Sub. H.B. 392*

125th General Assembly
(As Reported by S. Health, Human Services, and Aging)

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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.
- Requires a printed declaration form to include a donor registry enrollment form that an individual making an anatomical gift can send to the Bureau of Motor Vehicles to be included in the Bureau's donor registry.
- 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.

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* *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.*

- Specifies that the bill's provisions concerning printed forms of declarations take effect 90 days after the bill's effective date.

- Makes changes to the membership of the Second Chance Trust Fund Advisory Committee.

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Background

Anatomical gifts

Ohio law defines "anatomical gift" as a donation of all or part of a human body to take effect upon or after death (R.C. 2108.01). 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 (R.C. 2108.02). The following persons or entities may become donees of anatomical gifts (R.C. 2108.03):

- 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

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 treatment[1] 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 define or otherwise explain these terms in a manner that is substantially consistent with the definitions of these terms in Ohio law.[2] (R.C. 2133.02.)

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[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)).*

[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*

A declaration becomes operative when all of the following requirements are met (R.C. 2133.03):

- The declaration is communicated to the attending physician of the declarant.

- The attending physician and one other physician who examines the declarant 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 the physician's expertise, 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 must determine, in good faith, to a reasonable degree of medical certainty, 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

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

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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)).

- 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. (R.C. 2108.04.)

The bill

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 is subject to the Anatomical Gift Law to the extent the declaration specifies the intent of the individual to make an anatomical gift. (R.C. 2108.04(B)(3) and 2133.16(B).)

Form for anatomical gifts

Current law

Current law specifies the general form for anatomical gifts to which documents other than wills must substantially comply (R.C. 2108.10(A)). 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") identification[3] if the individual so specifies. (R.C. 2133.07.)

The bill

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 (R.C. 2133.07(B)). 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 **COMMENT** 1, below) (R.C. 2108.10(A) and 2133.07(B)).

Under the bill, a printed declaration form must also 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 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). The donor registry enrollment form must conform substantially to a form provided in the bill (a reproduction of this form appears in **COMMENT** 2, below). (R.C. 2133.07(C).) The bill provides that any

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[3] *A "DNR identification" is a standardized identification card, form, necklace, or bracelet that signifies either of the following:*

(1) That the person who is named on and possesses the DNR identification 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 DNR identification has issued a current do-not-resuscitate order for that person and has documented the grounds for the order in that person's medical record.

R.C. 2133.21(C).

person who sends the enrollment form to the BMV requesting inclusion in the donor registry must be included (R.C. 2108.18(A)(2)).

The bill specifies that the changes made to the Revised Code sections related to printed declaration forms take effect 90 days after the bill's effective date (Section 3). The bill also provides that those changes do not affect the validity of a declaration executed before the effective date of the changes (Section 4).

Amendment and revocation of anatomical gifts

Current law

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 the document of gift has been delivered to a donee (see above) or in the manner provided for amendment or revocation of wills.[4] (R.C. 2108.06, not in the bill.)

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

The bill

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. (R.C. 2133.16(C) and (D).)[5]

Refusal to make an anatomical gift

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. (R.C. 2133.16(E).)

No requirement to make or amend an anatomical gift

The bill expressly states that a declarant is not required to make, amend, or refuse to make an anatomical gift in a space provided in a declaration or otherwise limited by the bill in 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. (R.C. 2133.16(F).)

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[5] *If the will, card, or other document of gift or an executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the anatomical gift by: (1) the execution and delivery to the donee of a signed statement, (2) an oral statement made in the presence of two persons and communicated to the donee, (3) a statement during a terminal illness or injury addressed to the physician attending the donor and communicated to the donee, and (4) a signed card or document found on the donor's person or in the donor's effects.*

The donor may revoke any document of gift which has not been delivered to the donee, in any manner specified in the preceding paragraph or by destruction, cancellation, or mutilation of the document and all executed copies of it. Any anatomical gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in the preceding paragraph. (R.C. 2108.06.)

