



Bill Analysis

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Legislative Service Commission

Sub. S.B. 188*

123rd General Assembly

(As Reported by H. Health, Retirement and Aging)

Sens. Drake, White, Prentiss, Kearns, Spada

BILL 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.
- Requires the Bureau of Motor Vehicles to develop and maintain a registry that identifies certain individuals who have agreed to make an anatomical gift.
- Requires the Bureau 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 moneys from the Second Chance Trust Fund.
- Creates the Second Chance Trust Fund Advisory Committee.
- Requires the State Board of Education to include information on the donation of anatomical gifts in health and driver education curricula.

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

- 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.

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).

Protocols for obtaining anatomical gifts

(secs. 2108.01, 2108.021, and 2108.022)

Current law requires every hospital to develop and implement a written protocol for facilitating procurement of anatomical gifts in consultation with all recovery agencies that work with the hospital in procuring and realizing anatomical gifts. A "recovery agency" is a nonprofit organization incorporated under Ohio law that is one of the following: (1) an organ procurement organization designated by the United States Secretary of Health and Human Services, (2) an eye bank certified by the Eye Bank Association of America, or (3) a tissue bank that is certified by the American Association of Tissue Banks or has applied for certification and is in substantial compliance with certification standards of the Association. The bill provides that "recovery agency" includes an eye bank that has applied for accreditation by the Eye Bank Association of America, is in substantial compliance with accreditation standards of the Association, and since applying for accreditation

has been in operation no longer than one year and excludes an uncertified tissue bank that has been operating for more than one year since applying for certification.

Under current law each protocol must include provisions under which the hospital is to do several things, including both of the following:

(1) Enter into an agreement with an organ procurement organization that: (a) provides for the hospital to give timely notice that an individual's death is imminent or the individual has died in the hospital, (b) provides for the organ procurement organization to determine the medical suitability of the potential donor for organ donation, (c) on notification by the hospital of the death or imminent death of a potential eye or tissue donor, provides for the organ procurement organization or third party to notify in a timely manner the eye and tissue banks with which the hospital has agreements, and (d) unless an agreement the hospital has entered into with an eye bank or tissue bank provides for the eye bank or tissue bank to determine the medical suitability of the potential donor for eye or tissue donation, provides for the organ procurement organization to determine the medical suitability of each potential donor for eye and tissue donation.

(2) Collaborate with the 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.

The bill replaces the specific protocol requirements with a requirement that the protocol be consistent with Health Care Financing Administration (HCFA) regulations.¹

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

(secs. 313.30 and 4717.17)

The bill 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 bill specifies that an eye bank or tissue bank designated by a coroner or funeral director has the property right in an anatomical gift. The bill provides that a

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.

coroner or 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 of an intent to make an anatomical gift. (See "**Declaration of anatomical gifts.**")

Declarations of anatomical gifts

(secs. 2108.02 and 2108.04)

The bill 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 Ohio's anatomical gift 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 bill 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,**" above.)

Donor registry

(secs. 2108.18 and 4501.024)

The bill requires the Bureau of Motor Vehicles to develop and maintain a donor registry that identifies 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 registry must be fully operational no later than July 1, 2002. The Bureau 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.

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

The Registrar of Motor Vehicles, in consultation with the Director of Health and the Second Chance Trust Fund Advisory Committee created by the bill, 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 Bureau 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 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 Bureau is required by the bill to develop and 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.

Immunity

(sec. 2108.20)

The bill provides immunity for the Bureau of Motor Vehicles, Registrar of Motor Vehicles, deputy registrars of motor vehicles, and agents and employees of the Bureau 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

(secs. 2108.15 and 2108.17)

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 donation. The bill 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 Bureau of Motor Vehicles;

(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 and local programs recognizing donor families;

(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.

It eliminates the provision of current law that provides 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.

The bill creates the Second Chance Trust Fund Advisory Committee, which is to make recommendations to the Director for projects that should receive money from the Fund.³ The Director then must approve or disapprove those projects and

³ Under current law, the Second Chance Trust Fund Board is appointed by the Governor to make recommendations to the Director for projects that should receive money from the Fund. The Board is abolished as of December 31, 2000.

approve or disapprove the disbursement of money from the Fund. The 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 Ohio Solid Organ Transplantation Consortium;

(5) The Ohio Hospital Association;

(6) The Department of Health.

The director is also to appoint three member of the public who are not affiliated with recovery agencies. The three public members are not to be initially appointed to the committee instead the three other Ohio organ procurement organizations not represented under (1) 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. After the rules are formulated, the public members are to be appointed to serve terms of three years.

The members (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.

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. Because the Committee is established within the Department of Health, the Department is to be responsible for its other administrative expenses.

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 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 bill 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.⁴

Department of Education

(sec. 3301.07)

The bill requires the State Board of Education to include in the driver's 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.

Public information

(secs. 124.04 and 5703.142)

The Department of Administrative Services is required by the bill 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 bill 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;

⁴ Revised Code section 101.84 provides that any board, commission, committee, or council, or any other similar state public body created by statute after January 1, 1997, automatically expires four years after its creation, unless the General Assembly takes further action to extend its life.

(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 bill 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)
Reported, H. Health, Retirement
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10-19-99
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pp. 1079-1081
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