

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:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **26-28-2**, as last amended by Chapter 117, Laws of Utah 2001

32 **26-28-3**, as last amended by Chapter 343, Laws of Utah 1995

33 **26-28-6**, as last amended by Chapter 185, Laws of Utah 2002



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

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

37 **26-28-2. Definitions.**

38 As used in this chapter:

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

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

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

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

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

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

53 (7) "Organ procurement organization" means an organization recognized by the United
54 States Department of Health and Human Services as meeting the requirements of 42 U.S.C.
55 Section 273.

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

58 (9) "Physician" means a person licensed to practice medicine under Title 58, Chapter

59 68, Utah Osteopathic Medical Practice Act, or under Title 58, Chapter 67, Utah Medical
60 Practice Act, or a person similarly licensed in any state.

61 (10) "Procurement entity" means:

62 (a) an organ procurement organization; or

63 (b) a hospital, medical school, physician, eye bank, or tissue bank.

64 (11) "Technician" means a person:

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

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

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

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

72 **26-28-3. Anatomical gifts -- Eligibility to make -- Procedures.**

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

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

78 (a) limit an anatomical gift to one or more of the purposes listed in Subsection (1); or

79 (b) limit an anatomical gift to specific parts of his body.

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

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

86 (5) A document of gift may designate a particular procurement entity to carry out the
87 appropriate procedures. In the absence of a designation or if the designee is not available, or is
88 unable to perform the procedures, or does not desire to perform the procedures, any
89 procurement entity authorized under this chapter may carry out the appropriate procedures.

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

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

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

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

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

105 (10) In the absence of contrary indications by the donor, an anatomical gift of a part is
106 neither a refusal to give other parts nor a limitation on an anatomical gift under Section
107 26-28-4.

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

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

- 113 (i) a writing signed in the same manner as a document of gift provided for in
114 Subsection (3);
- 115 ~~[(ii) a statement attached to or imprinted on a license to operate a motor vehicle; or]~~
- 116 (ii) a restriction indicated on the Utah Donor Registry; or
- 117 (iii) any other writing used to identify the person as refusing to make an anatomical
118 gift; or

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

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

122 **26-28-6. Routine inquiry and required request -- Search and notification.**

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

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

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

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

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

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

143 (2) For purposes of Subsection (1)(b), the individual designated by the hospital to
144 initiate the request to the family must be an organ procurement entity representative or an
145 individual who has completed a course offered or approved by the organ procurement
146 organization and designed in conjunction with the tissue and eye bank community in the
147 methodology for approaching potential donor families.

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

151 (i) make a reasonable search for a document of gift or other information identifying

152 whether the individual has made or refused to make an anatomical gift; and

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

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

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

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

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

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

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

170 (A) the funeral establishment receives notice from the organ procurement organization,
171 tissue bank, or eye bank that the readily available persons listed as having priority in Section
172 26-28-4 have been informed by the individual described in Subsection (2) of the option to
173 make or refuse to make an anatomical gift in accordance with Section 26-28-4, with reasonable
174 discretion and sensitivity appropriate to the circumstances of the family;

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

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

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

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

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

Legislative Review Note
as of 12-8-03 10:57 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

Costs associated with this bill are expected to be minimal and can be handled within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst