



Sub. H.B. 529*

127th General Assembly

(As Reported by S. Health, Human Services & Aging)

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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 donors and donees, 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.

* This analysis was prepared before the report of the Senate Health, Human Services and Aging Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- 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 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measures necessary to ensure the medical suitability of an organ for transplantation or therapy from being withheld or withdrawn from a prospective donor unless the donor's declaration (living will) expressly provides for the contrary.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.

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 provisions of current law 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

- Requires a coroner, on a procurement organization's request and if available, 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 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.

- Specifies what happens when a coroner and procurement organization fail to enter into an agreement establishing protocols and procedures governing the relations between them.
- 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 an autopsy is not required or recovery of the anatomical gift will not interfere with the autopsy.
- Requires a coroner to communicate 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 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 with respect to an anatomical gift.

FEDERAL AND STATE ELECTRONIC SIGNATURES LAW

- Describes the relation of the RUAGA to the federal Electronic Signatures in Global and National Commerce Act.
- Specifies that the bill 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 (current law))

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

¹ 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/

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.²

At its July 2006 annual meeting, the NCCUSL approved a Revised Uniform Anatomical Gift Act (RUAGA).³ As of November 2008, 33 states and the District of Columbia have adopted the RUAGA.⁴

Adoption of Revised Uniform Anatomical Gift Act

(R.C. 2108.02 and 2108.03 (the bill))

The bill specifies that R.C. 2108.01 to 2108.29 are enacted to adopt the 2006 version of RUAGA. It also specifies that the changes made by the bill apply to an anatomical gift⁵ or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

NCCUSL, *About NCCUSL: Introduction* (last visited November 12, 2008), available at <<http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=11>>.)

² 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.

³ 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>>.

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

⁵ 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)).

Application and construction of RUAGA

(R.C. 2108.02 (current law) and 2108.28 (the bill))

Current law specifies that the existing Uniform Anatomical Gift Act must be construed so as to effectuate its general purpose to make uniform the law of those states which enact it.

The bill specifies that in applying and construing the Revised Uniform Anatomical Gift Act (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.

DONORS, DONEES, AND PROCUREMENT ORGANIZATIONS

Purpose of anatomical gifts; authorized recipients

(R.C. 2108.03 (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.⁶ 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.

⁶ 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 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;
- (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.

Donee specified in document of gift

(R.C. 2108.04 and 2108.11(A), (B), and (G) (the bill))

The bill permits an anatomical gift of a donor's⁷ body or part⁸ to be made during the life of the donor for the purpose of transplantation, therapy, research, or education to any of the following persons⁹ named in the document of gift:¹⁰

- (1) A hospital;¹¹
- (2) An accredited medical school, dental school, college, or university;
- (3) An organ procurement organization;¹²
- (4) Another appropriate person, for research or education;
- (5) An individual designated by the person making the anatomical gift if the individual is the recipient¹³ of the part;
- (6) An eye bank¹⁴ or tissue bank.¹⁵

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

⁸ 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).)

⁹ 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)).

¹⁰ 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)).

¹¹ The bill 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.

¹² 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)).

¹³ 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)).

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, 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,¹⁶ 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

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

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.

¹⁴ 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)).

¹⁵ 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(EE)).

¹⁶ 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).)

(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

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

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 bill requires that the gift be used only for transplantation or therapy. The bill 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 specified in document of gift

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

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 bill requires that the gift be used only for transplantation or therapy. The bill 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.

Who may make an anatomical gift

(R.C. 2108.02 (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.

During donor's life

(R.C. 2108.04 (the bill))

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;¹⁷

(2) The donor, if the donor is an emancipated minor or is authorized by state law to apply for a temporary instruction permit for a driver's license because the donor is at least age 15½.

(3) An agent of the donor, unless the donor's durable power of attorney for health care or other record¹⁸ prohibits the agent from making an anatomical gift.

(4) A parent¹⁹ of the donor, if the donor is an unemancipated minor.

(5) The donor's guardian.²⁰

After donor's death

(R.C. 2108.09 and 2108.21 (the bill))

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**," below, the bill permits any member of the following classes of persons who is reasonably available,²¹ 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:

¹⁷ The bill defines "adult" as a person who is at least age 18 (R.C. 2108.01(A)).

¹⁸ 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)).

¹⁹ The bill defines a "parent" as a parent whose parental rights have not been terminated (R.C. 2108.01(R)).

²⁰ The bill 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 *ad litem* is excluded from the definition.

²¹ 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 agent²² of the decedent²³ 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.

²² 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 other record signed by the principal (R.C. 2108.01(B)).

²³ 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 2108.29), 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, amended, or revoked, the bill permits a person to rely on representations of an individual listed in (1) through (8), above, relating to the individual's relationship to the donor or prospective donor²⁴ unless the person knows the representation is untrue.