Second Chance Trust Fund Advisory Committee

Current law

Under current law, the Second Chance Trust Fund Advisory Committee[6] has 11 members:

- The chairs of the standing committees of the House of Representatives and Senate with primary responsibilities for health legislation;
- A representative of an Ohio organ procurement organization that is a member of the Organ Procurement and Transplantation Network;
- A representative of an Ohio tissue bank that is an accredited member of the American Association of Tissue Banks and is not affiliated with an organ procurement association;
- A representative of an Ohio eye bank that is certified by the Eye Bank Association of America and is not affiliated with an organ procurement association;
- A representative of the Ohio Solid Organ Transplantation Consortium;
- A representative of the Ohio Hospital Association;
- A representative of the Department of Health;
- Three members of the public who are not affiliated with recovery agencies.

The Committee members who represent an Ohio organ procurement organization, tissue bank, or eye bank must be from different organ procurement and distribution service areas designated by the U.S. Secretary of Health and Human Services. (R.C. 2108.17.)

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[6] *The Committee's duties include all of the following: (1) making recommendations to the Director of Health for anatomical gift related projects for funding from the Second Chance Trust Fund, (2) consulting with the Registrar of Motor Vehicles in formulating proposed rules regarding the BMV donor registry and anatomical gift designations, (3) as requested, consulting with the Registrar or Director on other matters related to organ donation, and (4) approving brochures, written materials, and electronic media regarding anatomical gifts and anatomical gift procedures for use in driver training schools (R.C. 2108.17(H)).*

The bill

The bill makes changes to the membership requirements for the Committee. It eliminates the requirement that the tissue bank and eye bank committee members not be affiliated with an organ procurement organization and the requirement that the organ procurement organization, tissue bank, and eye bank members be from different organ procurement and distribution service areas. In addition, the bill requires that the member representing the Ohio Hospital Association also be representative of a hospital that has either a transplant program or a Level I or Level II trauma center.

The bill expands the Committee's membership to 13 members. The two new members are to be affiliated with recovery agencies or members of the public. The Director of Health is to appoint the new members. The new members, as is the case for the other non-legislative members of the Committee, are not to serve more than two consecutive terms.

Under the bill, members, except the legislative members, must be geographically and demographically representative of the state. The bill provides that no more than three of these members can be affiliated with the same recovery agency or group of recovery agencies. The bill requires that recovery agencies that recover only one type of organ, tissue, or part, as well as those that recover more than one type of organ, tissue, or part, be represented. (R.C. 2108.17.)

COMMENT 1

ANATOMICAL GIFT (optional)

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

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.

If I do not indicate a desire to donate all or part of my body by filling in the lines above, no presumption is created about my desire to make or refuse to make an anatomical gift.

COMMENT 2

DONOR REGISTRY ENROLLMENT FORM (optional)

To register for the Donor Registry, please complete this form and send it to the Ohio Bureau of Motor Vehicles. This form must be signed by two witnesses. If the donor is under age eighteen, one witness must be the donor's parent or legal guardian.

. . . Please include me in the donor registry.

. . . Please remove me from the donor registry.

Full Name (please print) . . . . . .

Mailing address . . . . . .

. . . . . .

Phone . . . . . Date of Birth . . . . . .

Driver License or ID Card No. . . . . .

Social Security No. . . . . .

. . . On my death, I make an anatomical gift of my organs, tissues, and eyes for any purpose authorized by law.

OR

. . . On my death, I make an anatomical gift of the following specified organs, tissues, or eyes for any purposes indicated below.

. . . . . .
. . . . . .
. . . . . .

Purposes:

. . . Any purpose authorized by law

. . . Transplantation

. . . Therapy

. . . Research

. . . Education

. . . Advancement of medical science

. . . Advancement of dental science

. . . . . .
Signature of donor registrant Date

. . . . . .
Witness signature

. . . . . .
Witness signature

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	02-03-04	p.	1592
Reported, H. Juvenile & Family Law	04-27-04	p.	1792
Passed House (96-0)	05-05-04	pp.	1843-1844
Reported, S. Health, Human Services, & Aging	---		---

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