WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

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ENROLLED

SENATE BILL NO. 387

(By Mr. Cassy)

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PASSED March 5, 1976

In Effect ninety days from Passage

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FILED IN THE OFFICE
JAMES R. MCCARTNEY
SECRETARY OF STATE
THIS DATE 3/11/76
AN ACT to amend and reenact sections one, two, three and four, article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections twelve, fourteen, fifteen, sixteen and seventeen, article eleven, chapter eighteen of said code, all relating to anatomical gifts; definitions; persons who may execute anatomical gift; certification of death; the West Virginia anatomical board and its powers, authority, duties, notices and requisition of unclaimed bodies, and bond; expense of delivery of body; rules and regulations governing the use, disposition and control of donated bodies and parts thereof; manner of executing anatomical gifts.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and four, article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections twelve, fourteen, fifteen, sixteen and seventeen, article eleven, chapter eighteen of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 19. UNIFORM ANATOMICAL GIFT ACT.

§16-19-1. Definitions.

1 (a) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage or distribution of human bodies or parts thereof.
(b) "Certification of death" means a written pronouncement of death by the attending physician. Such certification shall be required before the attending physician shall allow removal of any bodily organs of the decedent for transplant purposes.

(c) "Death" means that a person will be considered dead if in the announced opinion of the attending physician, based on ordinary standards of medical practice, the patient has experienced an irreversible cessation of spontaneous respiratory and circulatory functions; or, in the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of a physician, based on ordinary standards of medical practice, the patient has experienced an irreversible cessation of spontaneous brain functions.

Death will have occurred at the time when the relevant functions ceased.

(d) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

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

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

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

(h) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate trust, partnership or association, or any other legal entity.

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

(j) "State" includes any state, district, common-

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

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

(1) The spouse;

(2) An adult son or daughter;

(3) Either parent;

(4) An adult brother or sister;

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

(6) Any other person authorized or under obligation to dispose of the body.

(c) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) of this section may make the gift after or immediately before certification of death.

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

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by section seven, subsection (d) of this article.
§16-19-3. Persons who may become donees; purposes for which anatomical gifts may be made.

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

1. The West Virginia anatomical board for the scientific purposes of educational institutions for which it may receive or requisition dead bodies; or
2. Any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or
3. Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy; or
4. Any person operating a bank or storage facility for blood, arteries, eyes, pituitaries, or other human parts, for use in medical or dental education, advancement of medical or dental science, research, therapy or transplantation to individuals; or
5. Any specified individual for therapy or transplantation needed by him.

The use, disposition and control of any such donated bodies or parts thereof by any such donee shall be in accordance with rules and regulations prescribed by the West Virginia anatomical board.


(a) A gift of all or part of the body under subsection (a), section two of this article may be made by will. The gift becomes effective upon certification of death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under subsection (a), section two of this article may also be made by document other than a will. The gift becomes effective upon certification of death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the
donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the West Virginia anatomical board will be considered to be the donee unless it declines to accept the gift, or unless there is urgent immediate need for a part of the body for transplant or other purposes in which case the gift may be accepted by the attending physician as donee upon or following certification of death. In case the anatomical board is considered the donee it shall be the duty of the person who has charge or control of the body, if he or she has knowledge of the gift, to give notice thereof to the anatomical board within twenty-four hours after such body comes under his or her control. Thereafter, he or she shall hold the body subject to the order of the anatomical board for at least twenty-four hours after the sending of such notice. If the anatomical board makes a requisition for the body within the twenty-four hour period, it shall be delivered, pursuant to the order of the board, to the board or its authorized agent for transportation to West Virginia University or any other educational institution which the board deems to be in bona fide need thereof and able to adequately control, use and dispose of the body. If the anatomical board shall not so act within the twenty-four hour period, the gift may be accepted by the attending physician as donee upon or following certification of death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following certification of death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part, except that this prohibition shall not apply to the removing or transplanting of an eye or eyes.

