

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-25-79

Time 3:00 p.m.

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

— ● —

# ENROLLED

HOUSE BILL No. 1119

(By Mr. Starcher)

— ● —

Passed March 10, 1979

In Effect Ninety Days From Passage



No. 1119

**ENROLLED**

**H. B. 1119**

(By MR. STARCHER)

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[Passed March 10, 1979; in effect ninety days from passage.]

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AN ACT to amend and reenact section four, article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to the uniform anatomical gift act; the manner of completing and executing such gifts; permitting licensed embalmers and funeral directors to enucleate an eye or eyes in certain cases, immunity from civil or criminal liability.

*Be it enacted by the Legislature of West Virginia:*

That section four, 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.**

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

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

8 (b) A gift of all or part of the body under subsection (a),  
9 section two of this article may also be made by document

10 other than a will. The gift becomes effective upon certifica-  
11 tion of death of the donor. The document, which may be  
12 a card designed to be carried on the person, must be  
13 signed by the donor in the presence of two witnesses who  
14 must sign the document in his presence. If the donor cannot  
15 sign, the document may be signed for him at his direction  
16 and in his presence in the presence of two witnesses who  
17 must sign the document in his presence. Delivery of the  
18 document of gift during the donor's lifetime is not necessary  
19 to make the gift valid.

20 (c) The gift may be made to a specified donee or without  
21 specifying a donee. If the latter, the West Virginia anatomical  
22 board will be considered to be the donee unless it declines to  
23 accept the gift, or unless there is urgent immediate need  
24 for a part of the body for transplant or other purposes in  
25 which case the gift may be accepted by the attending physician  
26 as donee upon or following certification of death. In  
27 case the anatomical board is considered the donee it shall  
28 be the duty of the person who has charge or control of the  
29 body, if he or she has knowledge of the gift, to give notice  
30 thereof to the anatomical board within twenty-four hours  
31 after such body comes under his or her control. Thereafter,  
32 he or she shall hold the body subject to the order of the  
33 anatomical board for at least twenty-four hours after the  
34 sending of such notice. If the anatomical board makes a  
35 requisition for the body within the twenty-four-hour period,  
36 it shall be delivered, pursuant to the order of the board, to  
37 the board or its authorized agent for transportation to West  
38 Virginia University or any other educational institution which  
39 the board deems to be in bona fide need thereof and able to  
40 adequately control, use and dispose of the body. If the  
41 anatomical board shall not so act within the twenty-four-hour  
42 period, the gift may be accepted by the attending physician  
43 as donee upon or following certification of death. If the  
44 gift is made to a specified donee who is not available at the  
45 time and place of death, the attending physician upon or  
46 following certification of death, in the absence of any ex-  
47 pressed indication that the donor desired otherwise, may  
48 accept the gift as donee. The physician who becomes a

49 donee under this subsection shall not participate in the  
50 procedures for removing or transplanting a part, except that  
51 this prohibition shall not apply to the removing or trans-  
52 planting of an eye or eyes.

53 (d) Notwithstanding subsection (b), section seven of this  
54 article, the donor may designate in his will, card or other  
55 document of gift the surgeon or physician to carry out the  
56 appropriate procedures, or in the case of a gift of an eye or  
57 eyes, the surgeon or physician or the technician properly  
58 trained in the surgical removal of eyes to carry out the  
59 appropriate procedures. In the event of the nonavailability  
60 of such designee, or in the absence of a designation, the  
61 donee or other person authorized to accept the gift may  
62 employ or authorize for the purpose any surgeon or physician  
63 or in the case of a gift of an eye or eyes, any surgeon or  
64 physician or technician properly trained in the surgical removal  
65 of eyes or also in case of a gift of an eye or eyes, the donee  
66 or other person authorized to accept the gift may employ or  
67 authorize a licensed funeral director or embalmer licensed  
68 pursuant to article six, chapter thirty of this code who has  
69 successfully completed a course in enucleation approved by  
70 the medical licensing board of West Virginia to enucleate  
71 the eye or eyes for the gift after certification of death by a  
72 physician. The qualified funeral director or embalmer shall  
73 properly care for the enucleated eye or eyes and promptly  
74 deliver the eye or eyes to the donee or other person authorized  
75 to accept the gift. A qualified funeral director or embalmer act-  
76 ing in accordance with the terms of this subsection shall not be  
77 liable, civilly or criminally for the eye enucleation.

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

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

86 "UNIFORM DONOR CARD  
87 of

88 -----  
89 Print or type name of donor

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

94 I give: (a). . . . any needed organs or parts  
95 (b). . . . only the following organs or parts

96 -----  
97 Specify the organ(s) or part(s)

98 for the purposes of transplantation, therapy, medical research  
99 or education;

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

101 Limitation or special wishes, if any: -----  
102 Signed by the donor and the following two witnesses in the  
103 presence of each other:

104 -----  
105 Signature of Donor Date of Birth of Donor

106 -----  
107 Date Signed City and State

108 -----  
109 Witness Witness

110 This is a legal document under the Uniform Anatomical  
111 Gift Act or similar laws."

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

*James L. Davis*  
Chairman Senate Committee

*Lawrence C. Chestnut Jr.*  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

*J. G. Williams Jr.*  
Clerk of the Senate

*C. G. Blankenship*  
Clerk of the House of Delegates

*H. G. Battle Jr.*  
President of the Senate

*Chas. M. See Jr.*  
Speaker House of Delegates

The within is approved this the 25  
day of March, 1979.

*John R. Ralston*  
Governor

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