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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1970

—●—
ENROLLED

HOUSE BILL No. 537

(By Mr. Speaker, Mr. Borahy,
and Mr. Buck)
—●—

PASSED January 30, 1970

In Effect Ninety days from Passage



FILED IN THE OFFICE
JOHN D. ROCHFELDER, IV
SECRETARY OF STATE
THIS DATE 2-10-70

537

ENROLLED

House Bill No. 537

(By MR. SPEAKER, MR. BOIARSKY, and MR. BUCK)

[Passed January 30, 1970; in effect ninety days from passage.]

AN ACT to amend and reenact article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform anatomical gift act, definitions of terms, persons who may execute an anatomical gift, persons who may become donees, purposes for which anatomical gifts may be made, manner of executing anatomical gifts, delivery of document of gift, amendment or revocation of gift, rights and duties at death, uniformity of interpretation, short title of article.

Be it enacted by the Legislature of West Virginia:

That article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 19. UNIFORM ANATOMICAL GIFT ACT.

§16-19-1. Definitions.

1 (a) "Bank or storage facility" means a facility licensed,
2 accredited, or approved under the laws of any state for
3 storage or distribution of human bodies or parts thereof.

4 (b) "Decedent" means a deceased individual and in-
5 cludes a stillborn infant or fetus.

6 (c) "Donor" means an individual who makes a gift
7 of all or part of his body.

8 (d) "Hospital" means a hospital licensed, accredited,
9 or approved under the laws of any state; includes a
10 hospital operated by the United States government, a
11 state, or a subdivision thereof, although not required to
12 be licensed under state laws.

13 (e) "Part" means organs, tissues, eyes, bones, arteries,
14 blood, other fluids and any other portions of a human
15 body.

16 (f) "Person" means an individual, corporation, gov-
17 ernment or governmental subdivision or agency, business
18 trust, estate trust, partnership or association, or any other
19 legal entity.

20 (g) "Physician" or "surgeon" means a physician or
21 surgeon licensed or authorized to practice under the
22 laws of any state.

23 (h) "State" includes any state, district, common-
24 wealth, territory, insular possession, and any other area
25 subject to the legislative authority of the United States of
26 America.

§16-19-2. Persons who may execute an anatomical gift.

1 (a) Any individual of sound mind and eighteen years
2 of age or more may give all or any part of his body for
3 any purpose specified in section three of this article, the
4 gift to take effect upon death.

5 (b) Any of the following persons, in order of priority
6 stated, when persons in prior classes are not available
7 at the time of death, and in the absence of actual notice
8 of contrary indications by the decedent or actual notice
9 of opposition by a member of the same or a prior class,
10 may give all or any part of the decedent's body for any
11 purpose specified in section three of this article:

12 (1) The spouse;

13 (2) An adult son or daughter;

14 (3) Either parent;

15 (4) An adult brother or sister;

16 (5) A guardian of the person of the decedent at the
17 time of his death;

18 (6) Any other person authorized or under obliga-
19 tion to dispose of the body.

20 (c) If the donee has actual notice of contrary indi-
21 cations by the decedent or that a gift by a member of
22 a class is opposed by a member of the same or a prior
23 class, the donee shall not accept the gift. The persons
24 authorized by subsection (b) of this section may make
25 the gift after or immediately before death.

26 (d) A gift of all or part of a body authorizes any
27 examination necessary to assure medical acceptability
28 of the gift for the purposes intended.

29 (e) The rights of the donee created by the gift are
30 paramount to the rights of others except as provided by
31 section seven, subsection (d) of this article.

**§16-19-3. Persons who may become donees; purposes for which
anatomical gifts may be made.**

1 The following persons may become donees of gifts
2 of bodies or parts thereof for the purposes stated:

3 (1) Any hospital, surgeon, or physician, for medical
4 or dental education, research, advancement of medical
5 or dental science, therapy, or transplantation; or

6 (2) Any accredited medical or dental school, college
7 or university for education, research, advancement of
8 medical or dental science, or therapy; or

9 (3) Any bank or storage facility, for medical or dental
10 education, research, advancement of medical or dental
11 science, therapy, or transplantation; or

12 (4) Any specified individual for therapy or trans-
13 plantation needed by him.

§16-19-4. Manner of executing anatomical gifts.

1 (a) A gift of all or part of the body under section
2 two, subsection (a) of this article may be made by will.
3 The gift becomes effective upon the death of the tes-
4 tator without waiting for probate. If the will is not pro-
5 bated, or if it is declared invalid for testamentary pur-
6 poses, the gift, to the extent that it has been acted
7 upon in good faith, is nevertheless valid and effec-
8 tive.

9 (b) A gift of all or part of the body under section
10 two, subsection (a) of this article may also be made
11 by document other than a will. The gift becomes effec-
12 tive upon the death of the donor. The document, which
13 may be a card designed to be carried on the person,
14 must be signed by the donor in the presence of two
15 witnesses who must sign the document in his presence.
16 If the donor cannot sign, the document may be signed
17 for him at his direction and in his presence in the pres-
18 ence of two witnesses who must sign the document in
19 his presence. Delivery of the document of gift during
20 the donor's lifetime is not necessary to make the gift
21 valid.

