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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



# ENROLLED

## House Bill No. 4587

(By Delegates Staton, Johnson, Spencer,  
Capito, Amores, Rowe and Smirl)



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  
3 human body to take effect upon or after certification of death.

4       (2) “Certification of death” means a written pronouncement  
5 of death by the attending physician. Certification is required  
6 before the attending physician may allow removal of any bodily  
7 organs of the decedent for transplant purposes.

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

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

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

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

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

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

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

26       (10) “Person” means an individual, corporation, business  
27 trust, estate, trust, partnership, joint venture, association,  
28 government, governmental subdivision or agency, or any other  
29 legal or commercial entity.

30 (11) "Physician" or "surgeon" means an individual licensed  
31 or otherwise authorized to practice medicine and surgery or  
32 osteopathy and surgery under the laws of any state.

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

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

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

42 (15) "Technician" means a qualified individual who is  
43 certified or authorized by an accredited procurement organiza-  
44 tion to remove or process a part.

**§16-19-2. Making, amending, revoking, and refusing to make  
anatomical gifts by individual.**

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

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

4 (2) limit an anatomical gift to one or more of those pur-  
5 poses; or

6 (3) refuse to make an anatomical gift.

7 (b) An anatomical gift may be made only by a document of  
8 gift signed by the donor. If the donor is unable to sign a  
9 document of gift and intends to make an anatomical gift, the  
10 document of gift must be signed by another individual and by  
11 two witnesses, all of whom have signed at the direction and in

12 the presence of the donor and of each other, and state that it has  
13 been so signed.

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

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

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

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

35 (1) A signed statement;

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

38 (3) Any form of communication during a terminal illness or  
39 injury addressed to a physician, surgeon or physician assistant;  
40 or

41 (4) The delivery of a signed statement to a specified donee  
42 to whom a document of gift had been delivered.

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

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

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

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

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

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

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

64 (k) In the absence of contrary indications by the donor, a  
65 revocation or amendment of an anatomical gift is not a refusal  
66 to make another anatomical gift. If the donor intends a revoca-  
67 tion to be a refusal to make an anatomical gift, the donor shall  
68 make the refusal pursuant to subsection (i) of this section.

**§16-19-3. Making, revoking, and objecting to anatomical gifts, by others.**

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

6 (1) The medical power of attorney representative, if  
7 available;

8 (2) The spouse of the decedent, unless in the six months  
9 prior to the decedent's death the spouse has lived separate and  
10 apart from the decedent in separate places of abode without  
11 cohabitation;

12 (3) An adult son or daughter of the decedent;

13 (4) Either parent of the decedent;

14 (5) An adult brother or sister of the decedent;

15 (6) A grandparent of the decedent;

16 (7) A guardian of the decedent at the time of certification  
17 of death; and

18 (8) The health care surrogate.

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

21 (1) A person in a prior class is available at the time of  
22 certification of death to make an anatomical gift;

23 (2) The person proposing to make an anatomical gift knows  
24 of a refusal or contrary indications by the decedent; or

25 (3) The person proposing to make an anatomical gift knows  
26 of an objection to making an anatomical gift by a member of  
27 the person's class or a prior class.

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

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

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

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

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

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

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

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

6 (2) He or she has made a reasonable effort, taking into  
7 account the useful life of the part, to locate and examine the



8 decedent's medical records and inform persons listed in  
9 subsection (a), section three of this article of their option to  
10 make, or object to making, an anatomical gift;

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

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

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

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

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

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

32 (c) The coroner, chief medical examiner or local public  
33 health officer releasing and permitting the removal of a part  
34 shall maintain a permanent record of the name of the decedent,  
35 the person making the request, the date and purpose of the  
36 request, the part requested, and the person to whom it was  
37 released.

**§16-19-5. Information regarding anatomical donation; requests for anatomical gifts; search and notification.**

1 (a) All hospitals in this state shall provide general informa-  
2 tion available to the public regarding anatomical donation in the  
3 patient admission area of each facility.

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

16 (c) On or near the occurrence of each death in a hospital,  
17 the hospital shall contact the regional organ procurement  
18 organization by telephone to determine the suitability for organ,  
19 tissue and eye donation for any purpose specified under this  
20 chapter. The person designated by the hospital to contact the  
21 organ procurement organization shall have (1) the patient's  
22 name and identifier number, (2) the patient's age, (3) the cause  
23 of death and (4) any available current and past medical history  
24 available prior to making the contact. The organ procurement  
25 organization shall collaborate with the hospital's designated  
26 tissue or eye bank when there are tissue or eye donations. The  
27 organ procurement organization, in consultation with the  
28 patient's attending physician or hospital designee, shall  
29 determine suitability for donation.

30 (d) If it is determined that donation is not appropriate based  
31 on medical criteria, hospital personnel shall note this fact in the  
32 patient's record and no further action is necessary.

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

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

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

57 (2) A hospital, upon the admission of an individual at or  
58 near the time of death, if there is not immediately available any  
59 other source of that information; and

60 (3) The coroner or chief medical examiner as provided in  
61 subdivision (2), subsection (a), section four of this article when  
62 a body is placed in that official's custody.

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

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

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

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

1 (a) The following persons may become donees of anatomi-  
2 cal gifts for the purposes stated:

3 (1) The university of West Virginia system board of  
4 trustees for the scientific purposes of educational institutions  
5 for which it may receive or requisition bodies;

6 (2) A hospital, physician, surgeon or procurement organiza-  
7 tion, for transplantation, therapy, medical or dental education,  
8 research or advancement of medical or dental science;

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

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

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

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

#### **§16-19-7. Delivery of document of gift.**

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

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

**§16-19-8. Rights and duties at death.**

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

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

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

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

1 (a) Each hospital in this state, after consultation with other  
2 hospitals and procurement organizations, shall establish  
3 agreements or affiliations for coordination of procurement and  
4 use of human bodies and parts.

5 (b) The organ procurement organization involved in any  
6 transplant pursuant to this article shall facilitate, on the recipi-  
7 ent's behalf, a request by the recipient to contact the donor's  
8 family, in the priority order provided in subsection (a), section  
9 three of this article.

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

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

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

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

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

**§16-19-11. Examination; autopsy.**

1 (a) An anatomical gift authorizes any reasonable examina-  
2 tion necessary to assure medical acceptability of the gift for the  
3 purposes intended.

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

**§16-19-12. Transitional provisions.**

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

**§16-19-13. Immunity.**

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

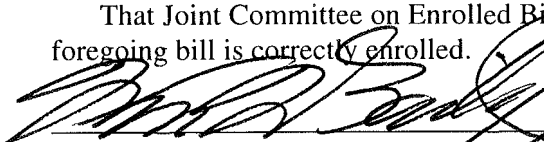
6 (b) Any individual who makes an anatomical gift pursuant  
7 to section two or three of this article and the individual's estate  
8 are not liable for any injury or damage that may result from the  
9 making or the use of the anatomical gift.

**§16-19-14. Short title.**

1 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.

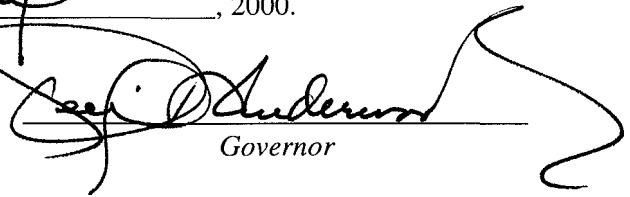
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

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

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/24/10

Time 3:21pm