
SUBSTITUTE HOUSE BILL 1787

State of Washington 52nd Legislature 1992 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Appelwick and Jacobsen)

Read first time 02/07/92.

1 AN ACT Relating to anatomical gifts; amending RCW 46.20.113,
2 68.50.106, and 68.50.500; adding new sections to chapter 68.50 RCW;
3 repealing RCW 68.50.280, 68.50.340, 68.50.350, 68.50.360, 68.50.370,
4 68.50.380, 68.50.390, 68.50.400, 68.50.410, and 68.50.420; and
5 prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** Unless the context requires otherwise,
8 the definitions in this section apply throughout sections 1 through 14
9 of this act.

10 (1) "Anatomical gift" means a donation of all or part of a human
11 body to take effect upon or after death.

12 (2) "Decedent" means a deceased individual.

1 (3) "Document of gift" means a card, a statement attached to or
2 imprinted on a motor vehicle operator's or chauffeur's license, a will,
3 or other writing used to make an anatomical gift.

4 (4) "Donor" means an individual who makes an anatomical gift of all
5 or part of the individual's body.

6 (5) "Enucleator" means an individual who is qualified to remove or
7 process eyes or parts of eyes.

8 (6) "Hospital" means a facility licensed, accredited, or approved
9 as a hospital under the law of any state or a facility operated as a
10 hospital by the United States government, a state, or a subdivision of
11 a state.

12 (7) "Part" means an organ, tissue, eye, bone, artery, blood, fluid,
13 or other portion of a human body.

14 (8) "Person" means an individual, corporation, business trust,
15 estate, trust, partnership, joint venture, association, government,
16 governmental subdivision or agency, or any other legal or commercial
17 entity.

18 (9) "Physician" or "surgeon" means an individual licensed or
19 otherwise authorized to practice medicine and surgery or osteopathy and
20 surgery under the laws of any state.

21 (10) "Procurement organization" means a person licensed,
22 accredited, or approved under the laws of any state for procurement,
23 distribution, or storage of human bodies or parts.

24 (11) "State" means a state, territory, or possession of the United
25 States, the District of Columbia, or the Commonwealth of Puerto Rico.

26 (12) "Technician" means an individual who is qualified to remove or
27 process a part.

28 NEW SECTION. **Sec. 2.** (1) An individual who is at least
29 eighteen years of age may (a) make an anatomical gift for any of the

1 purposes stated in section 5(1) of this act, (b) limit an anatomical
2 gift to one or more of those purposes, or (c) refuse to make an
3 anatomical gift.

4 (2) An anatomical gift may be made by a document of gift signed by
5 the donor. If the donor cannot sign, the document of gift must be
6 signed by another individual and by two witnesses, all of whom have
7 signed at the direction and in the presence of the donor and of each
8 other and state that it has been so signed.

9 (3) If a document of gift is attached to or imprinted on a donor's
10 motor vehicle operator's or chauffeur's license, the document of gift
11 must comply with subsection (2) of this section. Revocation,
12 suspension, expiration, or cancellation of the license does not
13 invalidate the anatomical gift.

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

20 (5) An anatomical gift by will takes effect upon death of the
21 testator, whether or not the will is probated. If, after death, the
22 will is declared invalid for testamentary purposes, the validity of the
23 anatomical gift is unaffected.

24 (6) A donor may amend or revoke an anatomical gift, not made by
25 will, by:

26 (a) A signed statement;

27 (b) An oral statement made in the presence of two individuals;

28 (c) Any form of communication during a terminal illness or injury;

29 or

1 (d) The delivery of a signed statement to a specified donee to whom
2 a document of gift had been delivered.

3 (7) The donor of an anatomical gift made by will may amend or
4 revoke the gift in the manner provided for amendment or revocation of
5 wills, or as provided in subsection (6) of this section.

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

9 (9) An individual may refuse to make an anatomical gift of the
10 individual's body or part by (a) a writing signed in the same manner as
11 a document of gift, (b) a statement attached to or imprinted on a
12 donor's motor vehicle operator's or chauffeur's license, or (c) any
13 other writing used to identify the individual as refusing to make an
14 anatomical gift. During a terminal illness or injury, the refusal may
15 be an oral statement or other form of communication.

16 (10) In the absence of contrary indications by the donor, an
17 anatomical gift of a part is neither a refusal to give other parts nor
18 a limitation on an anatomical gift under section 3 of this act.