Summary charts: who can make anatomical gifts

The charts below provide a summary comparison of who is authorized to make an anatomical gift under existing law and the bill.

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 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 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.
	A parent of a donor, if the donor is an unemancipated minor.
	A donor's guardian.

²⁴ 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 refusal. (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, (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 in (1) to (9), 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.

Means by which an anatomical gift may be made

Gifts by the donor under current law

(R.C. 2108.04)

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
By will, if the individual is at least age 18.	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.
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.
In a declaration ²⁵ (living will), by specifying in the declaration the intent of the declarant to make an anatomical gift (see " <u>Gift by declaration</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.
By a designation on an individual's driver's license, commercial driver's license, motorcycle operator's license or endorsement, or state identification card.	The holder of the license, endorsement, or identification card must sign a statement at the time of application or renewal of the license, endorsement, or identification card. This statement must also be signed by a parent or guardian of the holder if the

²⁵ A "declaration," commonly referred to as a "living will," is an advance directive an individual (the "declarant") can execute pursuant to current law (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
	holder is less than age 18. 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.

Gifts by another authorized person under current law

(R.C. 2108.04(E))

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 (1) a document signed by that person, (2) a telegram, or (3) 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.

Gifts under the bill

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

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 Authorized Person May Make a Gift

GIFT BY DONOR	GIFT BY OTHER PERSON AUTHORIZED TO MAKE GIFT
Before donor's death	Before donor's death
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	By a donor card or other record signed ²⁶ by the other person, or by authorizing that a statement or symbol indicating that the donor has certified a willingness to make an

²⁶ Under the bill, 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)).

GIFT BY DONOR	GIFT BY OTHER PERSON AUTHORIZED TO MAKE GIFT
Before donor's death	Before donor's death
the will after the donor's death does not invalidate the gift.)	anatomical gift be included in a donor registry. ²⁷
By authorizing a statement or symbol to be imprinted on the donor's driver's license ²⁸ or identification card ²⁹ 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.)	
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.	
By specifying in the donor's declaration (living will) an intent to make an anatomical gift (see " <u>Gift by declaration</u> ," below).	
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, ³⁰ that the donor intends to make an anatomical gift.	

²⁷ 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)).

²⁸ 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)).

²⁹ 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)).

³⁰ 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 an anatomical gift, or another adult who exhibited special care and concern for the individual.

GIFT BY DONOR	GIFT BY OTHER PERSON AUTHORIZED TO MAKE GIFT
After donor's death	After donor's death
No provision.	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 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 bill 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 (current law and the bill))

As described 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.³¹ 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.

"Disinterested witness" does not include a person to which an anatomical gift could pass under the bill (R.C. 2108.01(E)).

³¹ See footnote 25.

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 must conform substantially to the form specified in law (R.C. 2133.07(B)). In addition, current law 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 donor 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 enrollment form must conform substantially to the form specified in law (R.C. 2133.07(C)).

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 it complies with the requirements in R.C. 2108.05(B): that is, the form must be signed by the donor or another person authorized to make the gift or, if the donor or authorized person are unable to sign, the form must be (1) witnessed and signed by at least two adults, at least one of whom is a disinterested witness, and (2) state 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.

Standardized form and statement for making anatomical gifts

(R.C. 2108.10 (repealed))

Under current law, if an anatomical gift is made through a document other than a will, the document used to make the gift must conform substantially to a form that appears in statute. If an anatomical gift is made through a driver's license or identification card, the statement that must be signed by the donor appears in statute.

The bill eliminates the statutes that identify a standardized form for making an anatomical gift and the statement that must be signed when an anatomical gift is made through a driver's license or identification card.

Prior gifts; witnesses

(R.C. 2108.101 (repealed))

The bill repeals a provision of existing law specifying that an anatomical gift is valid regardless of whether it has been witnessed, if the gift was (1) made by an adult, (2) included the donor's signature, and (3) was made before November 21, 2001, the effective date of Sub. S.B. 158 of the 124th General Assembly.

Summary charts: means by which anatomical gifts can be made

The charts below provide a summary comparison of the process for making an anatomical gift under existing law and the bill.

Comparison: Means by Which an Anatomical Gift May Be Made

CURRENT LAW	THE BILL
Gift by donor	Gift by donor
By will, if the individual is at least age 18.	Same as current law.
By a document other than a will (such as a card).	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.
In a declaration (living will), by specifying an intent to make an anatomical gift. (Only adults can execute declarations.)	Same as current law.
By a designation on an individual's driver's license, commercial driver's license, motorcycle operator's license or endorsement, or state identification card.	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.
	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 donor intends to make an anatomical gift.

