to the appropriate tissue bank.
- In the case of an organ, to the appropriate organ procurement organization as custodian of the organ.

**Donee not specified in document of gift.** The bill 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.

The bill further specifies that if there is more than one purpose of an anatomical gift 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 bill permits the gift to be used for research or education.

**Purpose not specified in document of gift.** The bill requires an anatomical gift of one or more parts made in a document of gift that neither names a donee nor identifies the purpose of the gift to be used only for transplantation or therapy. The bill requires that such a 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.

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<sup>15</sup> The bill 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).)

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

**Document of gift only specifies a general intent to make a gift.** The bill requires that an anatomical gift 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, to be used only for transplantation or therapy. The bill requires that such a 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.

**Who may make an anatomical gift**

(R.C. 2108.02 (current law); R.C. 2108.04, 2108.09, and 2108.21 (the bill))

**Current law**

Current law permits all of the following to make an anatomical gift that is effective on the individual's death:

(1) An individual of sound mind who is 18 years of age or older.

(2) An individual of sound mind who is less than 18 years of age and whose parent or guardian has signed either (a) a document (other than a will) that expresses the individual's intention to make an anatomical gift, or (b) a statement that accompanies an application for a driver's or commercial driver's license, endorsement, or identification card in which the individual makes an anatomical gift by designation on the license, endorsement, or identification card.

(3) Any of the following persons, in the order of priority stated, when persons in prior classes are 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:

(a) The spouse.

(b) An adult son or daughter.

(c) Either parent.

- (d) An adult brother or sister.
- (e) A grandparent.
- (f) A guardian of the person of the decedent at the time of the decedent's death.
- (g) Any other person authorized or under obligation to dispose of the body.

### **The bill**

**During donor's life.** The bill permits an anatomical gift to be made by any of the following during the donor's life:

- (1) The donor, if the donor is an adult;
- (2) The donor, if the donor is an emancipated minor or is authorized by state law to apply for a driver's license because the donor is at least 15 years and 6 months of age.
- (3) An agent of the donor, unless the donor's durable power of attorney for health care or other record<sup>16</sup> prohibits the agent from making an anatomical gift.
- (4) A parent<sup>17</sup> of the donor, if the donor is an unemancipated minor.
- (5) The donor's guardian.

**After donor's death.** Unless an individual refused to make an anatomical gift during the individual's lifetime by a means described under "**Refusal to make an anatomical gift.**" "**The bill.**" below, the bill permits any member of the following classes of persons who is reasonably available,<sup>18</sup> in the following order of priority, to make an anatomical gift of an individual's body or part for purposes of transplantation, therapy, research, or education:

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<sup>16</sup> The bill 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>17</sup> The bill defines a "parent" as a parent whose parental rights have not been terminated (R.C. 2108.01(R)).

<sup>18</sup> The bill 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)).

(1) An agent<sup>19</sup> of the decedent<sup>20</sup> at the time of death who could have made an anatomical gift immediately before the decedent's death;

(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 in (1) to (9), above, to whom the right of disposition for the decedent's body has been assigned (pursuant to R.C. 2108.70) or who have the right of disposition for the decedent's body (as described in R.C. 2108.81).

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

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<sup>19</sup> The bill defines an "agent" 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 record signed by the principal (R.C. 2108.01(B)).

<sup>20</sup> The bill defines a "decedent" 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 (R.C. 2108.01 to 2108.28), a fetus (R.C. 2108.01(D)).

The bill 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 bill also permits a person to rely on representations of an individual listed in (1) through (8), above, relating individual's relationship to the donor or prospective donor<sup>21</sup> unless the person knows the representation is untrue.

### Comparison: Who Can Make Anatomical Gift

CURRENT LAW	THE BILL
Before donor's death	Before donor's death
An adult donor of sound mind.	An adult donor.
A minor donor of sound mind whose parent or guardian has signed either (a) a document (other than a will) that expresses the individual's intention to make an anatomical gift, or (b) a statement that accompanies an application for a driver's or commercial driver's license, endorsement, or identification card in which the individual makes an anatomical gift by designation on the license, endorsement, or identification card.	A donor who is an emancipated minor or who is authorized by state law to apply for a driver's license because the donor is at least fifteen years and six months of age.
	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.
	A parent of a donor, if the donor is an unemancipated minor.
	A donor's guardian.

