

SUBJECT: Regulating the removal of corneal tissue from deceased persons

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Delisi, Laubenberg, Coleman, Dawson, Jackson, McReynolds,
Truitt, Zedler

0 nays

1 absent — Solis

WITNESSES: For — None

Against — None

On — James Cutler, Southwest Transplant Alliance

BACKGROUND: Corneal tissue covers the front of the eye and is the main focusing element of the eye. Disease, injury, or infection of the cornea can lead to significant loss of vision or blindness. The cornea can be transplanted from a human donor to restore vision to the recipient. According to the Eye Bank Association of America, a trade group for corneal tissue banks, more than 46,000 corneal transplants are performed each year.

In Texas, the Texas Anatomical Gift Act (Health and Safety Code, ch. 692) regulates consent and liability for organ donation. It defines who may give consent, what organizations or professionals may receive the donated organ, hospital protocols that must be established, and limitations on liability for good faith efforts. A medical examiner may not remove an organ without consent.

Corneal tissue is not a visceral organ and has its own set of statutes, which generally permit “legislative consent” — the idea that the law permits removal of corneal tissue without express consent. Under Health and Safety Code, sec. 693.012, human corneal tissue may be removed following death if there is no known objection by a spouse or other next of kin, and the removal of the tissue would not interfere with an investigation or autopsy or alter the donor’s facial appearance.

Human organ transplantation, including corneal tissue, also is covered by federal law. The federal Uniform Anatomical Gift Act of 1968 and the National Organ Transplant Act of 1984 regulate issues of consent and distribution as well as establish penalties. The U.S. Food and Drug Administration is considering a rule change relating to corneal tissue, which may take effect in May 2005, that would require an interview with an individual who is knowledgeable about the donor's medical history and relevant social behavior in the absence of consent. This rule would not preempt state "legislative consent" but could add new consent obligations.

DIGEST:

HB 1544 would repeal the statutes concerning corneal tissue transplants. A medical examiner, justice of the peace, county judge, or physician designated by the medical examiner or justice of the peace could permit, on request from an eye bank, the removal of corneal tissue under the same provisions as visceral organs. It also specifically would apply the organ donation provisions relating to consent and immunity to corneal tissue donations.

This bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

HB 1544 would ensure that people who did not want to donate corneal tissue would not have it removed after death under "legislative consent." In current practice, corneal tissue may be removed without consent from the deceased or next of kin, and because the missing tissue rarely goes noticed, some practitioners do not seek consent as thoroughly as they would for other organs.

The bill would treat corneal tissue donation and transplantation just like the process for organ transplantation, ensuring that consent, distribution, and liability were handled in the same way for all human donations. There is no need for corneal tissue to fall under a separate statute or for additional penalties. Federal law treats corneal tissue the same as other organs and so should Texas law.

There is no shortage of corneal tissue in Texas and no transplant lists as there are for other organs. If removing legislative consent limited the availability of corneal tissue for transplantation, it is unlikely transplant patients would be affected.

OPPONENTS
SAY:

The “legislative consent” law was enacted in 1977 in response to a shortage of corneal tissue. The fact that there is no shortage today could be attributed to current law. Also, supply and demand can change quickly. For example, there was not a shortage of skin for transplantation in the United States until injured veterans began to return from the current war in Iraq.

OTHER
OPPONENTS
SAY:

Corneal tissue should not be treated like other organs. There is a much longer window of time for transplanting corneal tissue than for other organs. Also, restoration of sight is important but not lifesaving like other organ donations. Instead, the separate statute should be retained, but consent should be required and penalties for violating the statute should be established, as under HB 2963 by Coleman and SB 1562 by Ellis.

NOTES:

Two other bills relating to corneal tissue transplantation are HB 2963 by Coleman, which was referred to the House Public Health Committee, and its companion, SB 1562 by Ellis, which was referred to Senate Health and Human Services Committee.