

UNIFORM ANATOMICAL GIFT ACT

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Karen Hale

LONG TITLE

General Description:

This bill amends the Uniform Anatomical Gift Act to add eye and tissue banks to the list of anatomical gift options and to clarify requirements for notice to procurement organizations and consent for donations.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ includes a restriction indicated on the Utah Donor Registry as a method in which an individual can refuse to make an anatomical gift;
- ▶ amends the list of anatomical gift options that must be included in the routine inquiry to include an eye bank and tissue bank;
- ▶ provides that an organ procurement organization must confirm in writing or verbally whether or not a patient is eligible to make an anatomical gift;
- ▶ permits a signature or verbal confirmation of consent to donate from the one having highest priority; and
- ▶ requires law enforcement who find an individual who is deceased to inform an organ procurement organization of the deceased next of kin, if known.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-28-2, as last amended by Chapter 117, Laws of Utah 2001

26-28-3, as last amended by Chapter 343, Laws of Utah 1995

26-28-6, as last amended by Chapter 185, Laws of Utah 2002

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-28-2** is amended to read:

26-28-2. Definitions.

As used in this chapter:

(1) "Anatomical gift" means the giving of permission for a person authorized in this chapter to remove parts of the human body as limited in the document of gift after death of the human body and use them for the purposes listed in Subsection 26-28-3(1).

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Document of gift" means a card, a will, registration on the Utah Donor Registry, or other writing used to make an anatomical gift in compliance with this chapter.

(4) "Donor" means an individual who, prior to his death, executes a document of gift concerning all or part of his own body.

(5) "Evidence of a document of gift" means a statement attached to or imprinted on any license to operate a motor vehicle or any other writing expressing a desire to make an anatomical gift or giving evidence of the existence of a document of gift.

(6) "Hospital" means a general acute hospital and specialty hospital facility licensed in accordance with Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, or by the United States government.

(7) "Organ procurement organization" means an organization recognized by the United States Department of Health and Human Services as meeting the requirements of 42 U.S.C.

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(8) "Part" means an organ, tissue, skin, tendon, ligament, eye, bone, blood vessel, blood, fluid, or other portion of a human body.

(9) "Physician" means a person licensed to practice medicine under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or under Title 58, Chapter 67, Utah Medical Practice Act, or a person similarly licensed in any state.

(10) "Procurement entity" means:

- (a) an organ procurement organization; or
- (b) a hospital, medical school, physician, eye bank, or tissue bank.

(11) "Technician" means a person:

(a) certified by the American Association of Tissue Banks as a certified tissue bank specialist[-];

(b) certified by the Eye Bank Association of America as a certified eye bank technician; or

(c) under the supervision of a certified tissue bank specialist or certified eye bank technician.

Section 2. Section **26-28-3** is amended to read:

26-28-3. Anatomical gifts -- Eligibility to make -- Procedures.

(1) An individual who is 18 years of age or older may refuse to make an anatomical gift of any part of his own body or may make an anatomical gift of specific parts or of all of his own body to allow any part of his own body to be used for transplantation, therapy, medical or dental education, research, or the advancement of medical or dental science.

(2) In making an anatomical gift, the individual may:

- (a) limit an anatomical gift to one or more of the purposes listed in Subsection (1); or
- (b) limit an anatomical gift to specific parts of his body.

(3) An individual may make an anatomical gift only by signing a document of gift. If the individual is physically unable to sign, another person may sign the document of gift in the individual's and two witnesses' presence, and state that the document of gift has been signed in accordance with the individual's wishes.

(4) Revocation, expiration, or suspension of a license to operate a motor vehicle does not invalidate a document of gift evidenced by the license.

(5) A document of gift may designate a particular procurement entity to carry out the

appropriate procedures. In the absence of a designation or if the designee is not available, or is unable to perform the procedures, or does not desire to perform the procedures, any procurement entity authorized under this chapter may carry out the appropriate procedures.

(6) An anatomical gift made by will takes effect upon death of the testator, regardless of whether the will is probated. If upon submission to probate, the will is declared invalid, the validity of the anatomical gift is unaffected.

(7) A donor, or the person who signed a document of gift on behalf of the donor under Subsection (3), may amend or revoke an anatomical gift that is not made by will, only by:

- (a) a signed statement;
- (b) an oral statement made in the presence of two persons;
- (c) any form of communication during a terminal illness or injury addressed to a physician; or
- (d) the delivery of a signed statement to the procurement entity with whom a document of gift has been deposited.

(8) A person who executes a document of gift as a component of his will may amend or revoke the gift in accordance with Section 75-2-507 or as provided in Subsection (7).