<sup>21</sup> The bill 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, however, an individual who has made a referral. (R.C. 2108.01(W).)

CURRENT LAW	THE BILL
After donor's death	After donor's death
Any of the following persons, in the order of priority stated, when persons in a prior class are 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, a guardian of the person of the decedent at the time of the decedent's death, or (6) 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, persons other than those in (1) to (9), above, to whom the right of disposition for the decedent's body has been assigned (pursuant to R.C. 2108.70) or who have the right of disposition for the decedent's body (as described in R.C. 2108.81).

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

(R.C. 2108.04 (current law); R.C. 2108.05 and 2108.10(A) (the bill))

**Current law**

**By the donor.** Current law permits an individual to make an anatomical gift of the individual's own body or part through the means, and in accordance with the stipulations, summarized below.

**Current Law:  
Means by Which Donor May Make a Gift**

MEANS	STIPULATIONS
(1) By will, if the individual is at least 18 years of age.	Gift becomes effective on the testator's death without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the anatomical gift, to the extent that it has been acted on in good faith, is valid and effective.
(2) By a document other than a will.	Gift becomes effective on the donor's death. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in the donor's presence. If the donor cannot sign, the document must be signed for the donor at the donor's direction and in the presence of two witnesses, having no affiliation with the donee, who must sign the document in the donor's presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the anatomical gift valid.
(3) In a declaration <sup>22</sup> (living will), by specifying in the declaration the intent of the declarant to make an anatomical gift (see " <u><i>Gift by declaration</i></u> ," " <u><i>Current law</i></u> ," below).	A declaration that specifies the intent of a declarant to make an anatomical gift and satisfies the requirements of a provision in the living will law (R.C. 2133.02) is considered as having satisfied the requirements for making a gift by a document other than a will.
(4) By a designation on all of the individual's driver's licenses, commercial driver's licenses, motorcycle operator's licenses, endorsements, and state identification cards.	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

<sup>22</sup> A "declaration," commonly referred to as a "living will," is an advance directive an individual (the "declarant") can execute pursuant to R.C. 2133.02 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.

MEANS	STIPULATIONS
	identification card. This statement must also be signed by a parent or guardian of the holder if the holder is less than 18 years of age. 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 does not invalidate the anatomical gift. The anatomical gift must be renewed upon renewal of each license, endorsement, or identification card.

**By another person authorized to make a gift.** Current law permits a spouse, adult son or daughter, parent, adult brother or sister, grandparent, guardian, or other person authorized or under obligation to dispose of an individual's body to make an anatomical gift by a document signed by that person, a telegram, or 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.

### **The bill**

The bill permits a donor or other person to make an anatomical gift through the following means summarized in the table, below.

### **The Bill: Means by Which Donor or Other Person Authorized to Make Gift May Make a Gift**

GIFT BY DONOR	GIFT BY OTHER PERSON AUTHORIZED TO MAKE GIFT
Before donor's death	Before donor's death
(1) By specifying in the donor's will an intent to make an anatomical gift. (A gift by will takes effect on the donor's death whether or not the will is probated and invalidation of the will after the donor's death does not invalidate the gift.)	(1) By a donor card or other record signed 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>23</sup>

<sup>23</sup> The bill 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)).

<b>GIFT BY DONOR</b>	<b>GIFT BY OTHER PERSON AUTHORIZED TO MAKE GIFT</b>
<b>Before donor's death</b>	<b>Before donor's death</b>
(2) 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. (Revocation, suspension, expiration, or cancellation of a driver's license or identification card on which a gift is indicated does not invalidate the gift.)	
(3) 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.	
(4) By specifying in the donor's declaration (living will) an intent to make an anatomical gift (see " <u><i>Gift by declaration</i></u> ," " <u><i>The bill</i></u> ," below).	
(5) 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.	

<sup>24</sup> The bill 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 bill 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 bill defines a "disinterested witness" as a witness other than a spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical 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 R.C. 2108.11 (R.C. 2108.01(E)).

