



*David Fogarty*

***Bill Analysis***  
*Legislative Service Commission*

## **H.B. 658**

123rd General Assembly  
(As Introduced)

**Reps. Jolivette, Olman, Goodman, Van Vyven, Harris, Tiberi, Willamowski,  
Schuler, Allen, Mettler, James**

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### **BILL SUMMARY**

- Establishes that a valid declaration of anatomical gift prevails over the contrary wishes of a donor's family, that a hospital is not required to obtain approval from a donor's family when the donor has executed a declaration of anatomical gift, and that the donee has an enforceable property right in the anatomical gift.
- Requires the Department of Health to contract with a private entity to develop and maintain a registry that identifies certain individuals who have agreed to make an anatomical gift.
- Requires the private entity selected by the Department 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.
- Requires the private entity selected by the Department to provide informational material on organ, tissue, and eye donation to certain individuals who elect not to make an anatomical gift.
- Provides that the Director of Health is to use moneys from the Second Chance Trust Fund to pay for certain costs associated with developing and maintaining the registry, maintaining the toll-free telephone number, and sending informational materials on organ donation and other information.
- Requires the Bureau of Motor Vehicles to send to the private entity selected by the Department the date of birth and last four digits of the Social Security number of individuals who agree to make an anatomical gift.

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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)). "Death" is the irreversible cessation of circulatory and respiratory functions ("heart-lung death") or the irreversible cessation of all brain function, including cessation of brain stem function ("brain death") (R.C. § 2108.30).

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).

Ohio law requires each hospital to develop a protocol for obtaining anatomical gifts. The protocol must be developed in consultation with an organ, eye, and tissue procurement organization that works with the hospital in procuring and realizing anatomical gifts. Under the protocol, the hospital must collaborate with an organ procurement organization to establish a procedure for requesting organ, eye, or tissue donations that ensures that the family of each potential donor is notified of the option to donate organs, eyes, or tissues, or to decline to donate. (R.C. § 2108.021).

### Declarations of anatomical gifts

(secs. 2108.02, 2108.022, and 2108.04)

The bill provides that a hospital need not request that a patient's family approve an anatomical gift if the patient has already executed a valid declaration of anatomical gift. It also provides that a valid declaration of an anatomical gift prevails over any contrary desires of the donor's family regarding the donor's corpse.

Under Ohio's "Uniform Anatomical Gift Act," the rights of the person or entity to which an anatomical gift is made (the donee) are paramount to the rights of others.<sup>1</sup> The bill creates a property right in a specified anatomical gift and

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<sup>1</sup> *The only exception is that the coroner's rights are paramount if an autopsy is needed, but these rights can be waived.*

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 by the bill to give these declaratory judgment actions precedence over other pending actions.

### **Donor registry**

(sec. 2108.17(A), (B), and (C))

The bill requires the Department of Health to contract with a private entity to develop and maintain a donor registry that identifies by date of birth and the last four digits of the individual's Social Security number each individual who has agreed to make an anatomical gift by a designation on the individual's driver's or commercial driver's license or motorcycle operator's license or endorsement. The entity 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 Director of Health is required by the bill to adopt rules to govern the donor registry. The rules must specify all of the following:

- (1) The information to be included in the registry;
- (2) How the registry will be made available to organ procurement organizations, tissue banks, and eye banks;
- (3) Limitations on the use of and access to the registry;
- (4) Anything else the Director considers appropriate.

### **Toll-free telephone number**

(sec. 2108.18)

The private entity selected by the Department of Health to develop and maintain the donor registry is required by the bill 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.

### **Informational materials on organ donation**

(sec. 2108.19)

The bill provides that if an applicant for a driver's license, commercial driver's license, or motorcycle operator's license does not certify a willingness to

make an anatomical gift, the private entity selected by the Department of Health must, within 30 days of receipt of notice from the Bureau of Motor Vehicles, send the applicant both of the following:

(1) Informational material provided by the Department of Health on the importance of organ, tissue, and eye donation;

(2) Informational material on how to become an organ, tissue, or eye donor.

### **Funding**

(secs. 2108.15(B), (I), and (J), 2108.17(D), 2108.18, 2108.19, and 4501.80(C))

The bill requires the Director of Health to use moneys in the Second Chance Trust Fund to pay the cost of developing and maintaining the registry, maintaining the toll-free telephone number, sending informational materials on organ donation to individuals who do not certify a willingness to make an anatomical gift, and transmitting information about individuals who certify a willingness to make an anatomical gift to the entity that operates the registry.<sup>2</sup>

### **Use of Social Security numbers and other personal information**

(secs. 4501.25 and 4501.80)

The Bureau of Motor Vehicles is required by the bill to send to the private entity selected by the Department of Health the date of birth and last four digits of the Social Security number of each individual who certifies a willingness to make an anatomical gift for the purpose of including those individuals in the donor registry. The Bureau is also required to send to the private entity the name and address of each individual who does not certify a willingness to make an anatomical gift for the purpose of having informational materials on organ donation sent to the individual.

Current law prohibits the Department of Public Safety from providing Social Security numbers from its drivers license and vehicle registration records to any person, except local, state, and federal governmental agencies. The bill continues this prohibition, but requires the Department of Public Safety to provide the last four digits of Social Security numbers of individuals who certify a willingness to make an anatomical gift to the entity that operates the registry.

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<sup>2</sup> *The Second Chance Trust Fund is used to finance educational material and programs regarding organ donation. The Fund consists of contributions made by persons applying for or renewing an Ohio driver's license or identification card.*

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	04-12-00	p. 1824

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