



Am. Sub. S.B. 188

123rd General Assembly

(As Passed by the General Assembly)

Sens. Drake, White, Prentiss, Kearns, Spada

Reps. VanVyven, Schuring, Terwilleger, Ogg, Jolivette, Schuck, Vesper, Aslanides, Olman, Sutton, DePiero, Willamowski, Brading, Bender, O'Brien, Hoops, Patton, Sullivan, D. Miller, Myers, Grendell, Jones, Distel, Netzley, Buchy, Salerno, Amstutz, Buehrer, Barrett, Cates, Metzger, Collier, Austria, Schuler, Boyd, Clancy, A. Core, Corbin, Young, Gerberry, Smith, R. Miller, J. Beatty, Redfern, Britton, Widener, Barnes, Tiberi

Effective Date: *

ACT SUMMARY

- Revises the law dealing with hospital protocols for procuring and realizing anatomical gifts.
- Establishes that a valid declaration of an anatomical gift prevails over the contrary wishes of a donor's family and that the donee has an enforceable property right in the anatomical gift but is not required to accept the gift.
- Authorizes a coroner or funeral director to designate an eye bank, tissue bank, or both with which the coroner or funeral director will cooperate concerning retrieval of usable eyes and tissue.
- Requires the Bureau of Motor Vehicles (BMV) to develop and maintain a registry that identifies certain individuals who have agreed to make an anatomical gift.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Requires the BMV to maintain a toll-free telephone number available 24 hours a day that the public may use to obtain information on becoming an organ, tissue, or eye donor.
- Expands the permissible uses of money from the Second Chance Trust Fund.
- Creates the Second Chance Trust Fund Advisory Committee.
- Permits the State Board of Education to require the inclusion of information on the donation of anatomical gifts in health and driver education curricula.
- Requires the Department of Administrative Services to periodically send state employees information promoting anatomical gifts.
- Creates the Organ Donor Task Force to research and make recommendations on various matters related to anatomical gifts.
- Declares an emergency.

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CONTENT AND OPERATION

Background

Ohio law defines "anatomical gift" as a donation of all or part of a human body to take effect on or after death (R.C. § 2108.01(A)). Any individual of sound mind can make an anatomical gift, but if the individual is under age 18, the document creating the gift must be witnessed by a parent or guardian. An anatomical gift may be made by an individual by will, by a document other than a will, or by a designation on a driver's license or motorcycle operator's license. An anatomical gift regarding a deceased person may be made by certain family members, a guardian, or a person authorized or under obligation to dispose of the body. (R.C. § 2108.02).

Protocols for obtaining anatomical gifts

(sec. 2108.021)

Every hospital is required to develop a protocol for facilitating procurement of anatomical gifts. Prior law required that the protocols (1) be written, (2) be developed and implemented in consultation with all recovery agencies that work with the hospital in procuring and realizing anatomical gifts, and (3) include provisions regarding notification to the appropriate organization of the death of a potential donor, determination of medical suitability of the potential donor, and procedures for requesting organ, eye, and tissue donations from family members. The act provides instead that the protocols must be consistent with Health Care Financing Administration (HCFA) regulations.¹

Hospital designation of person to make anatomical gift requests

(sec. 2108.022 (repealed))

The act repeals a law requiring that requests for anatomical gifts be made by a person designated by a hospital. A hospital was permitted to designate either a representative of the organ procurement organization with which the hospital had an agreement to perform anatomical donation duties or an individual who had completed a course on the procedure for approaching the family of a potential donor and requesting organ, eye, and tissue donations. The designated person was not

¹ The regulations are in 42 Code of Federal Regulations section 482.85. HCFA, which is part of the United States Department of Health and Human Services, regulates the Medicare program. To be eligible to participate in Medicare, a hospital must comply with HCFA regulations.

authorized to make the request if there was actual notice of contrary intentions by the patient or actual notice of opposition by a person authorized to object.

