

HOUSE BILL REPORT

2ESHB 1637

As Amended by the Senate

Title: An act relating to creating the revised uniform anatomical gift act.

Brief Description: Creating the revised uniform anatomical gift act.

Sponsors: By House Committee on Health Care & Wellness (originally sponsored by Representatives Hinkle, Cody, B. Sullivan, Moeller, Campbell, Williams, Green, Lovick, Upthegrove, Seaquist, Goodman, Simpson, Morrell, Linville, Ormsby and Rolfes).

Brief History:

Committee Activity:

Health Care & Wellness: 2/8/07, 2/27/07 [DPS].

Floor Activity:

Passed House: 3/12/07, 98-0;

Passed House: 1/30/08, 96-0.

Senate Amended.

Passed Senate: 3/7/08, 48-0.

Brief Summary of Second Engrossed Substitute Bill

- Adopts an amended version of the 2006 Uniform Anatomical Gift Act to regulate the donation of, or refusal to donate, bodies or body parts for transplantation, therapy, research, or education.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Cody, Chair; Morrell, Vice Chair; Hinkle, Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Barlow, Campbell, Condotta, Curtis, Green, Moeller, Pedersen, Schual-Berke and Seaquist.

Staff: Chris Cordes (786-7103).

Background:

Laws Addressing Organ Transplants

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 1968, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Anatomical Gift Act (UAGA) to address, in part, the shortage of organs for transplants. This version of the UAGA was adopted by all the states. When the UAGA was revised in 1987 (UAGA of 1987), 26 jurisdictions adopted it, including Washington in 1993. The UAGA adopted its most recent version in 2006.

Since the adoption of the UAGA, Congress established the Organ Procurement and Transplantation Network (Network) under the National Organ Transplant Act of 1984. The procurement organizations in the service area in which a donor lives are responsible for recovering the donated parts, to be allocated as determined by the Network.

The Washington UAGA of 1987

Donors. The UAGA of 1987 specifies the persons who are permitted to make anatomical gifts (persons over 18, or over 16 with a parent's signature), or refusals to make gifts, and the methods by which such gifts or refusals are made, including through signed documents and imprinted driver's licenses. It also specifies the methods by which revocations of gifts or refusals may be made, including a witnessed oral statement or communication during a terminal illness.

Certain persons are allowed, in order of priority, to make anatomical gifts on behalf of a decedent, including guardians, certain relatives, and persons with a health care power of attorney, unless the decedent has made an unrevoked refusal to make that gift.

Donees. Anatomical gifts may be made to (1) individuals for transplantation or therapy, (2) hospitals, physicians, or procurement organizations for transplantation, therapy, education, research, or the advancement of science, or (3) accredited colleges and universities for education, research, or the advancement of science. Hospitals are allowed to accept donations that are rejected by a donee.

Identifying Donors. Hospitals must have procedures for identifying potential anatomical parts donors, including asking the next of kin if the deceased was a donor and discussing donation options with them. Hospitals and coroners or medical examiners must also make reasonable searches of patients or persons within their jurisdiction, respectively, for gift donor documentation.

Organ and Tissue Donor Registry. In 2003, the Organ and Tissue Donor Registry was established in Washington. The Department of Licensing is required to transfer organ donor information from driver's licenses to the registry.

Violations. It is a Class C felony to knowingly purchase or sell, for valuable consideration, a part for transplantation or therapy, if the removal of the part is intended to occur after death.

Immunity. There is both civil and criminal immunity for persons who act in accordance with the UAGA of 1987, or attempt to do so in good faith.

Summary of Second Engrossed Substitute Bill:

The Uniform Anatomical Gift Act of 1987 is repealed, and the Uniform Anatomical Gift Act of 2006 is adopted, with some revisions.

Anatomical Gift Donors

The list of persons who may be donors of anatomical gifts is expanded to include:

- adults, emancipated minors, or minors reaching age 15 and one-half who are authorized to apply for a driver's license;
- agents of a donor, unless prohibited by a health care power of attorney;
- parents of an unemancipated minor; or
- donor's guardian.

A gift made by a parent of an unemancipated minor is not valid once the minor becomes emancipated or an adult.

Gifts may be evidenced by:

- a statement or symbol on a driver's license;
- a will;
- a communication during a terminal illness to at least two persons, one of whom is disinterested; or
- a signed donor card or other record for a donor registry.

For signatures, electronic symbols may be used in addition to written signatures.

An anatomical gift document is valid if executed according to these provisions or another state's or country's law where executed or where the person is domiciled, had a place of residence, or was a national at the time of execution of the document.

There is a presumption that an anatomical gift document is valid, unless the person knows that it was not validly executed or was revoked.

In the absence of express contrary indication of the donor, a person other than the donor is prohibited from making, amending, or revoking an anatomical gift that the donor made.

Gift Revocation

An anatomical gift may be revoked or amended by:

- a signed record;
- a later executed document, expressly or by inconsistency;
- the destruction or cancellation of the document of gift, but the registry must be notified;
- by a communication during a terminal illness to at least two persons, one of whom is disinterested; or
- if in a will, by amendment of the will.

A donor's revocation of an anatomical gift is not a refusal to be a donor and does not bar another authorized person from making an anatomical gift of the body or part.

Refusal to be an Anatomical Gift Donor

In the absence of express contrary indications, an individual's unrevoked refusal to make a gift bars all other persons from making a gift of the individual's body or part.