CURRENT LAW	THE BILL
Gift by another person authorized to make a gift	Gift by another person authorized to make a gift
By any of the following means: (1) A document signed by the other person authorized to make a gift; (2) A telegram from the authorized person; (3) A telephone call initiated by the authorized person and received by two	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.

CURRENT LAW	THE BILL
Gift by another person authorized to make a gift	Gift by another person authorized to make a gift
<p>persons, one of whom must prepare written documentation of the message;</p> <p>(4) A telephone call initiated by the authorized person that is recorded mechanically or electronically.</p>	

Amendment of an anatomical gift

(R.C. 2108.06(A) and (C) (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;
- (5) If made by a will, in the manner provided for amendment of wills.

In general--gift made during donor's lifetime

(R.C. 2108.06(A) and (C) (the bill))

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) 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.

Exceptions

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

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

(R.C. 2108.10(B) (the bill))

With respect to an anatomical gift made after a person's death by a member of any of the classes of persons the bill authorizes to make the gift, the bill 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 bill permits the gift to be amended only if a majority of the reasonably available members agree to the amendment.

Representations of family members

(R.C. 2108.21 (the bill))

In determining whether an anatomical gift has been amended, the bill 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 bill 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) (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;
- (6) If made by a will, in the manner provided for revocation of wills.

In general--gift made during donor's lifetime

(R.C. 2108.06(B) and (C) (the bill))

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) 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) 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;

(7) If made in a will, by the manner provided for revocation of wills or by any of the applicable means described above.

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 who have signed at the request of the donor or other person, and (b) state that it has been signed and witnessed.

Exceptions

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

In the absence of an express, contrary indication by a donor, the bill prohibits a person other than the donor from revoking 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 revoking the gift.

Gift made after donor's death

(R.C. 2108.10(B) (the bill))

With respect to an anatomical gift made after a person's death by a member of any of the classes of persons the bill authorizes to make the gift, the bill permits the gift to be revoked 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 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,³² physician, or technician³³ knows of the revocation before an incision

³² 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)).

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

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

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 by a person other than the donor of an anatomical gift does not bar another person from making a gift.

Representations of family members

(R.C. 2108.21 (the bill))

In determining whether an anatomical gift has been revoked, the bill 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 bill does not authorize reliance on representations made by an agent or guardian of the decedent.

Refusal to make an anatomical gift

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

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).

³³ 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)). The portion of the definition pertaining to embalmers reflects the substance of a statutory provision that the bill repeals pertaining to the authority of embalmers to enucleate eyes (R.C. 2108.071).

In addition to continuing the authority to make a refusal through a living will, the bill permits an individual to refuse to make an anatomical gift by doing any of the following:³⁴

(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 bill requires that the record (a) be 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 bill))

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.

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

³⁴ The bill 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)).

Unrevoked refusal bars others from making a refusal

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

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

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

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. Under the bill, 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 bill))

The bill 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 bill 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 bill))

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

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

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.

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.

Reasonable search for document of gift

(R.C. 2108.12 (the bill))

The bill 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;³⁵
- (2) A member of a fire department;³⁶

³⁵ 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).

³⁶ 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

(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 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 duties when potential donors are referred by hospitals

(R.C. 2108.14(A), (B), (D), and (F) (the bill))

Reasonable search of BMV records

(R.C. 2108.14(A) (the bill))

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

appointment from a duly established civil service eligibility list or under R.C. 505.38, 709.012, or 737.22.

Medical suitability examinations

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

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 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

(R.C. 2108.14(F) (the bill))

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 duty to search for deceased minor's parents

(R.C. 2108.14(E) (the bill))

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

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

Unless prohibited by law other than state law governing anatomical gifts, the bill 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.

Donee's superior right to anatomical gifts

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

In general, current law specifies that a donee's rights created by an anatomical gift are paramount to the rights of all others. The primary exception to this rule is 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 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 may waive the paramount right and permit the donee to take the donated part, either during the autopsy or after it is completed.

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 eliminates the provisions of current law specifying that the donee has a property right in an anatomical gift. Instead, the bill 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 bill (*see* "**CORONERS**," below);³⁷

(2) Any rights of disposition of the decedent's body that are held by or assigned to a person, as specified under current law (R.C. 2108.70 and 2108.81),

³⁷ The bill 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 will not exist under the bill.

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

Current law permits a donee to accept or reject an anatomical gift of an entire body or a part of a 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. 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 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 bill 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 bill 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 current law.

Persons authorized and prohibited from removing donated parts

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

Current law prohibits the physician who attends a donor at death or, if none, the physician who certifies an individual's death from participating in the procedures for removing or transplanting a part.

