

2 **SHB 1012** - S COMM AMD

3 By Committee on Health & Human Services

4 ADOPTED 4/13/93

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that:

8 (1) The demand for donor organs and body parts exceeds the  
9 available supply for transplant.

10 (2) The discussion regarding advance directives including  
11 anatomical gifts is most appropriate with the primary care provider  
12 during an office visit.

13 (3) Federal law requires hospitals, skilled nursing facilities,  
14 home health agencies, and hospice programs to provide information  
15 regarding advance directives.

16 (4) Discretion and sensitivity must be used in discussion and  
17 requests for anatomical gifts.

18 The legislature declares that it is in the best interest of the  
19 citizens of Washington to provide a program that will increase the  
20 number of anatomical gifts available for donation, and the legislature  
21 further declares that wherever possible policies and procedures  
22 required in this chapter shall be consistent with the federal  
23 requirements.

24 NEW SECTION. **Sec. 2.** Unless the context requires otherwise, the  
25 definitions in this section apply throughout sections 1 through 16 of  
26 this act.

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

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

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

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

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

3 (6) "Hospital" means a facility licensed under chapter 70.41 RCW,  
4 or as a hospital under the law of any state or a facility operated as  
5 a hospital by the United States government, a state, or a subdivision  
6 of a state.

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

9 (8) "Person" means an individual, corporation, business trust,  
10 estate, trust, partnership, joint venture, association, government,  
11 governmental subdivision or agency, or any other legal or commercial  
12 entity.

13 (9) "Physician" or "surgeon" means an individual licensed or  
14 otherwise authorized to practice medicine and surgery or osteopathy and  
15 surgery under chapters 18.71 and 18.57 RCW.

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

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

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

23 NEW SECTION. **Sec. 3.** (1) An individual who is at least eighteen  
24 years of age may (a) make an anatomical gift for any of the purposes  
25 stated in section 6(1) of this act, (b) limit an anatomical gift to one  
26 or more of those purposes, or (c) refuse to make an anatomical gift.

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

32 (3) If a document of gift is attached to or imprinted on a donor's  
33 motor vehicle operator's license, the document of gift must comply with  
34 subsection (2) of this section. Revocation, suspension, expiration, or  
35 cancellation of the license does not invalidate the anatomical gift.

36 (4) The donee or other person authorized to accept the anatomical  
37 gift may employ or authorize a physician, surgeon, technician, or  
38 enucleator to carry out the appropriate procedures.

1 (5) An anatomical gift by will takes effect upon death of the  
2 testator, whether or not the will is probated. If, after death, the  
3 will is declared invalid for testamentary purposes, the validity of the  
4 anatomical gift is unaffected.

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

7 (a) A signed statement;

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

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

10 or

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

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

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

19 (9) An individual may refuse to make an anatomical gift of the  
20 individual's body or part by (a) a writing signed in the same manner as  
21 a document of gift, (b) a statement attached to or imprinted on a  
22 donor's motor vehicle operator's license, or (c) another writing used  
23 to identify the individual as refusing to make an anatomical gift.  
24 During a terminal illness or injury, the refusal may be an oral  
25 statement or other form of communication.

26 (10) In the absence of contrary indications by the donor, an  
27 anatomical gift of a part is neither a refusal to give other parts nor  
28 a limitation on an anatomical gift under section 4 of this act.

29 (11) In the absence of contrary indications by the donor, a  
30 revocation or amendment of an anatomical gift is not a refusal to make  
31 another anatomical gift. If the donor intends a revocation to be a  
32 refusal to make an anatomical gift, the donor shall make the refusal  
33 pursuant to subsection (9) of this section.