Declarations of anatomical gifts

(secs. 2108.01, 2108.02, and 2108.04)

The act provides that a valid declaration of an anatomical gift prevails over any contrary desires of the donor's family regarding the donor's corpse and clarifies that a donee is not required to accept an anatomical gift.

Under continuing law, the rights of the person or entity to which an anatomical gift is made (the donee) are paramount to the rights of others.² The act gives the donee a property right in an anatomical gift donated under the anatomical gift law and permits a donee 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 where the donee resides. The court is required to give these actions precedence over other pending actions.

The act specifies, for the purposes of determining who has the property right in an anatomical gift, that if a will or other document by which an anatomical gift is made includes a valid specification of the intended donee, the donee is the specified person or entity; otherwise, the donee, in the case of organs, is the organ procurement organization that serves the region of the state where the donor's body is located, or in the case of tissue or eyes, an organization entitled by law to recover the tissue or eyes from the donor's body, such as an eye or tissue bank designated by a coroner or funeral director. (See "**Coroner and funeral director designation of an eye bank and tissue bank.**")

Coroner and funeral director designation of an eye bank and tissue bank

(secs. 313.30 and 4717.17)

The act authorizes a coroner or funeral director to designate in writing an eye bank, tissue bank, or both with which the coroner or funeral director will cooperate concerning retrieval of usable eyes and tissues that have been donated.

The act specifies that an eye bank or tissue bank designated by a coroner or funeral director has the property right in an anatomical gift (see "**Declarations of Anatomical gifts,**" above). The act provides that a coroner or funeral director acting

² *The only exception is that the coroner's rights are paramount if an autopsy is needed, but these rights can be waived.*

in good faith is not liable in damages for injury resulting from acting or attempting to act in accordance with the donor's declaration of an intent to make an anatomical gift.

Donor registry

(secs. 2108.15, 2108.18, and 4501.024)

The act requires the Bureau of Motor Vehicles (BMV) to develop and maintain a donor registry that identifies each individual who has agreed to make an anatomical gift by a designation on a driver's or commercial driver's license or motorcycle operator's license or endorsement. The registry must be fully operational no later than July 1, 2002. The BMV must maintain the registry in a manner that provides to organ procurement organizations, tissue banks, and eye banks immediate access to the information in the registry 24 hours a day, seven days a week.

The Registrar of Motor Vehicles, in consultation with the Director of Health and the Second Chance Trust Fund Advisory Committee created by the act, is required to formulate proposed rules that specify all of the following:

- (1) The information to be included in the registry;
- (2) A process, in addition to that provided under existing law, for an individual to revoke the intent to make an anatomical gift and for updating information in the registry;
- (3) How the registry will be made available to organ procurement organizations, tissue banks, and eye banks;
- (4) Limitations on the use of and access to the registry;
- (5) How information on organ, tissue, and eye donation will be developed and disseminated to the public by the BMV and the Department of Health;
- (6) Anything else the Registrar considers appropriate.

In formulating the proposed rules, the Registrar may consult with any person or entity that expresses an interest in the rules. Following formulation of the proposed rules, the Registrar is to adopt the rules no later than January 1, 2002. The rules are to be adopted in accordance with the Administrative Procedure Act. The cost of developing and initially implementing the registry is to be paid from the Second Chance Trust Fund and cannot exceed \$150,000.

Toll-free telephone number

(secs. 2108.19 and 4501.024)

The BMV is required by the act to maintain a toll-free telephone number available 24 hours a day that the public may use to obtain information on becoming an organ, tissue, or eye donor. The BMV must pay the costs of maintaining the telephone number.

Immunity

(sec. 2108.20)

The act provides immunity for the BMV, Registrar of Motor Vehicles, deputy registrars of motor vehicles, and agents and employees of the BMV from civil or criminal liability for acting, attempting to act, or failing to act in accordance with the laws governing the registry and the toll-free telephone number, unless the act, attempt, or omission was committed or omitted with malicious purpose, in bad faith, or in a wanton or reckless manner.

