

H.B. 464
As Introduced

_____ moved to amend as follows:

In line 1 of the title, after "2106.13" insert ", 2108.05, 1
2108.06, 2108.07, 2108.23, 2108.24, 2108.34"; after "2111.50" 2
insert ", 2133.07" 3

In line 2 of the title, after "5805.06" insert "and to repeal 4
section 2133.16" 5

In line 7 of the title, delete "and" 6

In line 9 of the title, after "judge" insert ", and to 7
eliminate a donor's ability to make an anatomical gift through a 8
will or a declaration or living will" 9

In line 10, after "2106.13" insert ", 2108.05, 2108.06, 10
2108.07, 2108.23, 2108.24, 2108.34"; after "2111.50" insert ", 11
2133.07" 12

After line 81, insert: 13

"**Sec. 2108.05.** (A) A donor may make an anatomical gift by 14
doing any of the following: 15

(1) Authorizing a statement or symbol to be imprinted on the 16
donor's driver's license or identification card indicating that 17
the donor has certified a willingness to make an anatomical gift; 18

(2) ~~Specifying in the donor's will an intent to make an~~ 19

~~anatomical gift;~~ 20

~~(3) Specifying an intent to make an anatomical gift in the donor's declaration as described in section 2133.16 of the Revised Code;~~ 21
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~~(4) During a terminal illness or injury of the donor, communicating in any manner to a minimum of two adults, at least one of whom is a disinterested witness, that the donor intends to make an anatomical gift;~~ 24
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~~(5)(3)~~ Following the procedure in division (B) of this section. 28
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(B) A donor or other person authorized to make an anatomical gift under section 2108.04 of the Revised Code may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has certified a willingness to make an anatomical gift be included in a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall do both of the following: 30
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(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; 39
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(2) State that it has been signed and witnessed as provided in division (B)(1) of this section. 42
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(C) Once a donor has authorized a statement or symbol to be imprinted on the donor's driver's license or identification card indicating that the donor has certified a willingness to make an anatomical gift, the donor does not need to recertify the donor's willingness to make an anatomical gift upon renewal of the 44
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driver's license or identification card. The authorization shall remain in effect until the donor withdraws that authorization.

(D) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

~~(E) An anatomical gift made by will takes effect on the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.~~

Sec. 2108.06. (A) Subject to section 2108.08 of the Revised Code, an anatomical gift made under section 2108.04 of the Revised Code may be amended by any of the following means:

(1) By a record signed by the donor or other person authorized to make an anatomical gift under section 2108.04 of the Revised Code;

(2) Subject to division (C) of this section, by a record signed by another individual acting at the direction of the donor or other person authorized to make an anatomical gift under section 2108.04 of the Revised Code if the donor or other person is physically unable to sign;

(3) By a later-executed document of gift that amends a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency;

(4) By any form of communication during a terminal illness or injury addressed to at least two adults;

(5) By a parent who is reasonably available, if the donor is an unemancipated minor who has died;

~~(6) If made in a will, by the manner provided for amendment of wills or by any of the applicable means described in divisions~~

~~(B)(1) to (5) of this section.~~ 77

(B) Subject to section 2108.08 of the Revised Code, an anatomical gift made under section 2108.04 of the Revised Code may be revoked by any of the following means: 78
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(1) By a record signed by the donor or other person authorized to make an anatomical gift under section 2108.04 of the Revised Code; 81
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(2) Subject to division (C) of this section, by a record signed by another individual acting at the direction of the donor or other person authorized to make an anatomical gift under section 2108.04 of the Revised Code if the donor or other person is physically unable to sign; 84
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(3) By a later-executed document of gift that revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency; 89
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(4) By any form of communication during a terminal illness or injury addressed to at least two adults; 92
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(5) By a parent who is reasonably available, if the donor is an unemancipated minor who has died; 94
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(6) By the destruction or cancellation of the document of gift, or the portion of the document of gift, used to make the gift, with the intent to revoke the gift; 96
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~~(7) If made in a will, by the manner provided for revocation of wills or by any of the applicable means described in divisions (B)(1) to (6) of this section.~~ 99
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(C) A record signed pursuant to division (A)(2) or (B)(2) of this section shall do both of the following: 102
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(1) Be witnessed by a minimum of two adults who have signed 104