GIFT BY DONOR	GIFT BY OTHER PERSON AUTHORIZED TO MAKE GIFT
Before donor's death	Before donor's death
	After donor's death
	By a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

If a donor or other 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 bill permits the record to be signed by another individual at the direction of the donor or other person. However, the signature of the other individual must (1) 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 (current law and the bill))

**Current law.** As mentioned in the table above (see "**Current Law: Means by Which Donor May Make a Gift**"), current 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.<sup>27</sup> When an individual declares the intent to make an anatomical gift in the individual's 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.

Current law requires a printed declaration form to 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

<sup>27</sup> See footnote 22.

must conform substantially to the form specified in law (R.C. 2133.07(B)). In addition, current law also requires a printed declaration form to include a donor registry enrollment form. The enrollment form must be a separate page or a portion of a page that the individual can detach and send to the Bureau of Motor Vehicles (BMV) to be included in the registry the BMV maintains to identify people who have agreed to make anatomical gifts through a designation on the person's driver's license (the donor registry). The donor registry enrollment form must conform substantially to the form specified in law (R.C. 2133.07(C)).

**The bill.** The bill 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 complies with the requirements in R.C. 2108.05(B): that is, the form is (1) 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 bill maintains the requirement that the form be forwarded to the BMV on completion.

#### **Comparison: Means by Which an Anatomical Gift May Be Made**

<b>CURRENT LAW</b>	<b>THE BILL</b>
<b>Gift by donor</b>	<b>Gift by donor</b>
(1) By will, if the individual is at least 18 years of age.	(1) Same as current law.
(2) By a document other than a will (such as a card).	(2) 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.
(3) In a declaration (living will), by specifying an intent to make an anatomical gift. (Only adults can execute declarations.)	(3) Same as current law.
(4) By a designation on all of the individual's driver's licenses, commercial driver's licenses, motorcycle operator's licenses, endorsements, and state identification cards.	(4) By authorizing a statement or symbol to be imprinted on the donor's driver's license or identification card indicating that the donor has certified a willingness to make an anatomical gift.
	(5) 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, that the

CURRENT LAW	THE BILL
	donor intends to make an anatomical gift.
Gift by another person authorized to make a gift	Gift by another person authorized to make a gift
<p>By any of the following means:</p> <p>(1) A document or telegram signed by the other person authorized to make a gift;</p> <p>(2) A telephone call initiated by the person authorized to make a gift to two persons, one of whom receives the message and one of whom prepares written documentation of the message;</p> <p>(3) A telephone call initiated by the other person authorized to make a gift that is recorded mechanically or electronically.</p>	<p>By a donor card or other record signed 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.</p>

### **Amendment of an anatomical gift**

(R.C. 2108.06 (current law); R.C. 2108.06(A) and (C), 2108.08, 2108.10(B), and 2108.21 (the bill))

#### **Current law**

If a will, card, or other document indicating an anatomical gift has been delivered to a specified donee, current law permits 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.

### **The bill**

**In general--gift made during donor's lifetime.** The bill, subject to the exceptions discussed below, permits an anatomical gift made during the donor's lifetime to 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) If not made in a will, by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness;
- (5) If made in a will, by the manner provided for amendment of wills.

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, at least one of whom is a disinterested witness, who have signed at the request of the donor or other person, and (b) state that it has been signed and witnessed.

In addition, the bill permits a parent of an unemancipated minor who has died to amend a gift if the parent is reasonably available.

**Exceptions.** In the absence of an express, contrary indication by a donor, the bill 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 bill prohibits another person from amending the gift.

**Gift made after donor's death.** The bill permits an anatomical gift made after the donor's death to be amended orally or in a record by any member of a prior class who is authorized to make a gift and is reasonably available. However, if more than one member of a prior class is reasonably available, the bill permits the gift to be amended only if a majority of the reasonably available members agree to the amendment.

**Representations of certain individuals.** In determining whether an anatomical gift has been amended, the bill permits a person to rely on representations of an individual listed in R.C. 2108.09(A)(2), (3), (4), (5), (6), (7),

or (8) (see "*Who may make an anatomical gift,*" "*The bill,*" above) relating to the individual's relationship to the donor or prospective donor unless the person knows the representation is untrue.

