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Bill Analysis
Legislative Service Commission

H.B. 392

125th General Assembly
(As Introduced)

Reps. Wagner, Williams, McGregor, Latta, Hoops, Price, Seitz, Aslanides, G. Smith, Hollister, Kearns, Harwood, Perry, Raga, Walcher, Distel, DeGeeter, Collier, Schmidt, C. Evans, Faber, Ujvagi, Gilb, Reidelbach, Barrett, Allen

BILL SUMMARY

- 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 living will ("declaration" under Ohio law).
- Requires a printed declaration form to include a section, before the form's signature line, specifically designed for an individual to declare the individual's intent to make an anatomical gift.
- Permits an individual who makes an anatomical gift through a declaration to amend or revoke the gift.
- Permits an individual to refuse to make an anatomical gift by specifying the refusal in the declaration.

CONTENT AND OPERATION

Background

Anatomical gifts

(R.C. 2108.01, 2108.02, and 2108.03)

Ohio law defines "anatomical gift" as a donation of all or part of a human body to take effect upon or after death. 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 signed by a parent or guardian. The following persons or entities may become donees of anatomical gifts:

- Hospitals, surgeons, physicians, or recovery agencies, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science.
- Accredited medical or dental schools, colleges, or universities, for education, research, or advancement of medical or dental science.

Living wills

(R.C. 2133.02 and 2133.03)

A living will (referred to under Ohio law as "a declaration") is a legal document governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment¹ to an individual (referred to as "a declarant"). For a declaration to be valid, all of the following requirements must be met:

- The declaration must be signed by the declarant or by another individual at the declarant's direction, and must state its date of execution.
- The declarant's signature must appear at the end of the declaration.
- The declarant must be an adult of sound mind.
- The declaration must be executed voluntarily.
- The declaration must either be witnessed by two adults or acknowledged before a notary public.
- The witness or notary public must attest that the declarant appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

Depending on whether the declarant intends the declaration to apply when the declarant is in a terminal condition, in a permanently unconscious state, or in either of these circumstances, the declarant's declaration must use either or both of the terms "terminal condition" and "permanently unconscious state" and must

¹ "Life-sustaining treatment" means any medical procedure, treatment, intervention, or other measure that, when administered to a qualified patient or other patient, will serve principally to prolong the process of dying. (R.C. 2133.01(Q).)

define or otherwise explain these terms in a manner that is substantially consistent with the definitions of these terms in Ohio law.²

A declaration becomes operative when all of the following requirements are met:

- The declaration is communicated to the attending physician of the declarant.
- The attending physician and one other physician examine the declarant and determine that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration.
- If the declarant is in a permanently unconscious state, the consulting physician associated with the determination that the declarant is in the permanently unconscious state must be a physician who, by virtue of advanced education or training, of a practice limited to particular diseases, illnesses, injuries, therapies, or branches of medicine and surgery or osteopathic medicine and surgery, of certification as a specialist in a particular branch of medicine and surgery or osteopathic medicine and surgery, or of experience acquired in the practice of medicine and surgery, is qualified to determine whether the declarant is in a permanently unconscious state.
- If the declarant is in a terminal condition or a permanently unconscious state, the attending physician of the declarant must determine, in good faith, to a reasonable degree of medical certainty,

² *"Terminal condition" means an irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by a declarant's or other patient's attending physician and one other physician who has examined the declarant or other patient, both of the following apply: (1) there can be no recovery, and (2) death is likely to occur within a relatively short time if life-sustaining treatment is not administered (R.C. 2133.01(AA)). "Permanently unconscious state" means a state of permanent unconsciousness in a declarant or other patient that, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by the declarant's or other patient's attending physician and one other physician who has examined the declarant or other patient, is characterized by both of the following: (1) irreversible unawareness of one's being and environment, and (2) total loss of cerebral cortical functioning, resulting in the declarant or other patient having no capacity to experience pain or suffering (R.C. 2133.01(U)).*

and in accordance with reasonable medical standards, that there is no reasonable possibility that the declarant will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment.

- The attending physician determines that the declarant is no longer able to make informed decisions regarding the administration of life-sustaining treatment.

Provision for anatomical gifts

Current law

(R.C. 2108.04(A), (B)(1) and (2), and (F))

Under current law, an individual may make an anatomical gift through the following means:

- If the individual is at least age 18, by a will.
- By a document other than a will (however, if the individual is less than age 18, one of the witnesses who signs the document must be the parent or guardian of the minor).
- By a designation on a driver's license or motorcycle operator's license or state identification card (however, if the individual is less than 18, the statement authorizing the designation also must be signed by a parent or guardian of the holder of the license or card).

A valid declaration of an anatomical gift made by any of these means prevails over any contrary desires of the donor's family regarding the donor's corpse. Nonetheless, a donee is not required to accept an anatomical gift.