Second Chance Trust Fund and Advisory Committee

(secs. 2108.15 and 2108.17)

Trust Fund

The Second Chance Trust Fund consists of \$1 contributions made by persons applying for or renewing an Ohio driver's license or identification card. The money in the Fund is to be used by the Director of Health to promote organ tissue, and eye donation. The act specifies that money in the Fund is also to be used for the following:

- (1) Development and initial implementation of the Donor Registry developed and maintained by the BMV;
- (2) Development and distribution of materials promoting organ, tissue, and eye donation the Director is to make available to other state agencies;
- (3) Development and implementation of local public education programs, local donor awareness programs in secondary schools, and local programs recognizing donor families;³

³ *The Director is required by continuing law to use money in the Second Chance Trust Fund to develop and implement such programs on the statewide level.*

(4) Cooperation with the Ohio Supreme Court, the Ohio State Bar Association, and Ohio law schools to more effectively educate attorneys about donation of anatomical gifts and to encourage them to assist their clients in donating anatomical gifts;

(5) Cooperation with the State Medical Board, the State Medical, Osteopathic, and Ophthalmological Associations, and Ohio colleges of medicine and osteopathic medicine to more effectively educate physicians about the donation of anatomical gifts and to encourage them to assist their patients in making declarations of anatomical gifts;

(6) Reimbursement of the Department of Health for its administrative costs relating to the Fund and the Second Chance Trust Fund Advisory Committee.

The act eliminates the provision of law that provided for compensation of a Department of Health employee for the employee's time spent monitoring hospital compliance with Ohio's anatomical gift law as a permissible use of the money in the Fund.

Advisory Committee

The act creates the Second Chance Trust Fund Advisory Committee to make recommendations to the Director for projects that should receive money from the Fund.⁴ The Director then must approve or disapprove those projects and approve or disapprove the disbursement of money from the Fund.

The Advisory Committee is to include the chairs of the standing committees of the House of Representatives and Senate with primary responsibilities for health legislation and a representative of each of the following appointed by the Director:

(1) An Ohio organ procurement organization that belongs to the Organ Procurement and Transplantation Network;

(2) An Ohio tissue bank that is an accredited member of the American Association of Tissue Banks and not affiliated with an organ procurement organization;

(3) An Ohio eye bank that is a certified member of the Eye Bank Association of America and not affiliated with an organ procurement organization;

⁴ *The duties of the Advisory Committee are similar to those of the Second Chance Trust Fund Board, which ceases to exist December 31, 2000. The Board was established by Sub. S.B. 300 of the 121st General Assembly to make recommendations to the Director of Health for projects for funding from the Second Chance Trust Fund.*

(4) The Ohio Solid Organ Transplantation Consortium;

(5) The Ohio Hospital Association;

(6) The Department of Health.

(7) Three members of the public who are not affiliated with recovery agencies.

Three public members are not to be initially appointed to the committee. Instead, representatives of the following are to be appointed in place of the public members and are to serve on the committee until the rules governing the donor registry are formulated: an organ procurement organization in Ohio designated by the United States Secretary of Health and Human Services that is not represented by the appointment under (1) above; an Ohio tissue bank appropriately accredited, not affiliated with an organ procurement organization, and not represented by the appointment under (2) above; an Ohio eye bank appropriately certified, not affiliated with an organ procurement organization, and not represented by the appointment under (3) above. After the rules are formulated, the public members are to be appointed to serve terms of three years.

The members appointed under (1), (2), and (3) above may not be from the same organ procurement and distribution service area, as designated by the United States Secretary of Health and Human Services. The members appointed by the Director are to serve staggered three-year terms, and no individual, except for the Committee's legislative members, may serve more than two terms regardless of whether the terms were full or partial terms.⁵ Each member is to serve from the date of appointment until the member's successor is appointed. Vacancies are to be filled for the balance of the expired term in the same manner as the original appointment.

The Committee is to choose a chairperson each year from among its members and establish procedures for governance of its operations. The Committee is required to meet at least semiannually. The members are to be compensated only for actual and necessary expenses incurred in the performance of official duties. Those expenses are to be paid from the Fund.