19 (11) In the absence of contrary indications by the donor, a
20 revocation or amendment of an anatomical gift is not a refusal to make
21 another anatomical gift. If the donor intends a revocation to be a
22 refusal to make an anatomical gift, the donor shall make the refusal
23 pursuant to subsection (9) of this section.

24 NEW SECTION. **Sec. 3.** (1) Any member of the following classes
25 of persons, in the order of priority listed, absent contrary
26 instructions by the decedent, may make an anatomical gift of all or a
27 part of the decedent's body for an authorized purpose, unless the
28 decedent, at the time of death, had made an unrevoked refusal to make
29 that anatomical gift:

1 (a) The appointed guardian of the person of the decedent at the
2 time of death;

3 (b) The individual, if any, to whom the decedent had given a
4 durable power of attorney that encompassed the authority to make health
5 care decisions;

6 (c) The spouse of the decedent;

7 (d) A son or daughter of the decedent who is at least eighteen
8 years of age;

9 (e) Either parent of the decedent;

10 (f) A brother or sister of the decedent who is at least eighteen
11 years of age;

12 (g) A grandparent of the decedent.

13 (2) An anatomical gift may not be made by a person listed in
14 subsection (1) of this section if:

15 (a) A person in a prior class is available at the time of death to
16 make an anatomical gift;

17 (b) The person proposing to make an anatomical gift knows of a
18 refusal or contrary indications by the decedent; or

19 (c) The person proposing to make an anatomical gift knows of an
20 objection to making an anatomical gift by a member of the person's
21 class or a prior class.

22 (3) An anatomical gift by a person authorized under subsection (1)
23 of this section must be made by (a) a document of gift signed by the
24 person or (b) the person's telegraphic, recorded telephonic, or other
25 recorded message, or other form of communication from the person that
26 is contemporaneously reduced to writing and signed by the recipient of
27 the communication.

28 (4) An anatomical gift by a person authorized under subsection (1)
29 of this section may be revoked by any member of the same or a prior
30 class if, before procedures have begun for the removal of a part from

1 the body of the decedent, the physician, surgeon, technician, or
2 enucleator removing the part knows of the revocation.

3 (5) A failure to make an anatomical gift under subsection (1) of
4 this section is not an objection to the making of an anatomical gift.

5 NEW SECTION. **Sec. 4.** (1) On or before admission to a
6 hospital, or as soon as possible thereafter, a person designated by the
7 hospital shall ask each patient who is at least eighteen years of age:
8 "Are you an organ or tissue donor?" If the answer is affirmative the
9 person shall request a copy of the document of gift. If the answer is
10 negative or there is no answer and the attending physician consents,
11 the person designated shall discuss with the patient the option to make
12 or refuse to make an anatomical gift. The answer to the question, an
13 available copy of any document of gift or refusal to make an anatomical
14 gift, and any other relevant information shall be placed in the
15 patient's medical record.

16 (2) If, at or near the time of death of a patient, there is no
17 medical record that the patient has made or refused to make an
18 anatomical gift, the hospital administrator or a representative
19 designated by the administrator shall discuss the option to make or
20 refuse to make an anatomical gift and request the making of an
21 anatomical gift pursuant to section 3(1) of this act. The request
22 shall be made with reasonable discretion and sensitivity to the
23 circumstances of the family. A request is not required if the gift is
24 not suitable, based upon accepted medical standards, for a purpose
25 specified in section 5 of this act. An entry shall be made in the
26 medical record of the patient, stating the name and affiliation of the
27 individual making the request, and of the name, response, and
28 relationship to the patient of the person to whom the request was made.

1 The secretary of the department of health shall adopt rules to
2 implement this subsection.

3 (3) The following persons shall make a reasonable search of the
4 individual and his or her personal effects for a document of gift or
5 other information identifying the bearer as a donor or as an individual
6 who has refused to make an anatomical gift:

7 (a) A law enforcement officer, fire fighter, paramedic, or other
8 emergency rescuer finding an individual who the searcher believes is
9 dead or near death; and

10 (b) A hospital, upon the admission of an individual at or near the
11 time of death, if there is not immediately available any other source
12 of that information.

13 (4) If a document of gift or evidence of refusal to make an
14 anatomical gift is located by the search required by subsection (3)(a)
15 of this section, and the individual or body to whom it relates is taken
16 to a hospital, the hospital shall be notified of the contents and the
17 document or other evidence shall be sent to the hospital.