The bill

(R.C. 2108.04(B)(3) and 2133.16(B))

The bill preserves the ability of an individual to make an anatomical gift by all of the means listed above, but also adds that an individual may 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. When an individual declares the intent to make an anatomical gift in the individual's declaration, the bill provides that 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 must meet all of the requirements in the Anatomical Gift Law (R.C. 2108.01 through 2108.12) to the extent the declaration specifies the intent of the individual to make an anatomical gift.

Form for anatomical gifts

Current law

(R.C. 2108.10(A) and 2133.07(A))

Current law specifies the general form for anatomical gifts to which documents other than wills must substantially comply. Also, under current law, a printed form of a declaration may be sold or otherwise distributed for use by adults who are not advised by an attorney. By using a printed form, an individual may do all of the following:

- Authorize the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the individual be in a terminal condition, a permanently unconscious state, or either a terminal condition or a permanently unconscious state.
- Authorize the withholding or withdrawal of nutrition or hydration should the individual be in a permanently unconscious state.
- Designate one or more persons who are to be notified by the individual's attending physician at any time that life-sustaining treatment would be withheld or withdrawn pursuant to the declaration.

The printed form may not be used as an instrument for granting any other type of authority or for making any other type of designation, except that it may be used as a DNR ("do-not-resuscitate") identification³ if the individual so specifies.

³ A "DNR identification" is a standardized identification card, form, necklace, or bracelet that is of uniform size and design, that has been approved by the Department of Health, and that signifies either of the following:

(1) That the person who is named on and possesses the card, form, necklace, or bracelet has executed a declaration that authorizes the withholding or withdrawal of CPR and that has not been revoked;

(2) That the attending physician of the person who is named on and possesses the card, form, necklace, or bracelet has issued a current do-not-resuscitate order, in accordance with the do-not-resuscitate protocol adopted by the Department of Health for

The bill

(R.C. 2108.10(A) and 2133.07(B))

The bill 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 a form provided for in the bill (a reproduction of this form appears in the **COMMENT** section, below).

Amendment and revocation of anatomical gifts

Current law

(R.C. 2108.06, not in the bill)

Existing law specifies that an individual may amend or revoke an anatomical gift. If the will, card, or other document of anatomical gift has been delivered to a specified donee, the donor may amend or revoke the anatomical gift by any of the following means:

- The execution and delivery to the donee of a signed statement.
- An oral statement made in the presence of two persons and communicated to the donee.
- A statement during a terminal illness or injury addressed to the physician attending the donor and communicated to the donee.
- A signed card or document found on the individual's person or in the person's effects.

If a document of anatomical gift has not been delivered to a donee, the donor may revoke the document of gift in any manner specified above or by destruction, cancellation, or mutilation of the document and all executed copies of it.

If an anatomical gift has been made by will, the gift may be amended or revoked in any manner for the amendment or revocation of anatomical gifts when

that person and has documented the grounds for the order in that person's medical record.

R.C. 2133.21(C).



the document of gift has been delivered to a donee (see above) or in the manner provided for amendment or revocation of wills.⁴

The bill

(R.C. 2133.16(C) and (D))

The bill provides that an individual who makes an anatomical gift through a declaration may amend the anatomical gift under the circumstances and by any of the means provided for individuals who have already delivered a will, card, or other document of anatomical gift to a donee (see above). An individual who makes an anatomical gift through a declaration may revoke the gift under the circumstances and by any of the means provided for individuals who have already delivered a will, card, or other document of anatomical gift to a donee or by cancellation of the individual's intent to make the anatomical gift as specified in the declaration.

Refusal to make an anatomical gift

(R.C. 2133.16(E))

Under the bill, 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 declaration.

No requirement to make or amend an anatomical gift

(R.C. 2133.16(E))

The bill makes it clear that nothing in the bill requires a declarant to make, amend, or refuse to make an anatomical gift in a space provided in a declaration or otherwise limits a declarant from making, amending, or refusing to make an anatomical gift. The failure of a declarant to indicate in the space provided in the declaration the intent of the declarant to make an anatomical gift or to refuse to make an anatomical gift does not create a presumption of the intent of the declarant with respect to the matter of making or refusing to make an anatomical gift.

⁴ R.C. 2107.084 and R.C. 2107.33 govern the modification and revocation of wills.

COMMENT**ANATOMICAL GIFT**(optional)

Upon my death, the following are my directions regarding donation of all or part of my body:

YES, in the hope that I may help others upon my death, I hereby give the following body parts:

for any purpose authorized by law: transplantation, therapy, research, or education.

OR

NO, I do not wish to donate all or any part of my body as an anatomical gift. (If this revokes a prior anatomical gift that I have made to a designated donee, I will attempt to notify the donee to which or to whom I agreed to donate all or part of my body.)

If I do not check either of the lines indicated above, no presumption is created about my desire to make or refuse to make an anatomical gift.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-03-04	p. 1592

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