22 (c) The gift may be made to a specified donee or
23 without specifying a donee. If the latter, the gift may be
24 accepted by the attending physician as donee upon or
25 following death. If the gift is made to a specified donee
26 who is not available at the time and place of death,
27 the attending physician upon or following death, in the
28 absence of any expressed indication that the donor

29 desired otherwise, may accept the gift as donee. The
30 physician who becomes a donee under this subsection
31 shall not participate in the procedures for removing or
32 transplanting a part, except that this prohibition shall not
33 apply to the removing or transplanting of an eye or eyes.

34 (d) Notwithstanding section seven, subsection (b) of
35 this article, the donor may designate in his will, card, or
36 other document of gift the surgeon or physician to carry
37 out the appropriate procedures. In the absence of a desig-
38 nation or if the designee is not available, the donee or
39 other person authorized to accept the gift may employ or
40 authorize any surgeon or physician for the purpose.

41 (e) Any gift by a person designated in section two,
42 subsection (b) of this article shall be made by a docu-
43 ment signed by him or made by his telegraphic, re-
44 corded telephonic, or other recorded message.

45 (f) No particular words shall be necessary for dona-
46 tion of all or part of a body, but the following words,
47 in substance, properly signed and witnessed, shall be
48 legally valid for donations made pursuant to subsection
49 (b) of this section:

50 "UNIFORM DONOR CARD

51 of

52 _____

53 Print or type name of donor

54 In the hope that I may help others, I hereby make this
55 anatomical gift, if medically acceptable, to take effect
56 upon my death. The words and marks below indicate
57 my desires.

58 I give: (a)_____ any needed organs or parts

59 (b)_____ only the following organs or parts

60 _____

61 Specify the organ(s) or part(s)

62 for the purposes of transplantation, therapy, medical
63 research or education;

64 (c)_____ my body for anatomical study if
65 needed.

66 Limitations or special wishes, if any:_____

67 Signed by the donor and the following two witnesses
68 in the presence of each other:

69 _____

70 Signature of Donor

_____ Date of Birth of Donor

71

72

Date Signed

City and State

73

74

Witness

Witness

75 This is a legal document under the Uniform Anatomical

76 Gift Act or similar laws.”

§16-19-5. Delivery of document of gift.

1 If the gift is made by the donor to a specified donee,
2 the will, card, or other document, or an executed copy
3 thereof, may be delivered to the donee to expedite the
4 appropriate procedures immediately after death. Delivery
5 is not necessary to the validity of the gift. The will,
6 card, or other document, or an executed copy thereof,
7 may be deposited in any hospital, bank or storage facility
8 or registry office that accepts it for safekeeping or for
9 facilitation of procedures after death. On request of any
10 interested party upon or after the donor's death, the
11 person in possession shall produce the document for
12 examination.

§16-19-6. Amendment or revocation of the gift.

1 (a) If the will, card, or other document or executed
2 copy thereof, has been delivered to a specified donee,

3 the donor may amend or revoke the gift by:

4 (1) The execution and delivery to the donee of a
5 signed statement; or

6 (2) An oral statement made in the presence of two
7 persons and communicated to the donee; or

8 (3) A statement during a terminal illness or injury
9 addressed to an attending physician and communicated
10 to the donee; or

11 (4) A signed card or document found on his person
12 or in his effects.

13 (b) Any document of gift which has not been de-
14 livered to the donee may be revoked by the donor in the
15 manner set out in subsection (a) of this section or by
16 destruction, cancellation, or mutilation of the document
17 and all executed copies thereof.

18 (c) Any gift made by a will may also be amended
19 or revoked in the manner provided for amendment or
20 revocation of wills, or as provided in subsection (a) of
21 this section.

§16-19-7. Rights and duties at death.

1 (a) The donee may accept or reject the gift. If the
2 donee accepts a gift of the entire body, he may, subject

3 to the terms of the gift, authorize embalming and the
4 use of the body in funeral services. If the gift is of a
5 part of the body, the donee, upon the death of the donor
6 and prior to embalming, shall cause the part to be
7 removed without unnecessary mutilation. After removal
8 of the part, custody of the remainder of the body vests
9 in the surviving spouse, next of kin, or other persons
10 under obligation to dispose of the body.

11 (b) The time of death shall be determined by a phy-
12 sician who tends the donor at his death, or, if none, the
13 physician who certifies the death. Such physician shall
14 not participate in the procedures for removing or trans-
15 planting a part.

16 (c) A person who acts in good faith in accord with
17 the terms of this article or with the anatomical gift laws
18 of another state or a foreign country is not liable for
19 damages in any civil action or subject to prosecution in
20 any criminal proceeding for his act.

21 (d) The provisions of this article are subject to the
22 laws of this state prescribing powers and duties with
23 respect to autopsies.

§16-19-8. Uniformity of interpretation.

- 1 This article shall be so construed as to effectuate its
- 2 general purpose to make uniform the law of those states
- 3 which enact it.

§16-19-9. Short title.

- 1 This article may be cited as the "Uniform Anatomical
- 2 Gift Act."

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tongos
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Myers
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Rep. J. J. [unclear]
President of the Senate

Gov. J. B. [unclear]
Speaker House of Delegates

The within approved this the 9th
day of February, 1970.

Arch. A. Shaw, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 2/3/70

Time 2:02 p.m.