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

(R.C. 2108.06(B) (current law); R.C. 2108.06(B) and (C), 2108.08, and 2108.10(B) and (C) (the bill))

#### **Current law**

If a will, card, or other document indicating an anatomical gift has been delivered to a specified donee, current law permits the donor to revoke 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) By destruction, cancellation, or mutilation of the document and all executed copies of it.

#### **The bill**

*In general--gift made during donor's lifetime.* The bill, subject to the exceptions discussed below, permits an anatomical gift made during a donor's lifetime to be revoked by 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 revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency;

(4) If not made in a will, by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness;

(5) If made in a will, by the manner provided for revocation of wills;

(6) By the destruction or cancellation of the document of gift, or the portion of the document of gift, used to make the gift, with the intent to revoke the gift.

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

In addition, the bill permits a parent of an unemancipated minor who has died to revoke a gift if the parent is reasonably available.

**Exceptions.** In the absence of an express, contrary indication by a donor, the bill 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 bill prohibits another person from amending the gift.

**Gift made after donor's death.** The bill permits an anatomical gift made after the donor's death to be revoked orally or in a record by any member of a prior class who is authorized to make a gift and is reasonably available. However, if more than one member of a prior class is reasonably available, the bill permits the gift to be revoked only if at least half of the reasonably available members agree to the revocation.

The bill also specifies that a revocation of an anatomical gift made after a donor's death is effective only if the procurement organization, transplant hospital,<sup>28</sup> physician, or technician<sup>29</sup> knows of the revocation before an incision

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<sup>28</sup> The bill 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>29</sup> The bill 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)).

has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient.

**Revocation does not equal refusal.** The bill specifies that a donor's revocation of an anatomical gift is not a refusal to make a gift and does not bar another person authorized to make a gift from making a gift. It also specifies that a revocation of a gift made by a person other than the donor does not bar another person from making a gift.

**Representations of certain individuals.** In determining whether an anatomical gift has been revoked, the bill permits a person to rely on representations of an individual listed in R.C. 2108.09(A)(2), (3), (4), (5), (6), (7), or (8) (see "**Who may make an anatomical gift,**" "**The bill,**" above) relating to the individual's relationship to the donor or prospective donor unless the person knows the representation is untrue.

### **Refusal to make an anatomical gift**

(R.C. 2133.16(E) (current law); R.C. 2108.07 (the bill))

#### **Current law**

Under current 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).

#### **The bill**

**In general.** The bill permits an individual to refuse to make an anatomical gift by doing any of the following:

(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, at least one of whom is a disinterested witness.

If an individual intends to refuse to make a gift through another individual, as described in (1)(b), above, the record must (a) be witnessed by a minimum of

two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or other person, and (b) state that it has been signed and witnessed.

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

**Amendment or revocation of a refusal.** The bill 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.

**Unrevoked refusal bars others from making a refusal.** The bill 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.

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

(R.C. 2108.02(G) and 2108.15 (current law); R.C. 2108.11(I) (the bill))

**Current law**

Current law specifies that the law governing anatomical gifts cannot be construed as requiring a donee to accept an anatomical gift. However, it does not specify what happens when a gift is rejected.

**The bill**

The bill also specifies that a donee can reject an anatomical gift in whole or in part. Unlike current law, however, the bill 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: 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).

### **Allocation of organs for transplantation or therapy**

(R.C. 2108.11(K) (the bill only))

The bill 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 of document of gift**

(R.C. 2108.05 (current law); R.C. 2108.13 (the bill))

#### **Current law**

Current law specifies that delivery of a will, card, or other document of gift is not necessary for the gift to be valid. It also requires 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 of gift.

#### **The bill**

The bill, like current law, 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.

### **Persons required to make reasonable search for document of gift**

(R.C. 2108.12 (the bill only))

The bill requires certain persons to make a reasonable search of the body of an individual who the person 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. These persons are both of the following:

(1) A law enforcement officer,<sup>30</sup> member of a fire department,<sup>31</sup> or a holder of a certificate issued by the State Board of Emergency Medical Services under R.C. Chapter 4765.

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<sup>30</sup> The bill defines a "law enforcement officer" consistent with the definition of this term used for purposes of Ohio criminal law (R.C. 2901.01). The definition is quite lengthy, so it is not reprinted here.