at the request of the donor or other person;	105
(2) State that it has been signed and witnessed as provided in division (C)(1) of this section.	106 107
Sec. 2108.07. (A) An individual may refuse to make an anatomical gift of the individual's body or part by doing any of the following:	108 109 110
(1) Indicating a refusal in a record signed by either of the following:	111 112
(a) The individual;	113
(b) Subject to division (B) of this section, another individual acting at the direction of the individual, if the individual is physically unable to sign.	114 115 116
(2) Indicating a refusal in the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death;	117 118 119
(3) Indicating a refusal by any form of communication made by the individual during the individual's terminal illness or injury addressed to a minimum of two adults.	120 121 122
(B) A record signed pursuant to division (A)(1)(b) of this section shall do both of the following:	123 124
(1) Be witnessed by at least two adults who have signed at the request of the individual;	125 126
(2) State that it has been signed and witnessed as provided in division (B)(1) of this section.	127 128
(C) An individual who has made a refusal may amend or revoke the refusal by doing any of the following:	129 130
(1) Amending or revoking the refusal in the manner provided	131

in division (A) of this section for making a refusal;	132
(2) Subsequently making an anatomical gift pursuant to section 2108.05 of the Revised Code that is inconsistent with the refusal;	133 134 135
(3) Destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.	136 137 138
(D) Except as provided in division (E) of this section, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.	139 140 141 142 143 144
(E) The parent of a deceased unemancipated minor who is reasonably available may revoke a refusal made by the minor.	145 146
Sec. 2108.23. (A)(1) The bureau of motor vehicles shall 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 license or identification card as provided in division (A)(1) of section 2108.05 of the Revised Code. The registry shall be fully operational not later than July 1, 2002.	147 148 149 150 151 152 153
(2) Any person who provides to the bureau the form set forth in division (D)(2) <u>(C)(2)</u> of section 2133.07 of the Revised Code requesting to be included in the donor registry shall be included.	154 155 156
(B) The bureau shall 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	157 158 159

twenty-four hours a day and seven days a week.	160
(C)(1) The registrar of motor vehicles, in consultation with	161
the director of health and the second chance trust fund advisory	162
committee created under section 2108.35 of the Revised Code, shall	163
formulate proposed rules that specify all of the following:	164
(a) The information to be included in the registry;	165
(b) A process, in accordance with division (B) of section	166
2108.06 of the Revised Code, for an individual to revoke the	167
individual's intent to make an anatomical gift and for updating	168
information in the registry;	169
(c) How the registry will be made available to organ	170
procurement organizations, tissue banks, and eye banks;	171
(d) Limitations on the use of and access to the registry;	172
(e) How information on organ, tissue, and eye donation will	173
be developed and disseminated to the public by the bureau and the	174
department of health;	175
(f) Anything else the registrar considers appropriate.	176
(2) In adopting the proposed rules under this division, the	177
registrar may consult with any person or entity that expresses an	178
interest in the matters to be dealt with in the rules.	179
(3) Following formulation of the proposed rules, but not	180
later than January 1, 2002, the registrar shall adopt rules in	181
accordance with Chapter 119. of the Revised Code.	182
(D) The costs of developing and initially implementing the	183
registry shall be paid from the second chance trust fund created	184
in section 2108.34 of the Revised Code.	185
Sec. 2108.24. (A) As used in this section:	186

(1) "Advance health-care directive" means a durable power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health-care decision.

(2) ~~"Declaration" means a written document executed in accordance with section 2133.02 of the Revised Code.~~

~~(3)~~ "Health care decision" means any decision regarding the health care of the prospective donor.

(B) If a prospective donor has ~~a declaration or~~ an advance health-care directive the terms of which are in conflict with the express or implied terms of a potential anatomical gift with regard to administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy and the prospective donor is capable of resolving the conflict, subject to division (G) of this section, the prospective donor's attending physician shall confer with the prospective donor to resolve the conflict.

(C) If a prospective donor has ~~a declaration or~~ an advance health-care directive the terms of which are in conflict with the express or implied terms of a potential anatomical gift with regard to administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy and the prospective donor is incapable of resolving the conflict, one of the following shall apply depending on the circumstances:

(1) If the prospective donor has an agent, the agent shall, subject to division (G) of this section, act for the prospective donor to resolve the conflict.

