WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2000

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ENROLLED

House Bill No. 4587
(By Delegates Staton, Johnson, Spencer, Capito, Amores, Rowe and Smirl)

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Passed March 11, 2000

In Effect Ninety Days from Passage
ENROLLED

H. B. 4587

(BY DELEGATES STATON, JOHNSON, SPENCER, CAPITO, AMORES, ROWE AND SMIRL)

[Passed March 11, 2000; 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 anatomical gifts.

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. ANATOMICAL GIFT ACT.

§16-19-1. Definitions.

1 As used in this article:

2 (1) “Anatomical gift” means a donation of all or part of a human body to take effect upon or after certification of death.
(2) “Certification of death” means a written pronouncement of death by the attending physician. Certification is required before the attending physician may allow removal of any bodily organs of the decedent for transplant purposes.

(3) “Death” has the meaning provided in section one, article ten, chapter sixteen of this code.

(4) “Decedent” means a deceased individual and includes a stillborn infant or fetus.

(5) “Designated requester” means an individual employed or trained by a procurement organization to discuss the option of donation with families of deceased individuals.

(6) “Document of gift” means a card, a statement attached to or imprinted on a motor vehicle operator’s or chauffeur’s license, a will, or other writing used to make an anatomical gift.

(7) “Donor” means an individual who makes an anatomical gift of all or part of his or her body.

(8) “Hospital” means a facility licensed, accredited, or approved as a hospital under the law of any state or a facility operated as a hospital by the United States government, a state or a subdivision of a state.

(9) “Part” means an organ, tissue, eye, bone, artery, blood, fluid or other portion of a human body.

(10) “Person” means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity.
(11) “Physician” or “surgeon” means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(12) “Physician assistant” has the meaning provided in section sixteen, article three, chapter thirty of this code.

(13) “Procurement organization” or “bank” means a person licensed, accredited, or approved under the laws of any state or federal agency for procurement, distribution or storage of human bodies or parts.

(14) “State” means any state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.

(15) “Technician” means a qualified individual who is certified or authorized by an accredited procurement organization to remove or process a part.


(a) An individual who is at least eighteen years of age may:

1. Make an anatomical gift for any of the purposes stated in subsection (a), section six of this article;

2. limit an anatomical gift to one or more of those purposes; or

3. refuse to make an anatomical gift.

(b) An anatomical gift may be made only by a document of gift signed by the donor. If the donor is unable to sign a document of gift and intends to make an anatomical gift, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in
the presence of the donor and of each other, and state that it has
been so signed.

(c) If a document of gift is attached to a donor's motor
vehicle operator's or chauffeur's license, the document of gift
must comply with subsection (b) of this section. If a donor's
intent to make an anatomical gift is imprinted on the donor's
motor vehicle operator's or chauffeur's license, it is a valid
indication of the donor's intent to make an anatomical gift.
Revocation, suspension, expiration, or cancellation of the
license does not invalidate the anatomical gift.

(d) A document of gift may designate a particular physician
or surgeon to carry out the appropriate procedures. In the
absence of a designation or if the designee is not available, the
donee or other person authorized to accept the anatomical gift
may employ or authorize any physician, surgeon or technician
to carry out the appropriate procedures.

(e) An anatomical gift by will takes effect upon certifica-
tion of death of the testator, whether or not the will is probated.
If, after certification of death, the will is declared invalid for
testamentary purposes, the validity of the anatomical gift is
unaffected.

(f) A donor may amend or revoke an anatomical gift, not
made by will, only by:

(1) A signed statement;

(2) An oral statement made in the presence of two individu-
als;

(3) Any form of communication during a terminal illness or
injury addressed to a physician, surgeon or physician assistant;
(4) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(g) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (f) of this section.

(h) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor’s death.

(i) An individual may refuse to make an anatomical gift of the individual’s body or part by:

(1) A writing signed in the same manner as a document of gift;

(2) Any other writing used to identify the individual as refusing to make an anatomical gift; or

(3) If the individual is suffering from a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(j) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under section three of this article or on a removal or release of other parts under section four of this article.

(k) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (i) of this section.
§16-19-3. Making, revoking, and objecting to anatomical gifts, by others.