(2) If no other source of information is immediately available, a hospital employee or agent, as soon as practical after the individual's arrival at the hospital.

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 bill requires the person responsible for conducting the search to send the document or refusal to the hospital.

The bill prohibits a person who is required to make a reasonable search from being subject to 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.

**Procurement organization's responsibilities when a hospital refers a potential donor**

(R.C. 2108.02(D) (current law); R.C. 2108.14(A), (B), (D), and (F) (the bill only))

**Reasonable search of BMV records**

The bill 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.

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<sup>31</sup> The bill 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.

The BMV must allow the procurement organization reasonable access to its records for the purposes of ascertaining whether the individual is a donor.

**Medical suitability of potential anatomical gift**

**Current law.** Current law specifies that an anatomical gift authorizes any examination necessary to ensure medical acceptability of the anatomical gift for the purpose intended.

**The bill.** The bill 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 bill 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 bill 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.

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

The bill 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 bill 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.

**Procurement organization's responsibility to conduct reasonable search for deceased minor's parents**

(R.C. 2108.04(E) (the bill only))

The bill 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 bill prohibits a procurement organization from conducting such a search if it knew the minor was emancipated.

### **Hospital agreements or affiliations with procurement organizations**

(R.C. 2108.021 (current law); R.C. 2108.17 (the bill))

#### **Current law**

Under existing law, every hospital is 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 bill**

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

### **Medical suitability examination by person to whom a part passes**

(R.C. 2108.02 (current law); R.C. 2108.14(C) and (E) (the bill))

#### **Current law**

Current law specifies that an anatomical gift authorizes any examination necessary to ensure medical acceptability of the anatomical gift for the purpose intended.

#### **The bill**

Unless prohibited by law other than state law governing anatomical gifts (R.C. 2108.01 to 2108.85), the bill permits the person to whom 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.

### **Donee rights to parts**

(R.C. 2108.02(E) and (F) and 2108.07(A) (current law); R.C. 2108.15 (the bill))

#### **Current law**

In general, current law specifies that a donee's rights created by an anatomical gift are paramount to the rights of all others. The only exceptions to this rule occur under the following two circumstances:

(1) When a coroner has taken charge of a decedent's body and decided that an autopsy is necessary.

In such cases, the rights of the coroner are paramount to the rights of the donee, although the coroner may waive this right and permit the donee to take a donated part if the part is or will be unnecessary for successful completion of the autopsy or for evidence. If the coroner or deputy coroner does not waive this paramount right and later determines, while performing the autopsy, that the donated part is or will be unnecessary for successful completion of the autopsy or for evidence, the coroner or deputy coroner may waive the paramount right and permit the donee to take the donated part, either during the autopsy or after it is completed.

(2) When a surviving spouse or next of kin, after consultation with the donee and subject to the terms of the anatomical gift, indicates an interest in allowing the body to be embalmed and used in funeral services.

In such cases, the surviving spouse or next of kin may allow the embalming and use of the body in funeral services. If the gift is only of a part (as opposed to the whole body), however, the donee, on the death of the donor and prior to embalming, must cause the part to be removed without unnecessary disfigurement. After removal of the part, the custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

Current law also specifies that a donee has a property right in an anatomical gift and is 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 is required to give such an action precedence over other pending actions.

### **The bill**

The bill specifies that, subject to law governing a coroner's medicolegal examination of a potential donor's body or parts (R.C. 2108.26) (see "**Coroner's responsibilities with respect to anatomical gifts**," "**Medicolegal examination**," below), the rights of the person to whom a part passes are superior to the rights of all others with respect to the part.

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

(R.C. 2108.07 (current law); R.C. 2108.15 (the bill))

### **Gift of an entire body**

**Current law.** Current law permits a donee to accept or reject an anatomical gift of an entire body. If a donee accepts a gift of an entire body, current law permits only the surviving spouse or next of kin to, after consultation with the donee and subject to the terms of the anatomical gift, allow the embalming and use of the body in funeral services.