18 (5) If, at or near the time of death of a patient, a hospital knows
19 that an anatomical gift has been made pursuant to section 3(1) of this
20 act, or that a patient or an individual identified as in transit to the
21 hospital is a donor, the hospital shall notify the donee if one is
22 named and known to the hospital; if not, it shall notify an appropriate
23 procurement organization. The hospital shall cooperate in the
24 implementation of the anatomical gift or release and removal of a part.

25 (6) A person who fails to discharge the duties imposed by this
26 section is not subject to criminal or civil liability but is subject to
27 appropriate administrative sanctions.

28 NEW SECTION. **Sec. 5.** (1) The following persons may become
29 donees of anatomical gifts for the purposes stated:

1 (a) A hospital, physician, surgeon, or procurement organization for
2 transplantation, therapy, medical or dental education, research, or
3 advancement of medical or dental science;

4 (b) An accredited medical or dental school, college, or university
5 for education, research, or advancement of medical or dental science;
6 or

7 (c) A designated individual for transplantation or therapy needed
8 by that individual.

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

13 (3) If the donee knows of the decedent's refusal or contrary
14 indications to make an anatomical gift or that an anatomical gift by a
15 member of a class having priority to act is opposed by a member of the
16 same class or a prior class under section 3(1) of this act, the donee
17 may not accept the anatomical gift.

18 NEW SECTION. **Sec. 6.** (1) Delivery of a document of gift
19 during the donor's lifetime is not required for the validity of an
20 anatomical gift.

21 (2) If an anatomical gift is made to a designated donee, the
22 document of gift, or a copy, may be delivered to the donee to expedite
23 the appropriate procedures after death. The document of gift, or a
24 copy, may be deposited in any hospital, procurement organization, or
25 registry office that accepts it for safekeeping or for facilitation of
26 procedures after death. On request of an interested person, upon or
27 after the donor's death, the person in possession shall allow the
28 interested person to examine or copy the document of gift.

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

11 (2) The time of death must be determined by a physician or surgeon
12 who attends the donor at death or, if none, the physician or surgeon
13 who certifies the death. Neither the physician or surgeon who attends
14 the donor at death nor the physician or surgeon who determines the time
15 of death may participate in the procedures for removing or
16 transplanting a part unless the document of gift designates a
17 particular physician or surgeon pursuant to section 2(4) of this act.

18 (3) If there has been an anatomical gift, a technician may remove
19 any donated parts and an enucleator may remove any donated eyes or
20 parts of eyes, after determination of death by a physician or surgeon.

21 NEW SECTION. **Sec. 8.** Each hospital in this state, after
22 consultation with other hospitals and procurement organizations, shall
23 establish agreements or affiliations for coordination of procurement
24 and use of human bodies and parts.

25 NEW SECTION. **Sec. 9.** (1) A person may not knowingly, for
26 valuable consideration, purchase or sell a part for transplantation or
27 therapy, if removal of the part is intended to occur after the death of
28 the decedent.

1 (2) Valuable consideration does not include reasonable payment for
2 the removal, processing, disposal, preservation, quality control,
3 storage, transportation, or implantation of a part.

4 (3) A person who violates this section is guilty of a felony and
5 upon conviction is subject to a fine not exceeding fifty thousand
6 dollars or imprisonment not exceeding five years, or both.

7 NEW SECTION. **Sec. 10.** (1) An anatomical gift authorizes any
8 reasonable examination necessary to assure medical acceptability of the
9 gift for the purposes intended.

10 (2) The provisions of sections 1 through 14 of this act are subject
11 to the laws of this state governing autopsies.

12 (3) A hospital, physician, surgeon, coroner, medical examiner,
13 local public health officer, enucleator, technician, or other person,
14 who acts in accordance with sections 1 through 14 of this act or with
15 the applicable anatomical gift law of another state or a foreign
16 country or attempts in good faith to do so, is not liable for that act
17 in a civil action or criminal proceeding.

18 (4) An individual who makes an anatomical gift pursuant to section
19 2 or 3 of this act and the individual's estate are not liable for any
20 injury or damage that may result from the making or the use of the
21 anatomical gift.

22 NEW SECTION. **Sec. 11.** Sections 1 through 14 of this act apply
23 to a document of gift, revocation, or refusal to make an anatomical
24 gift signed by the donor or a person authorized to make or object to
25 making an anatomical gift before, on, or after the effective date of
26 this section.

1 NEW SECTION. **Sec. 12.** This act shall be applied and construed
2 to effectuate its general purpose to make uniform the law with respect
3 to the subject of this act among states enacting it.

