

SUBJECT: Adoption of the Revised Uniform Anatomical Gift Act

COMMITTEE: Public Health — favorable, without amendment

VOTE: 6 ayes — Delisi, Jackson, Coleman, Gonzales, S. King, Olivo

0 nays

3 absent — Laubenberg, Cohen, Truitt

SENATE VOTE: On final passage, May 14 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 3814 by Zerwas:)*

For — Sam Holtzman, Life Gift Organ Donation Center; Teresa Shafer, Life Gift Organ Donation Center; *(Registered, but did not testify:* Jennifer Cutrer, Parkland Health and Hospital System; Greg Herzog, Texas Medical Association; Mazie M. Jamison, Children's Medical Center Dallas; Sister Michele O'Brien, CHRISTUS Santa Rosa Health Care; Laurie Reece, Texas Transplantation Society; Michelle Romero, Texas Academy of Internal Medicine Services; Harry Tindall, Texas Commission on Uniform State Laws; Catherine Wilkis, CHRISTUS Health; Chris Yanas, University Health System; James A. Cutler, Texas Transplant Society, Southwest Transplant Alliance; Matthew T. Wall, Texas Hospital Association)

Against — Randy Frost; Stephen Pustilnik, Galveston County Medical Examiner Office; Sharon M. Derrick, Harris County Medical Examiner's Office; Elizabeth Peacock; *(Registered, but did not testify:* Carl Wigren, Tarrant County Medical Examiner Office)

On — Michael Vasquez, Texas Conference of Urban Counties

BACKGROUND: In 1968, the National Conference of Commissioners on Uniform State Law created the Uniform Anatomical Gift Act. In 1969, the 61st Legislature adopted the act, which was codified as Health and Safety Code, ch. 692. A revised uniform act was developed in 1987, and in 1969, the 71st Legislature adopted it as the Texas Anatomical Gift Act.

DIGEST:

REVISED UNIFORM ANATOMICAL GIFT ACT

The bill would apply to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made and would establish persons authorized to make such a gift on the donor's behalf, both during the donor's life and afterwards.

Persons authorized to make anatomical gifts. An anatomical gift of a donor's body or part could be made during the life of the donor for the purpose of transplantation, therapy, research, or education by:

- an adult donor;
- an emancipated minor donor or a minor at least 16 years old and authorized to apply for a driver's license;
- an agent of the donor, unless prohibited by a medical power of attorney or other record;
- a parent of the donor, if the donor is an unemancipated minor; or
- the donor's guardian.

Making anatomical gift before death. A donor could make an anatomical gift by authorizing a statement indicating that the donor had made an anatomical gift:

- to be imprinted on the donor's driver's license or identification card;
- in a will;
- during a terminal illness or injury by any form of communication addressed to at least two adults, at least one of whom was a disinterested witness; or
- by a donor card or other record signed by the donor or other authorized person or on a donor registry.

If the donor or other person physically was unable to sign a record, the record could be signed by another individual at the direction of the donor or other person and would have to be witnessed by at least two adults, at least one of whom was a disinterested witness.

Revocation, suspension, expiration, or cancellation of a driver's license or identification card on which an anatomical gift was indicated would not invalidate the gift.

An anatomical gift made by will would take effect on the donor's death whether or not the will was probated. Invalidation of the will would not invalidate the gift.

Amending or revoking anatomical gift before death. A donor or other person authorized to make an anatomical gift could amend or revoke such gift by:

- a record signed by the donor, the other person, or another individual acting at the direction of the donor or other person if those persons physically were unable to sign; or
- a later-executed document that amended or revoked a previous anatomical gift.

A signed record amending or revoking a gift would have to be witnessed by at least two adults, at least one of whom was a disinterested witness.

A donor or authorized person could revoke an anatomical gift by the destruction or cancellation of the document of gift with the intent to revoke the gift. A donor could amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, one of whom was a disinterested witness. A donor who made an anatomical gift in a will could amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in the bill for a signed record.