**The bill.** The bill generally specifies that the rights of the person to whom an anatomical gift passes are superior to the rights of all others. This is subject only to (1) any rights a person to whom the right of disposition for a decedent's body has been assigned (under R.C. 2108.70) holds or a person who has the statutory right of disposition for the decedent's body (under R.C. 2108.81) holds in cases where an anatomical gift fails to pass under a document of gift or is not used for transplantation, therapy, research, or education, or (2) any rights a coroner holds (see "**CORONERS**," below).

The bill 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 of the body, and the use of the remains, in a funeral service.

### **Gift of a part**

**Current law.** Current law also permits a donee of an anatomical gift to accept or reject an anatomical gift of a body part. If a donee accepts a gift of a part, current law requires the donee, on the death of the donor and prior to embalming, to cause the part to be removed "without unnecessary disfigurement."

**The bill.** The bill permits the person who accepts the gift of a part to allow embalming, burial, or cremation, and use of the remains, in a funeral service. Before embalming, burial, or cremation, and the use of the remains in a funeral service can occur, however, the bill requires that the person accepting the gift cause the part to be removed "without unnecessary mutilation."

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

(R.C. 2108.07(B) (current law); R.C. 2108.16 (the bill))

### **Current law**

Current law prohibits the physician who determines the time of an individual's death or who certifies an individual's death from participating in the procedures for removing or transplanting a part.

### **The bill**

The bill also prohibits the physician who determines the time of an individual's death or certifies an individual's death from participating in the procedures for removing or transplanting a part. Unlike current law, however, it 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 to remove the part. While the bill 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 this state 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)).

## **Prohibitions**

### **Sale of body parts**

(R.C. 2108.12 (current law); R.C. 2108.18 (the bill))

**Current law.** Current law prohibits a person from knowingly acquiring, receiving, or otherwise transferring a human organ, tissue, or eye for transplantation in exchange for valuable consideration. Current law specifies that valuable consideration does not include reasonable payments for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part of a body.

**The bill.** The bill contains a prohibition similar to the one in current law: it 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. Like current law, the bill also permits a person to charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

### **Acceptance of an anatomical gift**

(R.C. 2108.02(C) (current law); R.C. 2108.11(J) (the bill))

**Current law.** Current law prohibits a donee from accepting an anatomical gift if the donee has actual notice of contrary indications by the decedent or if the anatomical gift is made by a person other than the donee and a member of a prior or same class as the donor opposes the gift.

**The bill.** The bill 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 bill specifies that if an anatomical gift was made in a document of gift, a 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 (the bill only))

The bill 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.

**Withholding or withdrawal of measures necessary to ensure medical suitability of gift**

(R.C. 2108.24 (the bill only))

If a prospective donor has a declaration<sup>32</sup> or advance health-care directive,<sup>33</sup> the bill prohibits 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 declaration expressly provides for the contrary.

**Immunity**

(R.C. 2108.08 (current law); R.C. 2108.20 (the bill))

**Current law**

Under current law, a person who in good faith acts, or attempts to act, in accordance with law governing anatomical gifts (R.C. 2108.01 to 2108.12, 2108.15, 2108.17, and 2108.18) or the anatomical gift laws of another state, is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for the act.

**The bill**

The bill grants immunity to a person who acts in accordance with the law governing anatomical gifts (R.C. 2108.01 to 2108.28), or attempts to act in good faith with this law, from not only civil and criminal actions, but administrative proceedings as well. It also 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.

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<sup>32</sup> See footnote 22.

<sup>33</sup> The bill 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 for the prospective donor (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)).

### **Validity of anatomical gifts**

(R.C. 2108.22 (the bill only))

The bill specifies that a document of gift is valid if executed in accordance with the law governing anatomical gifts (R.C. 2108.01 to 2108.28); 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 bill requires that the law governing anatomical gifts in Ohio govern the interpretation of the document of gift. The bill 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.

## **SECOND CHANCE TRUST FUND**

### **Use of Second Chance Trust Fund money**

(R.C. 2108.15 (current law); R.C. 2108.34 (the bill))

#### **Current law**

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, comprised of 13 members (see "**Second Chance Trust Fund Advisory Committee**," below) makes recommendations to the Director of Health for projects that should receive money from the Fund, although current law limits the purposes for which money in the Fund may be used. One of these purposes is the development and initial implementation of a donor registry by the Bureau of Motor Vehicles (BMV). The registry must identify 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. The registry was required to be fully operational by July 1, 2002.