(2) If the prospective donor does not have an agent, the individual or class of individuals determined in the following

descending order of priority and subject to divisions (D), (E),	216
(F), and (G) of this section shall act for the prospective donor	217
to resolve the conflict:	218
(a) The prospective donor's surviving spouse;	219
(b) The prospective donor's surviving adult children;	220
(c) The prospective donor's surviving parent or parents;	221
(d) The prospective donor's surviving adult siblings;	222
(e) The prospective donor's surviving adult grandchildren;	223
(f) The prospective donor's surviving grandparent or	224
grandparents;	225
(g) A surviving adult who exhibited special care and concern	226
for the prospective donor;	227
(h) The prospective donor's guardians of the person;	228
(i) The persons, other than those in divisions (C)(2)(a) to	229
(h) of this section, to whom the prospective donor has assigned	230
the right of disposition for the prospective donor's body pursuant	231
to section 2108.70 of the Revised Code or who have the right of	232
disposition for the prospective donor's body at the time of death	233
as described in section 2108.81 of the Revised Code.	234
(D) If an appropriate individual entitled to resolve a	235
conflict between the terms of a prospective donor's declaration or	236
advance health-care directive and the express or implied terms of	237
a potential anatomical gift as described in division (C) of this	238
section is not reasonably available to resolve the conflict, is	239
incapacitated, or declines to resolve the conflict, the next	240
priority individual or class of individuals specified in that	241
division is authorized to resolve the conflict.	242
(E) If at least one individual in a class of individuals	243

entitled to resolve a conflict between the terms of a prospective donor's ~~declaration or~~ advance health-care directive and the express or implied terms of a potential anatomical gift is not reasonably available, is incapacitated, or declines to resolve the conflict, the conflict shall be resolved by the individual or individuals in the class who are reasonably available, not incapacitated, and willing to resolve the conflict.

(F) If individuals in a class of individuals determined in accordance with division (C)(2) of this section disagree on how a conflict between the terms of a prospective donor's ~~declaration or~~ advance health-care directive and the express or implied terms of a potential anatomical gift should be resolved, the opinion of the majority of the individuals who are reasonably available, not incapacitated, and are willing to resolve the conflict shall prevail.

(G) A conflict between the terms of a prospective donor's ~~declaration or~~ advance health-care directive and the express or implied terms of a potential anatomical gift with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy shall be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 2108.09 of the Revised Code. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part shall not be withheld or withdrawn from the prospective donor unless withholding or withdrawing the measures is necessary for appropriate end-of-life care.

Sec. 2108.34. (A) There is hereby created in the state

treasury the second chance trust fund. The fund shall consist of 274
voluntary contributions deposited as provided in sections 275
4503.721, 4506.081, 4507.231, and 4507.501 of the Revised Code. 276
All investment earnings of the fund shall be credited to the fund. 277

(B) The director of health shall use the money in the fund 278
only for the following purposes: 279

(1) Development and implementation of a campaign that 280
explains and promotes the second chance trust fund; 281

(2) Development and implementation of local and statewide 282
public education programs about organ, tissue, and eye donation, 283
including the informational material required to be provided under 284
sections 4506.081, 4507.231, and 4507.501 of the Revised Code; 285

(3) Development and implementation of local and statewide 286
donor awareness programs in schools; 287

(4) Development and implementation of local and statewide 288
programs to recognize donor families; 289

(5) Development and distribution of materials promoting 290
organ, tissue, and eye donation; 291

(6) Cooperation with the Ohio Supreme Court, Ohio State Bar 292
Association, and law schools of this state to more effectively 293
educate attorneys about the donation of anatomical gifts and to 294
encourage them to assist their clients in donating anatomical 295
gifts through anatomical gift declarations, durable powers of 296
attorney for health care, ~~declarations as defined in section~~ 297
~~2133.01 of the Revised Code, wills,~~ and any other appropriate 298
means; 299