(a) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of certification of death, has made an unrevoked refusal to make an anatomical gift:

1. The medical power of attorney representative, if available;
2. The spouse of the decedent, unless in the six months prior to the decedent’s death the spouse has lived separate and apart from the decedent in separate places of abode without cohabitation;
3. An adult son or daughter of the decedent;
4. Either parent of the decedent;
5. An adult brother or sister of the decedent;
6. A grandparent of the decedent;
7. A guardian of the decedent at the time of certification of death; and
8. The health care surrogate.

(b) An anatomical gift may not be made by a person listed in subsection (a) of this section if:

1. A person in a prior class is available at the time of certification of death to make an anatomical gift;
2. The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or
(3) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person’s class or a prior class.

(c) An anatomical gift by a person authorized under subsection (a) of this section must be made by:

(1) A document of gift signed by the person; or

(2) The person’s telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(d) An anatomical gift by a person authorized under subsection (a) of this section may not be revoked by any member of the same or a prior class if procedures have begun for the removal of a part from the body of the decedent and the physician, surgeon or technician removing the part does not know or has not been notified of the revocation.

(e) An individual’s failure to make an anatomical gift under subsection (a) of this section does not indicate an individual’s objection to the making of an anatomical gift.

§16-19-4. Authorization by coroner, medical examiner or local public health official.

(a) The coroner or chief medical examiner may release and permit the removal of a part from a body within his or her custody, for transplantation or therapy, if:

(1) He or she has received a request for the part from a hospital, physician, surgeon or procurement organization;

(2) He or she has made a reasonable effort, taking into account the useful life of the part, to locate and examine the
decedent's medical records and inform persons listed in subsection (a), section three of this article of their option to make, or object to making, an anatomical gift;

(3) He or she does not know of a refusal or contrary indication by the decedent or objection by a person having priority to make an anatomical gift as provided in subsection (a), section three of this article;

(4) The removal will be performed by a physician, surgeon or technician;

(5) The removal will not interfere with any autopsy or investigation; but in the instance that the coroner or chief medical examiner refuses the request of an anatomical donation due to interference with an autopsy or investigation, the coroner or chief medical examiner shall document in writing to the hospital, physician, surgeon or procurement organization the specific circumstances which result in the interference;

(6) The removal will be in accordance with accepted medical standards; and

(7) Cosmetic restoration will be done, if appropriate.

(b) If the body is not within the custody of the coroner or chief medical examiner, the local public health officer may release and permit the removal of any part from a body in his or her custody for transplantation or therapy if the requirements of subsection (a) of this section are met.

(c) The coroner, chief medical examiner or local public health officer releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it was released.
§16-19-5. Information regarding anatomical donation; requests for anatomical gifts; search and notification.

(a) All hospitals in this state shall provide general information available to the public regarding anatomical donation in the patient admission area of each facility.

(b) At the time of admission to a hospital, every patient who is at least eighteen years of age shall receive, as part of the hospital admission packet, information regarding anatomical donation, including, but not limited to, (1) general facts about anatomical donation, (2) an explanation of their rights to make an anatomical gift, (3) a document of gift card for making an anatomical gift and (4) a card for acknowledging an existing document of gift. If the patient completes a document of gift card making an anatomical gift at the time of admission or at any time thereafter, or if the patient completes a card acknowledging an existing document of gift, the appropriate notation is to be prominently placed in the patient’s medical record.

(c) On or near the occurrence of each death in a hospital, the hospital shall contact the regional organ procurement organization by telephone to determine the suitability for organ, tissue and eye donation for any purpose specified under this chapter. The person designated by the hospital to contact the organ procurement organization shall have (1) the patient’s name and identifier number, (2) the patient’s age, (3) the cause of death and (4) any available current and past medical history available prior to making the contact. The organ procurement organization shall collaborate with the hospital’s designated tissue or eye bank when there are tissue or eye donations. The organ procurement organization, in consultation with the patient’s attending physician or hospital designee, shall determine suitability for donation.
(d) If it is determined that donation is not appropriate based on medical criteria, hospital personnel shall note this fact in the patient’s record and no further action is necessary.

(e) If it is determined that the patient is a suitable candidate for anatomical donation, and there is no document of gift or other information evidencing a refusal to make an anatomical gift, a designated requestor shall immediately contact the appropriate persons who are authorized to make an anatomical gift of a patient’s body, as provided in section three of this article, and inquire as to whether the patient was an anatomical donor. If those persons contacted by the designated requestor are unaware of the patient’s intent regarding anatomical donation, and if no document of gift satisfying the requirements of subsection (b) or (c), section two of this article is found, the designated requestor shall inform those individuals authorized to make an anatomical gift that they have the option of making an anatomical gift of all or part of the patient’s body. The designated requestor shall use discretion and be sensitive to family circumstances, cultural background and religious beliefs of the patient.