Refusal to make anatomical gift. Under the bill, an individual could refuse to make an anatomical gift by a signed record by the individual or another individual acting at the direction of that individual, the individual's will, or any form of communication made by the individual during a terminal illness or injury addressed to at least two adults, at least one of whom was a disinterested witness. An individual who had made a refusal could amend or revoke the refusal in the same manner as provided for making a refusal.

A record of refusal made by another individual's action at the direction of the person making the refusal would have to be witnessed by at least two adults, at least one of whom was a disinterested witness.

In the absence of an express, contrary indication by the individual set forth in a refusal, an individual's unrevoked refusal to make an anatomical gift

would bar all other persons from making an anatomical gift of the individual's body or part.

Preclusive effect of anatomical gift. In the absence of an express, contrary indication by the donor, a person would be barred from making, amending, or revoking an anatomical gift if the donor made an anatomical gift. A donor's revocation of an anatomical gift would not be a refusal and would not bar another person from making an anatomical gift on behalf of the donor.

If a donor who was an unemancipated minor died, a parent of the donor who was reasonably available could revoke or amend an anatomical gift. If an unemancipated minor who signed a refusal died, a parent of the minor who was reasonably available could revoke the minor's refusal.

Person's who could make anatomical gift of decedent. An anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education could be made by any of the following who were reasonably available, in the order of priority listed:

- an agent of the decedent at the time of death who was authorized to make an anatomical gift immediately before the decedent's death;
- the spouse of the decedent;
- adult children of the decedent;
- parents of the decedent;
- adult siblings of the decedent;
- adult grandchildren of the decedent;
- grandparents of the decedent;
- persons acting as guardians of the person as the time of death;
- the hospital administrator; and
- any other person having the authority to dispose of the decedent's body.

If more than one member of a class listed above was entitled to make an anatomical gift, the gift could be made by a member of the class unless that member knew of an objection by another member of the class. If an objection was known, the gift could be made only by a majority of the members of the class who were reasonably available.

A person could not make an anatomical gift if, at the time of the decedent's death, a person authorized prior to the decedent's death would be reasonably available to make or to object to an anatomical gift.

Manner of making, amending, or revoking anatomical gift of a decedent. A person authorized to make an anatomical gift could make the gift by a signed document of gift or by oral communication that was recorded or contemporaneously reduced to a record and signed by the individual receiving the oral communication.

An anatomical gift by an authorized person could be amended or revoked orally or in a record by any member of a prior class who was reasonably available. If more than one member of the prior class was reasonably available, the gift made by an authorized person could be amended only if a majority of the reasonably available members agreed to amending the gift; or revoked only if a majority of the reasonably available members agreed to the revocation of the gift or if they were equally divided as to whether to revoke the gift.

A revocation would be effective only if, before an incision had been made to remove a part from the donor's body or before the initiation of invasive procedures to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knew of the revocation.

Persons that could receive an anatomical gift. An anatomical gift could be made to the following persons named in the document of gift:

- a hospital or organ procurement organization for research or education;
- an individual designated by the person making the anatomical gift;
- an eye bank or tissue bank;
- a forensic science program at an academic teaching institution or a private or independent institution of higher education; or
- the Anatomical Board of the State of Texas.

Except for a donation to certain specified entities, the Anatomical Board would be the donee of a gift made for purposes of education or research. The gift would be subject to distribution by the board. A forensic science program that received a donation would have to submit a report to the Anatomical Board on a quarterly basis that listed the number of bodies or

part the program received and the method in which the program used the anatomical gift for education or research purposes.

If an anatomical gift of one or more specific parts or of all parts was made in a document of gift that did not name a person but identified the purpose for which an anatomical gift could be used, the following rules would apply:

- if the part was an eye and the gift was for the purpose of transplantation or therapy, the gift would pass to the appropriate eye bank;
- if the part was tissue and the gift was for the purpose of transplantation or therapy, the gift would pass to the appropriate tissue bank; and
- if the part was an organ and the gift was for the purpose of transplantation or therapy, the gift would pass to the appropriate organ procurement organization as custodian.

If there was more than one purpose for an anatomical gift set forth in the document but the purposes were not set forth in any priority, the gift would have to be used for transplantation or therapy, if suitable. If the gift could not be used for one of those purposes, the gift could be used for research or education.