(9) A document of gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

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

(11) In the absence of contrary indications by the donor, a revocation or amendment of one document of gift is not a refusal to make another subsequent anatomical gift. If the donor intends a revocation to be a refusal to make any anatomical gift, the donor shall make the refusal pursuant to Subsection (12).

(12) (a) An individual may refuse to make an anatomical gift by:

- (i) a writing signed in the same manner as a document of gift provided for in Subsection (3);
- ~~[(ii) a statement attached to or imprinted on a license to operate a motor vehicle; or]~~

(ii) a restriction indicated on the Utah Donor Registry; or

(iii) any other writing used to identify the person as refusing to make an anatomical gift;

or

(b) during a terminal illness or injury, refusing to make an anatomical gift by making an oral or nonverbal communication witnessed by a person 18 years of age or older.

Section 3. Section **26-28-6** is amended to read:

26-28-6. Routine inquiry and required request -- Search and notification.

(1) At or near the time of a patient's death, the administrator of the hospital where the patient is being treated or a representative designated by the administrator shall:

(a) notify the appropriate organ procurement organization of the imminent or actual death of the patient;

(b) ensure, in collaboration with the organ procurement organization, tissue bank, and eye bank that readily available persons listed as having priority in Section 26-28-4 are informed of the option to make or refuse to make an anatomical gift in accordance with Section 26-28-4, with reasonable discretion and sensitivity appropriate to the circumstances of the family;

(c) enter the required information on a Utah Anatomical Consent Form or hospital death form as adopted by the department, which may include the patient's name and demographic information, medical suitability of the patient, the response of the person to whom the request was made and the person's relationship to the patient, and if the patient does not meet the medical criteria, the reasons he did not meet the criteria; [~~and~~]

(d) obtain the signature or verbal confirmation of the one having the highest priority of the readily available persons listed as having priority in Section 26-28-4, signifying whether he consented or declined to consent to the making of an anatomical gift on behalf of the patient[-]; and

(e) obtain verbal or written confirmation from the organ procurement organization, tissue bank, or eye bank, including name and organization, indicating whether the patient is eligible or not to make an anatomical gift.

(2) For purposes of Subsection (1)(b), the individual designated by the hospital to initiate

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the request to the family must be an organ procurement entity representative or an individual who has completed a course offered or approved by the organ procurement organization and designed in conjunction with the tissue and eye bank community in the methodology for approaching potential donor families.

(3) (a) A law enforcement officer, fireman, emergency medical services provider, or other emergency rescuer who finds an individual who is deceased or near death, and a hospital, upon the admission of an individual at or near death, shall:

(i) make a reasonable search for a document of gift or other information identifying whether the individual has made or refused to make an anatomical gift; and

(ii) if he finds a document of gift, evidence of a document of gift, or evidence of refusal, notify the hospital to which the individual is taken and deliver the evidence to the hospital.

(b) When a law enforcement officer, fireman, emergency medical services provider, or other emergency rescuer finds an individual who is deceased at the scene of a motor vehicle accident, and when the deceased individual is transported from the scene of the accident to a funeral establishment licensed under Title 58, Chapter 9, Funeral Services Licensing Act:

(i) the law enforcement officer, firemen, emergency medical services provider, or other emergency rescuer shall as soon as reasonably possible, notify the appropriate organ procurement organization, tissue bank, or eye bank of:

(A) the identity of the deceased individual, if known; and

(B) information, if known, pertaining to the deceased individual's legal next-of-kin in accordance with Subsection 26-28-4(1);

~~[(B)]~~ (C) the name and location of the funeral establishment which received custody of and transported the deceased individual; and

(ii) the funeral establishment receiving custody of the deceased individual under this Subsection (3) may not embalm the body of the deceased individual until:

(A) the funeral establishment receives notice from the organ procurement organization, tissue bank, or eye bank that the readily available persons listed as having priority in Section 26-28-4 have been informed by the individual described in Subsection (2) of the option to make or

refuse to make an anatomical gift in accordance with Section 26-28-4, with reasonable discretion and sensitivity appropriate to the circumstances of the family;

(B) in accordance with federal law, prior approval for embalming has been obtained from a family member or other authorized person; and

(C) the period of time in which embalming is prohibited under Subsection (3)(b)(ii) may not exceed 24 hours after death.

(4) A hospital shall notify the appropriate organ procurement organization that a part is available if a person known to be a donor, and at or near death, is in transit to the hospital.

(5) The hospital and funeral establishment shall cooperate in the release and removal of the anatomical gift.

(6) A person who fails to discharge the duties imposed by this section is not subject to civil or criminal liability but is subject to appropriate administrative sanctions against the professional certification or license and against the facility's license.