34 NEW SECTION. **Sec. 4.** (1) A member of the following classes of  
35 persons, in the order of priority listed, absent contrary instructions  
36 by the decedent, may make an anatomical gift of all or a part of the  
37 decedent's body for an authorized purpose, unless the decedent, at the

1 time of death, had made an unrevoked refusal to make that anatomical  
2 gift:

3 (a) The appointed guardian of the person of the decedent at the  
4 time of death;

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

8 (c) The spouse of the decedent;

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

11 (e) Either parent of the decedent;

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

14 (g) A grandparent of the decedent.

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

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

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

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

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

30 (4) An anatomical gift by a person authorized under subsection (1)  
31 of this section may be revoked by a member of the same or a prior class  
32 if, before procedures have begun for the removal of a part from the  
33 body of the decedent, the physician, surgeon, technician, or enucleator  
34 removing the part knows of the revocation.

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

37 NEW SECTION. **Sec. 5.** (1) On or before admission to a hospital, or  
38 as soon as possible thereafter, a person designated by the hospital

1 shall ask each patient who is at least eighteen years of age: "Are you  
2 an organ or tissue donor?" If the answer is affirmative the person  
3 shall request a copy of the document of gift. If the answer is  
4 negative or there is no answer, the person designated shall provide the  
5 patient information about the right to make a gift and shall ask the  
6 patient if he or she wishes to become an anatomical parts donor. If  
7 the answer is affirmative, the person designated shall provide a  
8 document of gift to the patient. The answer to the questions, an  
9 available copy of any document of gift or refusal to make an anatomical  
10 gift, and any other relevant information shall be placed in the  
11 patient's medical record.

12 (2) If, at or near the time of death of a patient, there is no  
13 medical record that the patient has made or refused to make an  
14 anatomical gift, the hospital administrator or a representative  
15 designated by the administrator shall discuss the option to make or  
16 refuse to make an anatomical gift and request the making of an  
17 anatomical gift under section 4(1) of this act. The request shall be  
18 made with reasonable discretion and sensitivity to the circumstances of  
19 the family. A request is not required if the gift is not suitable,  
20 based upon accepted medical standards, for a purpose specified in  
21 section 6 of this act. An entry shall be made in the medical record of  
22 the patient, stating the name and affiliation of the individual making  
23 the request, and of the name, response, and relationship to the patient  
24 of the person to whom the request was made. The secretary of the  
25 department of health shall adopt rules to implement this subsection.

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

30 (a) The agency assuming jurisdiction over the decedent, such as the  
31 coroner or medical examiner; or

32 (b) A hospital, upon the admission of an individual at or near the  
33 time of death, if there is not immediately available another source of  
34 that information.

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

1 (5) If, at or near the time of death of a patient, a hospital knows  
2 that an anatomical gift has been made under section 4(1) of this act,  
3 or that a patient or an individual identified as in transit to the  
4 hospital is a donor, the hospital shall notify the donee if one is  
5 named and known to the hospital; if not, it shall notify an appropriate  
6 procurement organization. The hospital shall cooperate in the  
7 procurement of the anatomical gift or release and removal of a part.

8 (6) A person who fails to discharge the duties imposed by this  
9 section is not subject to criminal or civil liability.

10 (7) Hospitals shall develop policies and procedures to implement  
11 this section.

12 NEW SECTION. **Sec. 6.** (1) The following persons may become donees  
13 of anatomical gifts for the purposes stated:

14 (a) A hospital, physician, surgeon, or procurement organization for  
15 transplantation, therapy, medical or dental education, research, or  
16 advancement of medical or dental science;

17 (b) An accredited medical or dental school, college, or university  
18 for education, research, or advancement of medical or dental science;  
19 or

20 (c) A designated individual for transplantation or therapy needed  
21 by that individual.

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

26 (3) If the donee knows of the decedent's refusal or contrary  
27 indications to make an anatomical gift or that an anatomical gift made  
28 by a member of a class having priority to act is opposed by a member of  
29 the same class or a prior class under section 4(1) of this act, the  
30 donee may not accept the anatomical gift.