#### **The bill**

The bill 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.

### **Second Chance Trust Fund Advisory Committee**

(R.C. 2108.17 (current law); R.C. 2108.35 (the bill))

### **Current law**

As described above, the Second Chance Trust Fund Advisory Committee is required by current law to make recommendations to the Director of Health regarding projects that should receive money from the Second Chance Trust Fund. Of the Committee's 13 members, three must be appointed by the Director to represent the public. The individuals the Director appoints to serve as the initial public members must be representatives of the following:

(1) An Ohio organ procurement organization designated by the U.S. Secretary of Health and Human Services that is not represented by the Organ Procurement and Transplantation Network.<sup>34</sup>

(2) An Ohio tissue bank that is an accredited member of the American Association of Tissue Banks, not affiliated with an organ procurement organization, and not represented by the Organ Procurement and Transplantation Network.

(3) An Ohio eye bank that is certified by the Eye Bank Association of America, not affiliated with an organ procurement organization, and not represented by the Organ Procurement and Transplantation Network.

After the initial appointments, the Director is required to appoint three public members who are not affiliated with recovery agencies to serve three-year terms.

### **The bill**

The bill eliminates the provisions that required the initial public members of the Advisory Committee to be representatives of the organizations in (1) to (3), above.

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<sup>34</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 March 31, 2008), available at <<http://www.optn.org/optn/>>.

## CORONERS

### *Coroner's rights to donated parts when an autopsy is performed*

(R.C. 313.13(A) (current law and the bill))

#### *Current law*

Current law permits a coroner to go to any dead body and take charge of it. Whether a coroner is authorized to perform an autopsy, and when the autopsy must be performed, however, is governed by R.C. 313.121 and 313.131. These sections essentially require a coroner to perform an autopsy when (1) the decedent is a child under age two that dies suddenly, in apparent good health, unless a court with jurisdiction determines under R.C. 313.131 that an autopsy is contrary to the religious beliefs of the child, or (2) the coroner believes an autopsy is necessary,<sup>35</sup> unless, subject to certain exceptions, a relative or friend of the decedent informs the coroner that an autopsy is contrary to the decedent's religious beliefs, or the coroner otherwise has reason to believe that an autopsy is contrary to the decedent's person's religious beliefs.

Current law specifies that when a coroner has taken charge of a body and decided to perform an autopsy, the coroner's right to the body and its parts is paramount to any rights a donee may have. The coroner is permitted to waive his or her paramount right and allow the donee to take a donated part if the part is or will be unnecessary for successful completion of the autopsy or for evidence. If the coroner does not waive this right and later determines, while performing the autopsy, that the donated part is or will be unnecessary for successful completion of the autopsy or for evidence, the coroner may waive the right and permit the donee to take the donated part, either during the autopsy or after it is completed.

#### *The bill*

The bill neither alters the authority a coroner has under current law to take charge of a decedent's body, nor the process by which a coroner decides whether and when an autopsy is performed. It does, however, eliminate the reference to the coroner's "paramount right" to any donated part. It replaces the coroner's paramount right to a donated part with a directive that new law enacted by the bill (R.C. 2108.25 and 2108.26, described below) controls the recovery of anatomical gifts from a dead body.

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<sup>35</sup> Current law does not specify a process by which a coroner is to determine whether an autopsy is necessary.

## **Coroner's responsibilities with respect to anatomical gifts**

### **Cooperation with procurement organizations**

(R.C. 313.30 (current law); R.C. 313.30 and 2108.25 (the bill))

**Current law.** Under current law, a coroner is permitted to designate in writing an eye bank, tissue bank, or both with which the coroner will cooperate concerning retrieval of usable eyes and tissues that have been donated. An eye or tissue bank that is designated by a coroner has a property right in the gift.

**The bill.** The bill eliminates the provision permitting a coroner<sup>36</sup> to designate an eye or tissue bank, or both, with which the coroner will cooperate and instead requires a coroner to cooperate with procurement organizations<sup>37</sup> to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

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

(R.C. 313.10(A)(2) (current law); R.C. 2108.26(B) (the bill))

**Current law.** Current 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 bill.** The bill does not repeal 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 available medical and social history of a decedent whose body is under the jurisdiction of the coroner to the procurement organization.