(d) Notwithstanding subsection (b), section seven of
this article, the donor may designate in his will, card
or other document of gift the surgeon or physician to
carry out the appropriate procedures, or in the case of
a gift of an eye or eyes, the surgeon or physician or
the technician properly trained in the surgical removal
of eyes to carry out the appropriate procedures. In the
event of the nonavailability of such designee, or in the
absence of a designation, the donee or other person
authorized to accept the gift may employ or authorize
for the purpose any surgeon or physician or in the case
of a gift of an eye or eyes, any surgeon or physician or
technician properly trained in the surgical removal of
eyes.

(e) Any gift by a person designated in subsection (b),
section two of this article shall be made by a document
signed by him or made by his telegraphic, recorded tele-
phonic, or other recorded message.

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

"UNIFORM DONOR CARD

Print or type name of donor

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

I give: (a) ________ any needed organs or parts
(b) ________ only the following organs or
parts

Specify the organ(s) or part(s)

for the purposes of transplantation, therapy, medical re-
search or education;

(c) ________ my body for anatomical study
if needed.

Limitations or special wishes, if any: ____________________
Signed by the donor and the following two witnesses in the presence of each other:

Signature of Donor Date of Birth of Donor

Date Signed City and State

Witness Witness

This is a legal document under the Uniform Anatomical Gift Act or similar laws.”

CHAPTER 18. EDUCATION.

ARTICLE 11. WEST VIRGINIA UNIVERSITY.

§18-11-12. Anatomical board.

1. The governor shall appoint one dean of a school of medicine, one dean of a school of dentistry and two chairmen of departments of anatomy of schools of medicine, all of whom shall constitute a board to be known as the “West Virginia Anatomical Board”. No more than one member of such board shall be from the same school. The board shall be responsible for making requisition for, receiving, and making disposition of the dead human bodies for the scientific uses and purposes of the West Virginia University schools of medicine, dentistry, nursing and the similar uses and purposes of other reputable educational institutions having medical osteopathy, dentistry or nursing schools. The board shall have full power to establish rules and regulations for its own government, and for the requisition, use, disposition, and control of such bodies as may come under its authority by way of gift, pursuant to this article or pursuant to section four, article nineteen, chapter sixteen of this code. The board shall have authority to appoint such officers, employees, and agents as may be necessary to carry out the purposes for which the board is organized. It shall keep a full and complete record of its transactions, showing among other things, every dead human body coming under its authority, giving name, sex, age, date of death, place from which received, when and from whom received, which
§18-11-14. Notice of unclaimed body; requisition for body.

It shall be the duty of any person who has charge or control of any unclaimed body, subject to requisition by the anatomical board, to give notice to the board of that fact by telephone or telegraph within twenty-four hours after such body comes under his control. Thereafter he shall hold the body subject to the order of the anatomical board for at least twenty-four hours after the sending of such notice. If the anatomical board makes requisition for the body within the twenty-four hour period, it shall be delivered, pursuant to the order of the board, to the board or its authorized agent for transportation to West Virginia University or to any other educational institution described in section twelve of this article which the board deems to be in bona fide need thereof and able to adequately control, use and dispose of the body.

§18-11-15. Transportation of dead bodies.

The anatomical board shall make suitable arrangements for the transportation of any body, or part or parts thereof, which may come under its authority to West Virginia University or any other educational institution as described in the preceding section.

§18-11-16. Expense of delivery.

All expenses incurred in connection with the preservation, delivery and transportation of any such body delivered pursuant to the order of the anatomical board shall be paid by the educational institution receiving the body.

§18-11-17. Bond of anatomical board.

No dead body shall be received or requisitioned by the anatomical board until the members of the board have filed a bond with the clerk of the circuit court of Monongalia County in a penalty of one thousand dollars, with good security, signed by a responsible person or persons, or by some surety company authorized to do
business in this state, or have proved to such clerk that they are covered by a suitable bond in at least that amount, conditioned for the faithful performance of their duties.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

W.A. Blankenship  
Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within _________________________ this the ____________________ day of _______ 1976

A.R. Shannon  
Governor