If an anatomical gift of one or more specific parts was made in a document of gift that did not name a person and did not identify the purpose of the gift, the gift could be used only for transplantation or therapy.

For a document of gift that was not specific or if a part could not be transplanted into a specified individual, the following rules would apply:

- if the part was an eye, to the appropriate eye bank;
- if the part was tissue, to the appropriate tissue bank; and
- if the part was an organ, to the appropriate organ procurement organization as custodian.

If an anatomical gift did not pass pursuant to the above criteria or the decedent's body or part was not used for the reasons set forth in the bill, custody of the body or part would pass to the person under obligation for disposal.

A person could not accept an anatomical gift if the person knew that the gift was not effectively made or if the person knew that the decedent made a refusal that was not revoked. If a person knew that an anatomical gift was made on a document of gift, the person would be deemed to know any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document.

The bill would allow a donee to accept or reject a gift.

Notification upon accident or other trauma. The donor card, or the driver's license indicating an affirmative statement of gift, of a person who was involved in an accident or other trauma would accompany the person to the hospital.

Delivery of document of gift not required. A document of gift would not need to be delivered during the donor's lifetime to be effective. On or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift would allow examination and copying of the document or refusal.

Rights and duties of procurement organization. When a hospital referred an individual at or near death to a procurement organization, the organization would make a reasonable search of Department of Public Safety (DPS) records and any donor registry for the individual's geographical area to ascertain whether the individual had made an anatomical gift. A procurement organization would have to be allowed reasonable access to information in the DPS records to ascertain whether an individual at or near death was a donor.

When a hospital referred an individual at or near death to a procurement organization, the organization could conduct any reasonable examination necessary to ensure medical suitability of an anatomical gift. Unless prohibited by other law, at any time after a donor's death, the person to which a part passed could conduct any reasonable examination necessary to ensure medical suitability. An examination could include all medical and dental records of the donor or prospective donor.

On the death of a minor who was a donor or had signed a refusal, unless a procurement organization knew the minor to be emancipated, the procurement organization would conduct a reasonable research for the

parents of the minor and provide them with an opportunity to revoke or amend the gift or the refusal.

On referral by a hospital, a procurement organization would make a reasonable search for any person having priority to make an anatomical gift on behalf of a prospective donor.

The rights of a person to which a part passed under a written commitment would be superior to the right of all others. The person could accept or reject an anatomical gift wholly or partly. If the gift was of a part, the person to which the part passed, on the death of the donor and before embalming, burial, or cremation, would cause the part to be removed without unnecessary mutilation.

The physician who attended the decedent at death or the physician who determined the time of the decedent's death could not participate in the procedures for removing or transplanting a part from the decedent. A physician or technician could remove a donated part from the body of a donor that the physician or technician was qualified to remove.

Coordination of procurement and use. Each hospital in the state would enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts. Each hospital would have a protocol that ensured its maintenance of an effective donation system in order to maximize organ and tissue donation. The bill would set forth 13 protocol standards.

Prohibited sale or purchase of parts. Except as otherwise provided, a person would commit an offense if the person for valuable consideration knowingly purchased or sold a part for transplantation or therapy if removal of a part from an individual was intended to occur after the individual's death. An offense would be a class C misdemeanor (maximum fine of \$500). If conduct also constituted an offense under other law, the actor could be prosecuted under this provision, the other law, or both. The bill would allow a person to charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

Other prohibited acts. A person would commit an offense if the person, in order to obtain a financial gain, intentionally falsified, forged, concealed, defaced, or obliterated a document of gift, an amendment or

revocation of a gift, or a refusal. An offense would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). If such conduct also constituted an offense under other law, the person could be prosecuted under this provision, the other law, or both.

Immunity. A person who acted in good faith in accordance with the provisions of this bill would not be liable for civil damages or subject to criminal prosecution if the prerequisites for an anatomical gift were met. A person who acted in accordance with this bill's provisions or with applicable law of another state, or attempted in good faith to do so, would not be liable for the act in a civil action, criminal prosecution, or administrative proceeding.