(f) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(1) A law-enforcement officer, fireman, paramedic or other emergency rescuer finding an individual who the searcher believes is dead or near death;

(2) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information; and
(3) The coroner or chief medical examiner as provided in subdivision (2), subsection (a), section four of this article when a body is placed in that official’s custody.

(g) If a law-enforcement officer, fireman, paramedic or other emergency rescuer finds a document of gift or evidence of refusal to make an anatomical gift by the search required by subsection (f) of this section, he or she shall notify the hospital where the individual or body is taken of the contents and send the document or other evidence to the hospital.

(h) If at or near the time of death of a patient, a hospital knows that (1) an anatomical gift has been made pursuant to subsection (a), section three of this article, (2) a release and removal of a part has been permitted pursuant to section four of this article, or (3) that the patient or an individual in transit to the hospital is a donor, the hospital shall notify the appropriate donee or procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(i) Any person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

§16-19-6. Persons who may become donees; purposes for which anatomical gifts may be made.

(a) The following persons may become donees of anatomical gifts for the purposes stated:

1 (1) The university of West Virginia system board of trustees for the scientific purposes of educational institutions for which it may receive or requisition bodies;
(2) A hospital, physician, surgeon or procurement organization, for transplantation, therapy, medical or dental education, research or advancement of medical or dental science;

(3) An accredited medical or dental school, college or university for education, research, advancement of medical or dental science; or

(4) A designated individual for transplantation or therapy needed by that individual.

(b) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.

(c) If the donee knows of the decedent’s refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under subsection (a), section three of this article the donee may not accept the anatomical gift.


(a) Delivery of a document of gift during the donor’s lifetime is not required for the validity of an anatomical gift.

(b) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after certification of death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after certification of death. On request of any person, upon or after the donor’s certification of death, the person in possession shall allow any person to examine or copy the document of gift.

(a) Rights of a donee created by an anatomical gift are superior to rights of others, except with respect to autopsies under subsection (b), section eleven of this article. A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the donee, upon the certification of death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(b) The time of death must be determined by a physician, surgeon or physician assistant who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician, surgeon or physician assistant who attends the donor at death nor the physician or surgeon who certifies the death may participate in the procedures for removing or transplanting a part, unless the document of gift designates the physician or surgeon as provided in subsection (d), section two of this article.

(c) If there has been an anatomical gift, a technician may remove any donated parts after certification of death by a physician or surgeon.

§16-19-9. Coordination of procurement and use; facilitation of communication.

(a) Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.
(b) The organ procurement organization involved in any transplant pursuant to this article shall facilitate, on the recipient's behalf, a request by the recipient to contact the donor's family, in the priority order provided in subsection (a), section three of this article.

(c) The organ procurement organization may not provide the name, address or any other confidential information regarding the donor or the donor's family to the recipient, except upon a specific request by the member of the donor's family contacted as provided in subsection (b) of this section.

§16-19-10. Sale or purchase of parts prohibited.

(a) It is unlawful for any person to knowingly acquire, receive, or otherwise transfer for valuable consideration any human organ for use in human transplantation. For purposes of this section, “human organ” means the human kidney, liver, heart, lung, bone marrow or any other human organ or tissue designated by the director of health other than blood.

(b) For purposes of this section, valuable consideration does not include reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ; or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ; or expenses incurred by nonprofit agencies or corporations to recover expenses incurred while offering services related to the location, maintenance and distribution of human organs.

(c) A person who violates this section is guilty of a felony and, upon conviction thereof, shall be fined not more than fifty thousand dollars, or confined in a state correctional facility not more than five years, or both.
§16-19-11. Examination; autopsy.

   (a) An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

   (b) The provisions of this article are subject to the laws of this state governing autopsies.


   This article applies to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after the effective date of this article.


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

   (b) Any individual who makes an anatomical gift pursuant to section two or three of this article and the individual’s estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift.


   This article may be cited as the “Anatomical Gift Act.”
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 4th day of __________, 2000.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/4/10
Time 3:21 pm