

- SUBJECT:** Immunity for certain persons under the Texas Anatomical Gift Act
- COMMITTEE:** Public Health — favorable, without amendment
- VOTE:** 8 ayes — Gray, Coleman, Capelo, Glaze, Longoria, Maxey, Uresti, Wohlgemuth
- 0 nays
- 1 absent — Delisi
- WITNESSES:** For — James A. Cutler, Southwest Transplant Alliance; *Registered but did not testify:* Harold Freeman, Texas Medical Association; Matt Wall, Texas Hospital Association
- Against — Dennis Roberts; Peggy Roberts
- On — *Registered but did not testify:* Phil Walker, Texas Department of Health
- BACKGROUND:** The Texas Anatomical Gift Act (TAGA), enacted in 1989, adopted the national provisions of the Uniform Anatomical Gift Act of 1968 as well as state guidelines for the process of donating organs and tissue. Health and Safety Code, secs. 692.013 and 692.014 outline hospital protocol and set procedures for an organ procurement organization (OPO) or its designee to follow at or near the time of a potential donor’s death. Unless a dying person is considered a medically unsuitable donor or a hospital or OPO has specific evidence that the person would object to being a donor, an OPO must ask the person authorized to make an anatomical gift on behalf of the decedent if they will consider the option of organ or tissue donation.
- Under Health and Safety Code, sec. 692.016, a person who acts in “good faith” by making a reasonable effort to comply with a potential donor’s wishes and to contact family members or an authorized guardian for consent at or near the time of the donor’s death is not liable for civil damages or subject to criminal prosecution “except in the case of the person’s own negligence.”

DIGEST: HB 80 would amend Health and Safety Code, sec. 692.016 to define negligence specifically as “an act or omission of the person that is intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard.”

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS SAY: HB 80 would strengthen the TAGA by clarifying the definition of negligence involving organ and tissue removal. The new language would resolve conflicting language in the current law, because by definition, a person who is acting in good faith cannot be negligent. The bill would specify that a negligent action or omission is one that is intended, wilful, or wanton and committed with reckless disregard or conscious indifference. This would differentiate between a simple, unintended mistake and gross negligence, thus ensuring that those who truly intend to do harm are the ones who are held liable.

HB 80 would help clear litigation and liability fears for hospitals, doctors, nurses, and employees of OPOs who are working in good faith to comply with the law. When TAGA was enacted, sec. 692.016 was designed as a “Good Samaritan” provision intended to protect anyone who makes an unintentional error while acting in good faith in his or her professional capacity. As case law has evolved over the years, “good faith” protection has eroded, thus subjecting some people who honestly are trying to follow the law to unnecessary and expensive lawsuits for negligence.

HB 80 would encourage and support medical professionals in their efforts to perform an extremely sensitive and important service. As of January 1, some 4,500 Texans were waiting for organs. Organ and tissue donation saves hundreds of lives every year, and while 85 percent of Americans support organ donation, it still can be a tough personal decision. In an emotionally charged situation where life-and-death decisions must be made quickly, asking the relatives of a dying person whether they wish to donate their loved one’s organs is a difficult and sensitive task. Under this kind of pressure,

mistakes occasionally are made, but as long as those who perform this task are working in good faith to follow the intention of the law under TAGA, they should not be subject to civil or criminal penalties.

HB 80 would not protect people who commit grossly negligent acts. Providing false or misleading information to families to coerce them into donating their relatives' organs is grossly negligent, as is deliberately misrepresenting the severity of a person's injuries to pressure a family into making a decision. Under current law, *not* asking an eligible family to donate their loved one's organs could be held to be a grossly negligent omission if another patient died on a waiting list for organs or tissue. None of these acts or omissions are protected under current law, nor would they be protected under HB 80.

OPPONENTS
SAY:

Because organ and tissue donations are deeply personal choices, every possible protection should be extended to patients and their families under TAGA. Changing the current language to limit liability could make it more difficult for families to obtain a legal remedy when organs and tissue are removed without proper procedures being followed to obtain their permission.