31 NEW SECTION. **Sec. 7.** (1) Delivery of a document of gift during  
32 the donor's lifetime is not required for the validity of an anatomical  
33 gift.

34 (2) If an anatomical gift is made to a designated donee, the  
35 document of gift, or a copy, may be delivered to the donee to expedite  
36 the appropriate procedures after death. The document of gift, or a  
37 copy, may be deposited in a hospital, procurement organization, or

1 registry office that accepts it for safekeeping or for facilitation of  
2 procedures after death. On request of an interested person, upon or  
3 after the donor's death, the person in possession shall allow the  
4 interested person to examine or copy the document of gift.

5 NEW SECTION. **Sec. 8.** (1) Rights of a donee created by an  
6 anatomical gift are superior to rights of others except when under the  
7 jurisdiction of the coroner or medical examiner. A donee may accept or  
8 reject an anatomical gift. If a donee accepts an anatomical gift of an  
9 entire body, the donee, subject to the terms of the gift, may allow  
10 embalming and use of the body in funeral services. If the gift is of  
11 a part of a body, the donee, upon the death of the donor and before  
12 embalming, shall cause the part to be removed without unnecessary  
13 mutilation. After removal of the part, custody of the remainder of the  
14 body vests in the person under obligation to dispose of the body.

15 (2) The time of death must be determined by a physician or surgeon  
16 who attends the donor at death or, if none, the physician or surgeon  
17 who certifies the death. Neither the physician or surgeon who attends  
18 the donor at death nor the physician or surgeon who determines the time  
19 of death may participate in the procedures for removing or  
20 transplanting a part.

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

24 NEW SECTION. **Sec. 9.** Each hospital in this state, after  
25 consultation with other hospitals and procurement organizations, shall  
26 establish agreements or affiliations for coordination of procurement  
27 and use of human bodies and parts.

28 NEW SECTION. **Sec. 10.** (1) A person may not knowingly, for  
29 valuable consideration, purchase or sell a part for transplantation or  
30 therapy, if removal of the part is intended to occur after the death of  
31 the decedent.

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

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

4 NEW SECTION. **Sec. 11.** (1) An anatomical gift authorizes  
5 reasonable examination necessary to assure medical acceptability of the  
6 gift for the purposes intended.

7 (2) The provisions of sections 1 through 16 of this act are subject  
8 to the laws of this state governing the jurisdiction of the coroner or  
9 medical examiner.

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

16 (4) An individual who makes an anatomical gift under section 3 or  
17 4 of this act and the individual's estate are not liable for injury or  
18 damage that may result from the making or the use of the anatomical  
19 gift.

20 NEW SECTION. **Sec. 12.** Sections 1 through 16 of this act apply to  
21 a document of gift, revocation, or refusal to make an anatomical gift  
22 signed by the donor or a person authorized to make or object to making  
23 an anatomical gift before, on, or after the effective date of this  
24 section.

25 NEW SECTION. **Sec. 13.** This act shall be applied and construed to  
26 effectuate its general purpose to make uniform the law with respect to  
27 the subject of this act among states enacting it.

28 NEW SECTION. **Sec. 14.** If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 15.** In any case where a patient is in need of  
33 corneal tissue for a transplantation, corneal tissue may be provided by



1 eye banks licensed by the secretary of health under rules promulgated  
2 by the department of health.

3 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act may be  
4 cited as the "uniform anatomical gift act."

5 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act are each  
6 added to chapter 68.50 RCW.

7 **Sec. 18.** RCW 46.20.113 and 1987 c 331 s 81 are each amended to  
8 read as follows:

9 The department of licensing shall provide a statement whereby the  
10 licensee may certify (~~(in the presence of two witnesses)~~) his or her  
11 willingness to make an anatomical gift under (~~(RCW 68.50.370)~~) section  
12 3 of this act, as now or hereafter amended. The department shall  
13 provide the statement in at least one of the following ways:

- 14 (1) On each driver's license; or
- 15 (2) With each driver's license; or
- 16 (3) With each in-person driver's license application.