(7) Cooperation with the state medical board, state medical, 300
osteopathic, and ophthalmological associations, and colleges of 301
medicine and osteopathic medicine in this state to more 302

effectively educate physicians about the donation of anatomical	303
gifts and to encourage them to assist their patients in making	304
declarations of anatomical gifts;	305
(8) Development of statewide hospital training programs to	306
encourage and facilitate compliance with sections 2108.14 and	307
2108.15 of the Revised Code;	308
(9) Reimbursement of the bureau of motor vehicles for the	309
administrative costs incurred in the performance of duties under	310
sections 4506.081, 4507.231, and 4507.501 of the Revised Code;	311
(10) Reimbursement of the department of health for	312
administrative costs incurred in the performance of duties under	313
this section and section 2108.35 of the Revised Code;	314
(11) Reimbursement of members of the second chance fund	315
advisory committee for actual and necessary expenses incurred in	316
the performance of official duties.	317
(C) The director shall make the materials developed under	318
division (B)(5) of this section available to other state agencies.	319
(D) The director shall consider recommendations made by the	320
second chance trust fund advisory committee pursuant to section	321
2108.35 of the Revised Code. The director shall determine the	322
appropriateness of and approve or disapprove projects recommended	323
by the advisory committee for funding and approve or disapprove	324
the disbursement of money from the second chance trust fund."	325
After line 235, insert:	326
" Sec. 2133.07. (A) As used in this section:	327
(1) "Anatomical gift" has the same meaning as in section	328
2108.01 of the Revised Code.	329

~~(2)~~ "DNR identification" has the same meaning as in section 2133.21 of the Revised Code.

(B) A printed form of a declaration may be sold or otherwise distributed in this state for use by adults who are not advised by an attorney. By use of a printed form of that nature, a declarant may authorize the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the declarant be in a terminal condition, a permanently unconscious state, or either a terminal condition or a permanently unconscious state, may authorize the withholding or withdrawal of nutrition or hydration should the declarant be in a permanently unconscious state as described in division (A)(3)(a) of section 2133.02 of the Revised Code, and may designate one or more persons who are to be notified by the declarant's attending physician at any time that life-sustaining treatment would be withheld or withdrawn pursuant to the declaration. The printed form shall not be used as an instrument for granting any other type of authority or for making any other type of designation, except that the printed form may be used as a DNR identification if the declarant specifies on the form that the declarant wishes to use it as a DNR identification ~~and except as provided in division (C) of this section.~~

~~(C) A printed form of a declaration under division (B) of this section shall include, before the signature of the declarant or another individual at the direction of the declarant, statements that conform substantially to the following form:~~

~~"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:~~

..... 360

..... 361

~~for any purpose authorized by law: transplantation, therapy,
research, or education.~~ 362
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~~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."~~ 364
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~~(D)(1) A printed form of a declaration under division (B) of
this section shall include, as a separate page or as a portion of
a page that can be detached from the declaration, a donor registry
enrollment form that permits the donor to be included in the donor
registry created under section 2108.23 of the Revised Code.~~ 367
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~~(2) The donor registry enrollment form may be in any form
that complies with the requirements of division (B) of section
2108.05 of the Revised Code. On completion, the form shall be
forwarded to the bureau of motor vehicles."~~ 372
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~~In line 465, after "2106.13" insert ", 2108.05, 2108.06,
2108.07, 2108.23, 2108.24, 2108.34"; after "2111.50" insert ",
2133.07"~~ 376
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~~After line 467, insert:~~ 379

~~"Section 3. That section 2133.16 of the Revised Code is
hereby repealed."~~ 380
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The motion was _____ agreed to.

SYNOPSIS

Anatomical gift in a declaration or living will or in a will 382

R.C. 2108.05, 2108.06, 2108.07, 2108.23, 2108.24, 2108.34,	383
2133.07, and outright repeal of R.C. 2133.16	384
Eliminates a donor's ability to make an anatomical gift in	385
the donor's will or in the donor's declaration (popularly known as	386
a "living will") as described in R.C. 2133.16; outright repeals	387
that section which permits a declarant to make an anatomical gift,	388
the declarant's intent and provisions relating to that intent, the	389
amendment, revocation, and refusal to make an anatomical gift, and	390
related provisions; removes the provision describing the printed	391
form of a declaration making an anatomical gift of body parts to	392
be donated; removes the provisions dealing with a conflict between	393
a declaration's terms and the terms of a potential anatomical gift	394
and the resolution of such conflict; removes the provisions	395
dealing with amending or revoking anatomical gifts made in a will	396
and with the refusal to make an anatomical gift in a will; and	397
eliminates the provision in the Second Chance Trust Fund's money	398
to be used to encourage attorneys to assist their clients in	399
making anatomical gifts through their wills or their declarations	400
(living wills).	401