4 NEW SECTION. **Sec. 13.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 14.** Sections 1 through 14 of this act may be
9 cited as the "Uniform Anatomical Gift Act."

10 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act are
11 each added to chapter 68.50 RCW.

12 **Sec. 16.** RCW 46.20.113 and 1987 c 331 s 81 are each amended to
13 read as follows:

14 The department of licensing shall provide a statement whereby the
15 licensee may certify (~~(in the presence of two witnesses)~~) his or her
16 willingness to make an anatomical gift under (~~(RCW 68.50.370)~~) section
17 2 of this act, as now or hereafter amended. The department shall
18 provide the statement in at least one of the following ways:

- 19 (1) On each driver's license; or
20 (2) With each driver's license; or
21 (3) With each in-person driver's license application.

22 **Sec. 17.** RCW 68.50.106 and 1987 c 331 s 59 are each amended to
23 read as follows:

24 In any case in which an autopsy or post mortem is performed, the
25 coroner or medical examiner, upon his or her own authority or upon the

1 request of the prosecuting attorney or other law enforcement agency
2 having jurisdiction, may make or cause to be made an analysis of the
3 stomach contents, blood, or organs, or tissues of a deceased person and
4 secure professional opinions thereon and retain or dispose of any
5 specimens or organs of the deceased which in his or her discretion are
6 desirable or needful for anatomic, bacteriological, chemical, or
7 toxicological examination or upon lawful request are needed or desired
8 for evidence to be presented in court. (~~When the autopsy or post~~
9 ~~mortem requires examination in the region of the pituitary gland, that~~
10 ~~gland may be removed and utilized for any desirable or needful purpose:~~
11 ~~PROVIDED, That a reasonable effort to obtain consent as required under~~
12 ~~RCW 68.50.350 shall be made if that organ is to be so utilized.))
13 Costs shall be borne by the county.~~

14 **Sec. 18.** RCW 68.50.500 and 1987 c 331 s 71 are each amended to
15 read as follows:

16 Each hospital shall develop procedures for identifying potential
17 organ and tissue donors. The procedures shall require that any
18 deceased individual's next of kin or other individual, as set forth in
19 (~~RCW 68.50.350~~) section 3 of this act, at or near the time of
20 notification of death be asked whether the deceased was an organ donor.
21 If not, the family shall be informed of the option to donate organs and
22 tissues pursuant to the uniform anatomical gift act. With the approval
23 of the designated next of kin or other individual, as set forth in
24 (~~RCW 68.50.350~~) section 3 of this act, the hospital shall then notify
25 an established eye bank, tissue bank, or organ procurement agency
26 including those organ procurement agencies associated with a national
27 organ procurement transportation network or other eligible donee, as
28 specified in (~~RCW 68.50.360~~) section 5 of this act, and cooperate in
29 the procurement of the anatomical gift or gifts. The procedures shall

1 encourage reasonable discretion and sensitivity to the family
2 circumstances in all discussions regarding donations of tissue or
3 organs. The procedures may take into account the deceased individual's
4 religious beliefs or obvious nonsuitability for organ and tissue
5 donation. Laws pertaining to the jurisdiction of the coroner shall be
6 complied with in all cases of reportable deaths pursuant to RCW
7 68.50.010.

8 NEW SECTION. **Sec. 19.** The following acts or parts of acts are
9 each repealed:

10 (1) RCW 68.50.280 and 1989 1st ex.s. c 9 s 224, 1987 c 331 s 64, &
11 1975-'76 2nd ex.s. c 60 s 1;

12 (2) RCW 68.50.340 and 1981 c 44 s 1 & 1969 c 80 s 2;

13 (3) RCW 68.50.350 and 1987 c 331 s 66 & 1969 c 80 s 3;

14 (4) RCW 68.50.360 and 1982 c 9 s 1, 1979 c 37 s 1, & 1969 c 80 s 4;

15 (5) RCW 68.50.370 and 1987 c 331 s 67, 1975 c 54 s 2, & 1969 c 80
16 s 5;

17 (6) RCW 68.50.380 and 1969 c 80 s 6;

18 (7) RCW 68.50.390 and 1969 c 80 s 7;

19 (8) RCW 68.50.400 and 1987 c 331 s 68 & 1969 c 80 s 8;

20 (9) RCW 68.50.410 and 1987 c 331 s 69 & 1969 c 80 s 9; and

21 (10) RCW 68.50.420 and 1987 c 331 s 70 & 1969 c 80 s 11.