17 **Sec. 19.** RCW 68.50.106 and 1987 c 331 s 59 are each amended to  
18 read as follows:

19 In any case in which an autopsy or post mortem is performed, the  
20 coroner or medical examiner, upon his or her own authority or upon the  
21 request of the prosecuting attorney or other law enforcement agency  
22 having jurisdiction, may make or cause to be made an analysis of the  
23 stomach contents, blood, or organs, or tissues of a deceased person and  
24 secure professional opinions thereon and retain or dispose of any  
25 specimens or organs of the deceased which in his or her discretion are  
26 desirable or needful for anatomic, bacteriological, chemical, or  
27 toxicological examination or upon lawful request are needed or desired  
28 for evidence to be presented in court. (~~(When the autopsy or post~~  
29 ~~mortem requires examination in the region of the pituitary gland, that~~  
30 ~~gland may be removed and utilized for any desirable or needful purpose:~~  
31 ~~PROVIDED, That a reasonable effort to obtain consent as required under~~  
32 ~~RCW 68.50.350 shall be made if that organ is to be so utilized.))  
33 Costs shall be borne by the county.~~

1       **Sec. 20.** RCW 68.50.500 and 1987 c 331 s 71 are each amended to  
2 read as follows:

3       Each hospital shall develop procedures for identifying potential  
4 ~~((organ and tissue))~~ anatomical parts donors. The procedures shall  
5 require that any deceased individual's next of kin or other individual,  
6 as set forth in ~~((RCW 68.50.350))~~ section 4 of this act, and the  
7 medical record does not specify the deceased as a donor, at or near the  
8 time of notification of death be asked whether the deceased was ~~((an~~  
9 ~~organ))~~ a part donor. If not, the family shall be informed of the  
10 option to donate ~~((organs and tissues))~~ parts pursuant to the uniform  
11 anatomical gift act. With the approval of the designated next of kin  
12 or other individual, as set forth in ~~((RCW 68.50.350))~~ section 4 of  
13 this act, the hospital shall then notify an established ~~((eye bank,~~  
14 ~~tissue bank, or organ procurement agency))~~ procurement organization  
15 including those organ procurement agencies associated with a national  
16 organ procurement transportation network or other eligible donee, as  
17 specified in ~~((RCW 68.50.360))~~ section 6 of this act, and cooperate in  
18 the procurement of the anatomical gift or gifts. The procedures shall  
19 encourage reasonable discretion and sensitivity to the family  
20 circumstances in all discussions regarding donations of ~~((tissue or~~  
21 ~~organs))~~ parts. The procedures may take into account the deceased  
22 individual's religious beliefs or obvious nonsuitability for ~~((organ~~  
23 ~~and tissue))~~ an anatomical parts donation. Laws pertaining to the  
24 jurisdiction of the coroner shall be complied with in all cases of  
25 reportable deaths pursuant to RCW 68.50.010.

26       NEW SECTION. **Sec. 21.** The following acts or parts of acts are  
27 each repealed:

28       (1) RCW 68.50.280 and 1989 1st ex.s. c 9 s 224, 1987 c 331 s 64, &  
29 1975-'76 2nd ex.s. c 60 s 1;

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

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

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

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

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

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

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

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

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

2 **SHB 1012** - S COMM AMD

3 By Committee on Health & Human Services

4 ADOPTED 4/13/93

5 On page 1, line 1 of the title, after "gifts;" strike the remainder  
6 of the title and insert "amending RCW 46.20.113, 68.50.106, and  
7 68.50.500; adding new sections to chapter 68.50 RCW; repealing RCW  
8 68.50.280, 68.50.340, 68.50.350, 68.50.360, 68.50.370, 68.50.380,  
9 68.50.390, 68.50.400, 68.50.410, and 68.50.420; and prescribing  
10 penalties."

--- END ---