The bill 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 then authorized to make a subsequent disclosure of these results or

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<sup>36</sup> The bill specifies that the term, "coroner," includes a medical examiner (R.C. 2108.25).

<sup>37</sup> The bill defines a "procurement organization" as an eye bank, organ procurement organization, or tissue bank (R.C. 2108.01(V)).

other information received from the coroner only if relevant to life-saving organ transplantation or therapy.

**Medicolegal examination**

(R.C. 2108.26(C) and (D) (the bill only))

The bill 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 bill 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. 2108.26(E) (the bill only))

The bill requires a coroner and procurement organization to cooperate in the timely removal of a part from a decedent whose body is under the jurisdiction of the coroner, for the purpose of life-saving organ transplantation or therapy, if any of the following are true:

- (1) An anatomical gift has been or might be made of a part and a post-mortem examination is not required.
- (2) An anatomical gift has been or might be made of a part and after a post-mortem examination the coroner determines that no autopsy is required.
- (3) An anatomical gift has been or might be made of a part and it is determined that an autopsy is required and after consultation with the prosecuting attorney it is determined that the recovery of the parts that are the subject of an anatomical gift will not interfere with the autopsy.

**When recovery of a part could interfere**

(R.C. 2108.26(E) (the bill only))

If an anatomical gift of a part from a decedent under the jurisdiction of a coroner has been or might be made, and after 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 bill requires the

coroner to consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. The bill 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. After consultation, 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. 2108.26(G) and (H) (the bill only))

The bill 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 bill 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.** 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 bill generally requires the coroner or the coroner's designee, 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. During the removal procedure, the coroner or the coroner's designee is permitted to allow recovery by the procurement organization to proceed or, 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, deny recovery by the procurement organization.

The bill specifies, however, that the coroner or designee is not required to attend the removal procedure if the procurement organization seeks to recover only an eye, tissue, or both.

**If coroner denies recovery**

(R.C. 2108.26(I) (the bill only))

If a coroner or designee denies recovery, the bill 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.

**If coroner allows recovery**

(R.C. 2108.26(J) (the bill only))

If a coroner allows recovery, the bill requires the procurement organization to cooperate with the coroner in any documentation of injuries and the preservation and collection of evidence prior to and during the recovery of the part. The bill also requires a procurement organization, on request, to cause the physician or technician who removes the part 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. 2108.26(K) (the bill only))

If a coroner or coroner's designee is required to be present at a removal procedure, the bill requires the procurement organization, on the request of the coroner, to reimburse the coroner's office for the additional costs incurred in attending the removal procedure. The bill 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. 2108.26(L) (the bill only))

The bill 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.

## **FUNERAL DIRECTORS**

### **Designation of eye and tissue banks**

(R.C. 4717.17 (current law only))

#### **Current law**

Current law permits 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 bill**

The bill eliminates the provision authorizing a funeral director to designate 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.

### **Liability for acting in accordance with anatomical gift law**

(R.C. 4717.17 (current law and the bill))

#### **Current law**

Current law 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 donor's declaration with respect to an anatomical gift.

#### **The bill**

The bill instead 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 (R.C. 2108.01 to 2108.28) regarding an anatomical gift.

## **APPLICATION AND CONSTRUCTION OF REVISED UNIFORM ANATOMICAL GIFT ACT; FEDERAL ELECTRONIC SIGNATURES LAW**

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

(R.C. 2108.27)

The bill requires a court applying and construing the Revised Uniform Anatomical Gift Act (RUAGA) (R.C. 2108.01 to 2108.28) to consider the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

### **Electronic Signatures in Global and National Commerce Act**

(R.C. 2108.28)

The bill declares that the RUAGA it enacts 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 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.

The effect of this provision apparently is 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.<sup>38</sup>

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<sup>38</sup> These notices are: (1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings, (2) 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 (3) 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)).

## TECHNICAL OR CONFORMING CHANGES

### Minor technical and cross-reference changes

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

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### HISTORY

ACTION	DATE
Introduced	04-08-08

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