The bill prohibits the attending physician or the physician who determines the time of 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 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)).

Sale of body parts

(R.C. 2108.12 (current law); R.C. 2108.18 and 2108.99 (the bill))

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. 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. A person who violates the prohibition is guilty of a felony of the fifth degree.

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. The bill establishes a higher penalty for violating its prohibition than under current law. Under the bill, 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. 2108.02(C) (current law); R.C. 2108.11(J) (the bill))

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 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.

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 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 bill))

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. 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 (the bill))

If a prospective donor has a declaration³⁸ or advance health-care directive³⁹ 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 bill 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,⁴⁰ 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 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;

³⁸ See footnote 25.

³⁹ 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 (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)).

⁴⁰ See footnote 22.

- (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 bill 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.

Under the bill, 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 bill 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 bill 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.

The bill prohibits measures necessary to ensure the medical suitability of a part from being 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. 2108.08 (current law); R.C. 2108.20 (the bill))

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 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. The immunity applies in a civil action, criminal prosecution, or administrative proceeding.

The bill 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.

Validity of anatomical gifts

(R.C. 2108.22 (the bill))

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 2108.29); 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.

DONOR REGISTRY AND SECOND CHANCE TRUST FUND

BMV donor registry

(R.C. 2108.18 (current law); R.C. 2108.23 (the bill))

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

Second Chance Trust Fund

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

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, 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 the BMV's donor registry. The registry was required to be fully operational by July 1, 2002.

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.

Advisory committee

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

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. Except for the initial public member appointees, the members cannot be affiliated with recovery organizations, which the bill refers to as procurement organizations.

The bill 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;⁴¹

(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

Background--coroner's rights when an autopsy is performed

(R.C. 313.13(A) (current law))

Law unchanged by the bill 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, 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 that an autopsy is contrary to the religious beliefs of the child, or (2) the coroner believes an autopsy is necessary,⁴² 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 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

⁴¹ 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/>>.)

⁴² Current law does not specify a process by which a coroner is to determine whether an autopsy is necessary.

paramount to any rights a donee of an anatomical gift may have. The coroner is permitted to waive this paramount right and allow the donee to take a donated part if the part is unnecessary for successful completion of the autopsy or for evidence. If the coroner does not waive this right and determines while performing the autopsy that the donated part is 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.

Cooperation with procurement organizations

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

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 requires a coroner⁴³ to cooperate with procurement organizations⁴⁴ in accordance with the bill's provisions to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education. The bill eliminates the provision authorizing a coroner to designate an eye or tissue bank, or both, with which the funeral director will cooperate. It also eliminates a corresponding provision specifying that the designated eye or tissue bank has a property right to anatomical gifts.

Release of information to procurement organizations

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

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 does not alter the provision that specifies that medical and psychiatric records provided to a coroner are not public records. However, it

⁴³ The bill specifies that the term, "coroner," includes a medical examiner (R.C. 2108.25 and 2108.26).

⁴⁴ The bill defines a "procurement organization" as an eye bank, organ procurement organization, or tissue bank (R.C. 2108.01(V)).

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 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 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 bill))

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. 2108.263 (the bill))

The bill 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 (the bill))

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 bill requires the coroner to communicate with a 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. 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 bill))

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

(R.C. 2108.266 (the bill))

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 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 bill 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 (the bill))

If a coroner or designee denies recovery of an organ, tissue, or eye, 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.

The bill 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 (the bill))

If a procurement organization refuses to accept an anatomical gift, the bill 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 (the bill))

If a coroner allows recovery, the bill 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 bill 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 (the bill))

If a coroner or coroner's designee attends a removal procedure, the bill 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 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. 2108.271 (the bill))

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.

Civil immunity for denial of a recovery

(R.C. 2108.272)

The bill 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 bill eliminates provisions of existing law that expressly authorize 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 (current law and the bill))

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 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. It also eliminates a corresponding provision specifying that the designated eye or tissue bank has a property right to anatomical gifts.

Immunity for acting in accordance with anatomical gift law

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

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 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 2108.29) regarding an anatomical gift.

FEDERAL AND STATE ELECTRONIC SIGNATURES LAW

Federal E-Sign Act

(R.C. 2108.29 (the bill))

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 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. 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.⁴⁵

⁴⁵ 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

State laws governing electronic signatures and records

(R.C. 2108.29 (the bill))

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

TECHNICAL OR CONFORMING CHANGES

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, 2108.30, 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 bill removes statutory cross-references to the definition of "hospital," as that term is used in the laws governing anatomical gifts. In place of these cross-references, the bill refers to the definition of "hospital" that is used in the laws that govern 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;
- (3) Prohibitions on the performance of post-viability abortions.

(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)).

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	---

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