In addition to making recommendations to the Director, the Committee is required to consult with the Registrar of Motor Vehicles and the Director in formulating rules for governance of the donor registry and development of materials

⁵ *The initial appointees representing the Department of Health and Ohio Solid Organ Transplantation Consortium are to serve two-year terms. The initial appointee representing the Ohio Hospital Association is to serve a one-year term.*

promoting organ, tissue, and eye donation and as requested, consult with the Registrar or Director on other matters related to organ donation.

The Committee must submit a yearly report of its activities and recommendations to the Director.

The act provides that state law regarding the automatic expiration of certain statutorily created boards, commissions, councils, committees, and other entities does not apply to the Second Chance Trust Fund Advisory Committee.⁶

Recovery agencies

(sec. 2108.01)

Recovery agencies are among the entities that state law authorizes to accept anatomical gifts. (R.C. 2108.03.) Recovery agencies are certain incorporated, nonprofit organ procurement organizations, eye banks, and tissue banks. Under prior law, an eye bank had to be certified by the Eye Bank Association of America to be a recovery agency. Under the act, an eye bank must be accredited by the Eye Bank Association or have applied for accreditation, be in substantial compliance with the accreditation standards, and, since applying, have been in operation for not longer than one year. For a tissue bank to be a recovery agency, it must be certified by the American Association of Tissue Banks or have applied for certification and be in substantial compliance with certification standards. The act provides that to be considered a recovery agency a tissue bank may not have been in operation for longer than one year since applying for certification.

Department of Education

(sec. 3301.07)

The act permits the State Board of Education to require as part of the health and driver education curricula information approved by the Director of Health promoting the donation of anatomical gifts and provide the information to high schools, educational service centers, and joint vocational school district boards of education.

⁶ The law is Revised Code section 101.84, which provides that any board, commission, committee, or council, or any other similar state public body created by statute after January 1, 1997, automatically ceases to exist ("sunset") four years after its creation, unless the General Assembly takes further action to extend it.

Public information

(sec. 124.04)

The Department of Administrative Services is required by the act to include periodically in communications sent to state employees information approved by the Director of Health promoting the donation of anatomical gifts.

Organ Donor Task Force

(Section 3)

The act creates the Organ Donor Task Force to do all of the following:

- (1) Recommend a form for expressing the intent to make an anatomical gift to be distributed by the Bureau of Motor Vehicles;
- (2) Recommend changes to the documents of gift set forth in existing law to endure that they are suited to carrying out their intended purposes;
- (3) Research the possibility of electronically connecting the donor registry established by the act to donor registries outside Ohio;
- (4) Research procedures used by funeral directors and individuals authorized to remove organs, tissues, or eyes insofar as those procedures could interfere with each other and recommend methods to facilitate cooperation between funeral directors and those individuals.

In making its recommendations, the task force must consider that the form may be distributed by the Bureau in conjunction with an application for a driver's license or motorcycle operator license and must also consider and make recommendations concerning how the form may be made available to hospitals and recovery agencies.

The task force is to consist of the following:

- (1) The chairs of the standing committees of the House of Representatives and the Senate with primary responsibility for health legislation;
- (2) A representative of the Ohio State Bar Association;
- (3) Three persons appointed by the President of the Senate who are not members of the General Assembly;
- (4) Three persons appointed by the Speaker of the House of Representatives who are not members of the General Assembly.



The task force is to submit its report to the Speaker of the House of Representatives and the President of the Senate no later than September 1, 2001. On submission of its report, the task force is to cease to exist.

Members of the task force are to receive only reimbursement for actual and necessary expenses in performing the official duties of the task force.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-30-99	p. 1016
Reported, S. Health, Human Services & Aging	10-14-99	p. 1070
Passed Senate (32-0)	10-19-99	pp. 1079-1081
Reported, H. Health, Retirement and Aging	9-19-00	pp. 2257-2258
Passed House (97-0)	9-20-00	pp. 2262-2264
Senate concurred in House amendments (32-0)	11-08-00	pp. 2187-2188

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