A person who acted in good faith in accordance with the bill would not be liable as a result of the action except in the case of an act or omission of the person that was intentional, willfully or wantonly negligent, or done with conscious indifference, or reckless disregard. "Good faith" in determining the appropriate authorized person would mean making a reasonable effort to locate and contact the member or members of the highest priority class who were reasonably available at or near the time of death.

Neither a person making an anatomical gift nor the donor's estate would be liable for any injury or damage that resulted from the making or use of the gift.

In a civil action brought by a person authorized to make an anatomical gift who did not object before the removal, a medical examiner, justice of the peace, county judge, medical facility, physician acting on permission of a medical examiner, justice of the peace, or county judge, or person assisting a physician would not be liable for damages on a theory of civil recovery based on a contention that the plaintiff's consent would be required before the part could be removed.

Presumption of validity. A document of gift would be valid if executed in accordance with the provisions of this bill, the laws of the state or country where it was executed, or the laws of the state or country where the person making the anatomical gift was domiciled at the time the document of gift was executed. A person could presume that a document of gift or amendment of a gift would be valid unless that person knew that it was not validly executed or revoked.

Donor registry. In consultation with DPS and organ procurement organizations, the Department of State Health Services (DSHS) would establish the Donor Education, Awareness, and Registry Program of Texas. DSHS would enter into an agreement with an organization selected by the commissioner under a competitive proposal process for the establishment and maintenance of a statewide Internet-based registry of organ, tissue, and eye donors. Contingent on the continued availability of appropriations, the term of the initial agreement would be two years and could be renewed for two-year terms unless terminated in a written notice to the other party by DSHS or the selected organization not later than 180 days before the last day of a term. The contract between DSHS and the selected organization would require the organization, among other things, to maintain the Internet-based registry in a manner that allowed procurement organizations immediately to access donation information 24 hours a day, seven days a week through electronic and telephonic methods. The selected organization would make an annual report to DSHS including the number of donors in the registry and the demographic characteristics of the donors.

In each office authorized to issue driver's licenses or personal identification certificates, DPS would make available educational materials developed by the Texas Organ, Tissue, and Eye Donor Council established under Health and Safety Code, ch. 113.

The bill would establish the use of fees collected from Internet renewals of driver's licenses and personal identification cards for donor awareness to be used in operating the Internet-based registry and designing and distributing educational materials for prospective donors. Additional monies could be used by DSHS to provide education or awarded as competitive grants to organizations to conduct anatomical donation education activities in Texas.

The bill would allow for DSHS to educate residents about anatomical gifts. In consultation with the Texas Organ, Tissue, and Eye Donor Council, DSHS could implement a training program for appropriate DPS and Texas Department of Transportation employees on the benefits of anatomical donations and the procedures for individuals to be added to the registry.

Advance directive of anatomical gift. The bill would define "advance directive" to mean a medical power of attorney or a record signed or

authorized by a prospective donor containing the donor's direction concerning a health-care decision. Under the bill, "declaration" would mean a record signed by a prospective donor specifying circumstances under which a life support system could be withheld or withdrawn from the prospective donor.

If a prospective donor had a declaration or advance directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift were in conflict with regard to the administration of measures necessary to ensure suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor or the donor's agent, or another person authorized to make health-care decisions on behalf of the prospective donor, would confer to resolve the conflict. If the conflict could not be resolved, an ethics or medical committee of the appropriate health care facility would initiate an expedited review of the matter.

Uniformity of application and construction. In applying and construing these provisions, consideration would have to be given to the need to promote uniformity of the law with respect to the subject matter among states that enacted a law substantially similar.

Electronic signatures in Global and National Commerce Act. The bill would modify, limit, and supersede the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C., sec. 7001 et seq.) but would not modify, limit, or supersede sec. 101(a) of the act, regarding the prohibition of invalidating contracts and transactions with electronic signatures, or authorize electronic delivery of any of the notices described in sec. 103(b), specifying specific exemptions to the act.

Disclosure without written authorization. The bill would authorize the disclosure of a patient's health care information with the patient's authorization to certain procurement organizations, rather than a qualified organ or tissue organization, and to a health care utilization review agent that required the information for review.

