
HOUSE BILL 1787

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Appelwick and Jacobsen.

Read first time February 11, 1991. Referred to Committee on Health Care.

1 AN ACT Relating to anatomical gifts; amending RCW 46.20.113,
2 68.50.106, 68.50.280, and 68.50.500; adding new sections to chapter
3 68.50 RCW; repealing RCW 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 15
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 and includes a stillborn
13 infant or fetus.

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 6(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 only by a document of gift
5 signed by the donor. If the donor cannot sign, the document of gift
6 must be signed by another individual and by two witnesses, all of whom
7 have signed at the direction and in the presence of the donor and of
8 each 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, only 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 addressed to a physician or surgeon; 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 or on a
19 removal or release of other parts under section 4 of this act.

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

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

- 1 (a) The spouse of the decedent;
- 2 (b) An adult son or daughter of the decedent;
- 3 (c) Either parent of the decedent;
- 4 (d) An adult brother or sister of the decedent;
- 5 (e) A grandparent of the decedent; and
- 6 (f) A guardian of the person of the decedent at the time of death.

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 5.** (1) On or before admission to a
2 hospital, or as soon as possible thereafter, a person designated by the
3 hospital shall ask each patient who is at least eighteen years of age:
4 "Are you an organ or tissue donor?" If the answer is affirmative the
5 person shall request a copy of the document of gift. If the answer is
6 negative or there is no answer and the attending physician consents,
7 the person designated shall discuss with the patient the option to make
8 or refuse to make an anatomical gift. The answer to the question, 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 pursuant to section 3(1) of this act. The request
18 shall be made with reasonable discretion and sensitivity to the
19 circumstances of the family. A request is not required if the gift is
20 not suitable, based upon accepted medical standards, for a purpose
21 specified in section 6 of this act. An entry shall be made in the
22 medical record of the patient, stating the name and affiliation of the
23 individual making the request, and of the name, response, and
24 relationship to the patient of the person to whom the request was made.
25 The secretary of the department of social and health services shall
26 adopt regulations to implement this subsection.

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

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

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

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

12 (5) If, at or near the time of death of a patient, a hospital knows
13 that an anatomical gift has been made pursuant to section 3(1) of this
14 act or a release and removal of a part has been permitted pursuant to
15 section 4 of this act, or that a patient or an individual identified as
16 in transit to the hospital is a donor, the hospital shall notify the
17 donee if one is named and known to the hospital; if not, it shall
18 notify an appropriate procurement organization. The hospital shall
19 cooperate in the implementation of the anatomical gift or release and
20 removal of a part.

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

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

26 (a) A hospital, physician, surgeon, or procurement organization for
27 transplantation, therapy, medical or dental education, research, or
28 advancement of medical or dental science;

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

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

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

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

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

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

26 NEW SECTION. **Sec. 8.** (1) Rights of a donee created by an
27 anatomical gift are superior to rights of others except with respect to
28 autopsies under section 11(2) of this act. A donee may accept or

1 reject an anatomical gift. If a donee accepts an anatomical gift of an
2 entire body, the donee, subject to the terms of the gift, may allow
3 embalming and use of the body in funeral services. If the gift is of
4 a part of a body, the donee, upon the death of the donor and before
5 embalming, shall cause the part to be removed without unnecessary
6 mutilation. After removal of the part, custody of the remainder of the
7 body vests in the person under obligation to dispose of the body.

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

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

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

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

26 (2) Valuable consideration does not include reasonable payment for
27 the removal, processing, disposal, preservation, quality control,
28 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 any
5 reasonable examination necessary to assure medical acceptability of the
6 gift for the purposes intended.

7 (2) The provisions of sections 1 through 15 of this act are subject
8 to the laws of this state governing autopsies.

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

15 (4) An individual who makes an anatomical gift pursuant to section
16 2 or 3 of this act and the individual's estate are not liable for any
17 injury or damage that may result from the making or the use of the
18 anatomical gift.

19 NEW SECTION. **Sec. 12.** Sections 1 through 15 of this act apply
20 to a document of gift, revocation, or refusal to make an anatomical
21 gift signed by the donor or a person authorized to make or object to
22 making an anatomical gift before, on, or after the effective date of
23 this section.

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

1 NEW SECTION. **Sec. 14.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 15.** Sections 1 through 15 of this act may be
6 cited as the "Uniform Anatomical Gift Act."

7 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act are
8 each added to chapter 68.50 RCW.

9 **Sec. 17.** RCW 46.20.113 and 1987 c 331 s 81 are each amended to
10 read as follows:

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

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

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

21 In any case in which an autopsy or post mortem is performed, the
22 coroner or medical examiner, upon his or her own authority or upon the
23 request of the prosecuting attorney or other law enforcement agency
24 having jurisdiction, may make or cause to be made an analysis of the
25 stomach contents, blood, or organs, or tissues of a deceased person and
26 secure professional opinions thereon and retain or dispose of any

1 specimens or organs of the deceased which in his or her discretion are
2 desirable or needful for anatomic, bacteriological, chemical, or
3 toxicological examination or upon lawful request are needed or desired
4 for evidence to be presented in court. When the autopsy or post mortem
5 requires examination in the region of the pituitary gland, that gland
6 may be removed and utilized for any desirable or needful purpose:
7 PROVIDED, That a reasonable effort to obtain consent as required under
8 (~~RCW 68.50.350~~) section 3 of this act shall be made if that organ is
9 to be so utilized. Costs shall be borne by the county.

10 **Sec. 19.** RCW 68.50.280 and 1989 1st ex.s. c 9 s 224 are each
11 amended to read as follows:

12 In any case where a patient is in need of corneal tissue for a
13 transplantation, the county coroner, or county medical examiner or
14 designee, may provide corneal tissue, from decedents under his or her
15 jurisdiction, upon the request of an eye bank approved and authorized
16 to make such requests by the secretary of the department of health,
17 subject to the following conditions:

- 18 (1) Ready identification of the decedent is impossible, or
19 (2) A reasonable effort to obtain such consent as is required under
20 (~~RCW 68.50.350~~) section 3 of this act is made, within the time period
21 during which corneal tissue is a viable transplant, and no objection by
22 the next of kin is known, and
23 (3) Removal of the cornea for transplantation will not interfere
24 with the subsequent course of an investigation or autopsy or alter the
25 post mortem facial appearance of the decedent.

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

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

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

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

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

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

27 (4) RCW 68.50.370 and 1987 c 331 s 67, 1975 c 54 s 2, & 1969 c 80
28 s 5;

29 (5) RCW 68.50.380 and 1969 c 80 s 6;

- 1 (6) RCW 68.50.390 and 1969 c 80 s 7;
- 2 (7) RCW 68.50.400 and 1987 c 331 s 68 & 1969 c 80 s 8;
- 3 (8) RCW 68.50.410 and 1987 c 331 s 69 & 1969 c 80 s 9; and
- 4 (9) RCW 68.50.420 and 1987 c 331 s 70 & 1969 c 80 s 11.