Anatomical Gift Donations on Behalf of a Decedent

The classes of specified persons who can make gifts of a decedent's body or parts is expanded to include these additional persons:

- an agent authorized to make the gift;
- a state registered domestic partner;
- adult grandchildren; and
- other persons having legal authority to dispose of the body.

The order of priority is changed to make guardians the last priority, except for persons with legal authority to dispose of the body.

A gift may be made by specified persons on behalf of a decedent after another such gift has been revoked. Any member of a class may make a gift, unless objections from other members of the class are known, and then the majority of persons in the class may make the gift. Revocation may be made a person in a higher class of priority unless a majority of persons in the higher class agree to the gift, but the revocation is effective only if the entity or person removing the body part knows before transplant procedures have begun.

Parents of an unemancipated minor who dies may revoke or amend an anatomical gift or a gift refusal.

Donees of Anatomical Gifts

Donees of anatomical gifts may be:

- for research or education: hospitals, accredited medical or dental schools, colleges or universities, or organ procurement organizations;
- an individual who will be the recipient of the part; and
- eye or tissue banks.

If a body part cannot be used by the donee or a donee is not named, there are provisions to specify to whom the body part passes. Priority is given to transplantation or therapy, over education or research, in certain situations.

Organ Procurement Organizations

A procurement organization, when a hospital refers an individual at or near death, must make a reasonable search of Department of Licensing records or any donor registry to ascertain whether the person has made an anatomical gift. The organization must be given reasonable access to records.

The procurement organization must:

- on the death of a minor, make a reasonable search for the parents and provide them with an opportunity to revoke or amend any gift or refusal of gift; and

- on referral of a patient by a hospital, make a reasonable search for persons with priority to make a gift on behalf of a prospective donor.

When English is not the first language of a person making, revoking, or changing an anatomical gift, organ procurement organizations must provide, at no cost, appropriate interpreter services.

If a prospective donor has a declaration or advance health directive that conflicts with the terms of a potential gift regarding use of measures to ensure medical suitability of a part for transplantation or therapy, the donor (or, if not able, an agent or other similarly authorized person) and the donor's physician must confer to resolve the conflict. Before resolution of the conflict, necessary measures to ensure medical suitability of the part may not be withheld if withholding is not contraindicated by appropriate end of life care.

Coroner or Medical Examiner Procedures

Specific requirements are established for coroners and medical examiners to cooperate with procurement organizations to maximize opportunities for recovering anatomical gifts, to the extent such cooperation does not interfere with timely death investigations. The coroner or medical examiner may limit the number of procurement organizations with which he or she cooperates. Procurement organizations must cooperate with the coroner or medical examiner to ensure the preservation and time transfer of evidence from a prospective donor that is required for a death investigation.

Coroners or medical examiners may release initial investigative information to a procurement organization to determine suitability of the potential donor. This information must remain confidential, and the coroner or medical examiner is not liable for any release of confidential information.

For bodies under the coroner's or medical examiner's jurisdiction, a body part may not be removed unless released by the coroner or medical examiner, or a body delivered for research or education, unless the part is the subject of a gift. If a part is released, the procurement organization must, if requested, cause a record to be made with information that would assist in the death investigation.

If the coroner or medical examination initially believes that the recovery of a part could interfere with postmortem investigation or the collection of evidence, the coroner or medical examiner may consult with the procurement organization about the proposed recovery and, after consultation, may release the part.

Illegal Activities

In addition to existing penalties, it is a Class C felony to intentionally falsify, forge, or obliterate a document of gift or refusal of gift for financial gain.

Immunity for Good Faith Actions

Additional immunity in civil or criminal proceedings is granted. A person may rely on the representations of the individuals specified to make gifts on behalf of the deceased as to their relationship with the deceased, unless the person knows that the representation is untrue.

Application Provisions

These provisions apply to all anatomical gifts, refusals to make gifts, or revocations of gifts, whenever made.

With respect to electronic signatures and anatomical gifts, these provisions supercede certain requirements of the federal Electronic Signatures in Global and National Commerce Act that federal law permits to be superceded.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment repeals a provision requiring hospitals to identify potential organ donors.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The new uniform act resolves many issues that have been concerns under current law. The rights of an individual to make anatomical gifts, or to refuse to, is strengthened. Transplantation is given priority over research, unless the donor says otherwise. The bill clarifies who can give consent to a gift. It keeps the current Washington donor registry. The provisions relating to medical examiners are new because there is not a uniform process for coordinating with post mortem examinations. There is a need to update the law to comply with current practices. The uniform law commissioners are a nonpartisan group of lawyers and judges from all the states whose job is to bring clarity and stability to the uniform laws. The process to update the Anatomical Gift Act was very inclusive. Uniformity across the states is very important, especially in an issue like anatomical gifts, where timeliness is of great concern. The state should resist making changes that are simply the preferences of various groups. The bill will save lives if it passes.

(With concerns) Coroners just became aware of this bill. It raises some serious concerns. There should be a collaborative process to resolve these concerns. Washington has a very effective death investigation system, but we cannot expect the rapid response this bill might require, especially in rural counties. The bill may impose an unreasonable burden on coroners and medical examiners to attend to issues relating to transplants. Many counties do not have the staff, or they will have geographical barriers to complying. The current law works to balance various statutory requirements.

(Opposed) None.

Persons Testifying: (In support) Jackie Der, University of Washington; Dennis Cooper, Uniform Law Commissioners of Washington; and Monica Johnson-Tomanka, Life Center Northwest.

(With concerns) Debbie Wilke, Washington Association of County Officials.

Persons Signed In To Testify But Not Testifying: None.