The bill would amend Health and Safety Code, sec. 693.002 to authorize certain entities to permit the removal of organs from a decedent who died under circumstances requiring an inquest if consent was obtained under provisions relating to the Revised Uniform Anatomical Gift Act, sec. 692A.005 through 692A.010. Within one hour of pronouncement of death,

or within one hour of consent on an asystolic organ donor, the organ procurement organization would notify the medical examiner, justice of the peace, county, judge, or designated physician of any death requiring an inquest that fell under that entity's jurisdiction.

SB 1597 would require the medical examiner who denied removal of an anatomical gift to provide certain explanations to the organ procurement organization and any person listed in secs. 692A.009 and 693.004 who consented to the removal.

Effective September 1, 2009, the medical examiner, or physician designee of a justice of the peace or a county judge, who subsequently would perform the postmortem examination could restrict designation of cardiac tissue for organ donation purposes without being required to be present at the hospital to examine the decedent before removal of the organs or during the removal procedure.

The bill would change sec. 693.002(b) to establish that on a request from a tissue bank, rather than a qualified procurement organization, the medical examiner could permit the removal of tissue believed to be clinically usable for transplants or other therapy or treatment from a decedent who died under circumstances requiring an inquest. If the medical examiner denied removal of tissue, the examiner would explain in writing the reasons for the denial to the tissue bank and to the person who consented to the removal under secs. 629A.009 and 693.004.

Consent not required in certain circumstances. If a person authorized to make the anatomical gift under secs. 692A.009 or 693.004 could not be identified and contacted with 12 hours after pronouncement of death and either a county court or medical examiner determined that no reasonable likelihood existed that a person could be identified and contacted during the 12-hour period, the county court or medical examiner could permit the removal of a visceral organ or tissue.

Immunity from damages in civil action. In a civil action brought by a person authorized in secs. 629A.009 or 693.004 who did not object before the removal of tissue or a body part, a medical examiner, justice of the peace, county judge, medical facility, physician acting on permission of a medical examiner, justice of the peace, or county judge, or person assisting a physician would not be liable for damages on a theory of civil

recovery based on a contention that the plaintiff's consent was required before the body part of tissue could be removed.

The bill would amend Transportation Code, sec. 521.401(b) and (c) to require that donor cards be provided to DPS by organ procurement organizations, tissue banks, or eye banks or by the Donor Education, Awareness, and Registry Program of Texas.

SB 1597 would repeal the following:

- Health and Safety Code, sec. 49.002 establishing the Donor Education, Awareness, and Registry Program of Texas;
- Health and Safety Code, ch. 692, the Texas Anatomical Gift Act;
- Transportation Code, sec. 521.403, regarding information provided to a hospital relating to anatomical gifts; and
- Transportation Code, sec. 521.404, regarding notification to a procurement organization.

The bill would make conforming changes in the Health and Safety Code, the Transportation Code, and the Occupations Code. It also would reflect a re-codification change in the Insurance Code.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

To further facilitate organ donation, the National Conference of Commissioners on Uniform State Law constructed the Revised Uniform Anatomical Gift Act in 2006 (2006 UAGA), which was the result of a three-year effort to create uniformity among state laws regarding anatomical gifts. SB 1597 would amend current law to add ch. 692A to reflect adoption of the Revised Uniform Anatomical Gift Act and would repeal the prior act found in ch. 692. The bill would aid 8,000 Texans, out of 96,000 nationally, awaiting life-saving organ transplants. SB 1597 would expand the list of individuals who could make an anatomical gift on a donor's behalf both during the donor's life and afterwards. The bill would continue a donor registry program for anatomical gifts, in addition to donor cards and consent on driver's licenses.

The Senate version of SB 1597 represents a compromise with medical examiners who have had ongoing concerns with provisions in current law involving interference with forensic evidence as a result of organ removal. The bill would allow, effective September 1, 2009, a medical examiner or

physician designee who performed the postmortem examination to restrict designation of cardiac tissue for organ donation purposes without being required to be present at the hospital to examine the decedent before removal of the organs.

**OPPONENTS
SAY:**

No apparent opposition

NOTES:

The companion bill, HB 3814 by Zerwas, was heard in the Public Health Committee on April 11.