

- SUBJECT:** The Revised Uniform Anatomical Gift Act
- COMMITTEE:** Public Health — favorable, without amendment
- VOTE:** 10 ayes — Kolkhorst, Naishtat, J. Davis, Gonzales, Hopson, S. King, Laubenberg, McReynolds, Truitt, Zerwas
- 0 nays
- 1 absent — Coleman
- WITNESSES:** For — Sam Holtzman, LifeGift Organ Donation Center; Bryan Rollins; Heather Sambily; Marie Weathersby; (*Registered, but did not testify:* Catherine Graham, LifeGift; Greg Herzog, Texas Medical Association; David Marwitz, Texas Dermatological Society; Jay Propes, Texas Ophthalmological Association; Laurie Reece, Texas Transplantation Society; Denise Rose, Texas Hospital Association)
- Against — Stephen Pustilnik, Galveston County Medical Examiner, Texas Medical Examiner Association; (*Registered, but did not testify:* Elizabeth Peacock)
- 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 uniform act. A revised uniform act was developed in 1987 and adopted in 1989 by the 71st Legislature as the Texas Anatomical Gift Act. The act governs the donation and receipt of organs, tissues, and eyes.
- DIGEST:** HB 2027 would repeal the Texas Anatomical Gift Act and establish the Revised Uniform Anatomical Gift Act. The act would establish those persons allowed to authorize anatomical gifts, entities that could accept anatomical gifts, and the rights and duties of organizations involved in the donation process.
- Persons who may authorize anatomical gifts before a donor's death.** While the donor was living, the following persons could authorize the donation of a donor's body or part for transplantation, therapy, research, or education:

- an adult donor;
- an emancipated minor;
- 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 was an unemancipated minor; or
- the donor's guardian.

Authorization to make an anatomical gift before death. Donors could make an anatomical gift by indicating authorization on a driver's license or identification card, in a will, or if terminally ill or injured, by any form of communication addressed to at least two adults, at least one of whom was a disinterested witness. A donor or other person authorized to make an anatomical gift before the donor's death could authorize donation by a signed donor card, another signed record, or by authorizing the donor's inclusion in a donor registry.

Amending or revoking an anatomical gift before death. A donor or other person authorized to make an anatomical gift before the donor's death, could amend or revoke the gift at any time by various means, including amending a will as necessary, by signed document, by destruction or cancellation of the gift authorization, or by any form of adequately witnessed communication while the donor was terminally ill or injured.

Refusal to make an anatomical gift. A person could refuse to make an anatomical gift by signed record, in a will, or through any form of adequately witnessed communication while terminally ill or injured. The bill would establish the process by which a refusal could be amended or revoked. No donation could be made if a refusal was not revoked prior to death unless the refusal was made by an unemancipated minor and was revoked by the parent.

Priority and effect of anatomical gift authorizations and refusals. 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 the gift. A donor's revocation of an anatomical gift would not bar another person from making an anatomical gift on behalf of the donor. In the absence of an express, contrary indication, an anatomical gift of a part for one or more purposes, including transplantation, therapy,

research, or education, would not limit the use of the part for any of the other purposes.

Persons who could make an anatomical gift of a decedent's body or part. 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, in the order of priority listed:

- an agent of the decedent authorized to make an anatomical gift;
- 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;
- an adult who exhibited special care and concern for the decedent;
- people who had been acting guardians of the decedent;
- the hospital administrator; and
- any other person having the authority to dispose of the decedent's body.

If more than one member of these classes of people were entitled to make an anatomical gift, the gift could be made by a member of the class, or if there was more than one member of the class available, by a majority of the members of the class who were reasonably available. Members of a class higher on the priority list could amend or revoke a gift authorization.

If no person could be identified and contacted within four hours after death was pronounced, the county court could permit the removal of certain organs or tissue.

Recipients of an anatomical gift. An anatomical gift could be made to the following recipients:

- a hospital, certain educational institutions, an organ procurement organization, or another appropriate person for research or education;
- an individual designated by the person making the gift;
- an eye 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.

The bill would specify the appropriate entity to which a donated eye, tissue, or organ would pass if the gift could not be passed to an individual designated by a donor or if the donor did not specify to where the gift should pass.

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.

Delivery of document of gift. 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 have to allow examination and copying of the document or refusal.

Rights and duties of procurement organizations and others. When a hospital referred a person at or near death to a procurement organization, the organization would make a reasonable record search to determine whether the person was a donor and search for people authorized to make anatomical gifts on behalf of the donor. The procurement organization as well as a person or entity to which the gift would pass could conduct a reasonable examination to ensure the medical suitability of an anatomical gift, unless prohibited by other law.

The rights of a person to which a part passed under authorization of the donor would be superior to the right of all others. If the gift was of a part, the person to which the part passed would ensure the part was removed without unnecessary mutilation.

The physician who attended the decedent at death or determined the time of death could not participate in removal or transplant of a part from the decedent.

Coordination of procurement and use by hospitals. Each Texas hospital 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 acts. It would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to knowingly purchase or sell a part for transplantation or therapy if removal of the part was intended to occur after the individual's death.

A person would commit an offense if, for financial gain, the person intentionally falsified, forged, concealed, defaced, or obliterated a document of gift, an amendment or revocation of a gift, or a refusal.

Immunity. The bill would provide immunity from criminal and civil liability for a person acting in good faith in accordance with the Revised Uniform Anatomical Gift Act. 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 a gift.

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.

Glenda Dawson Donate Life-Texas Registry. Provisions regarding the existing Glenda Dawson Donate Life-Texas Registry would be included in Revised Uniform Anatomical Gift Act and continued in effect

Advance directives and anatomical gifts. If a prospective donor had an advance directive concerning a health care decision or a declaration specifying the circumstances under which life support could be withdrawn that conflicted with the measures necessary to maintain the medical suitability of a potential anatomical gift, the prospective donor's physician would confer with the donor, donor's agent, or other authorized person 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 the Revised Uniform Anatomical Gift Act, consideration would be given to the need to promote uniformity in the law regarding anatomical gifts among states with substantially similar law.

Conforming changes. The bill would make conforming changes in the Health and Safety, Transportation, and Occupations codes.

The bill would take effect September 1, 2009

**SUPPORTERS
SAY:**

HB 2027 would implement legislation that is the result of a three-year effort by the Conference of Commissioners on Uniform State Law to create uniformity in state laws on anatomical gifts to further facilitate organ donation. Organ donation saves many lives. Technology has advanced to the point that many more people could be saved by organ donation. The only barrier to more people overcoming their life-threatening conditions is the lack of donor organs.

Currently, about 7,000 Texans are on the organ donation waiting list. Estimates suggest that with implementation of the Revised Uniform Anatomical Gift Act, donors could increase from 633 donors last year to more than 1,000 per year. Organ recipients in 35 other states already have benefited from their legislatures adopting similar legislation, and Texas similarly should assist Texans awaiting life-saving organ transplants.

HB 2027 would expand the list of individuals who could make an anatomical gift on a donor's behalf. The bill also would eliminate the ability of a single family member to supersede the wishes of all other family members by requiring a majority of family members in a class that could authorize donation to determine if an anatomical gift would be made. HB 2027 also would strengthen the deceased person's right to determine the final disposition of the person's body because no one could revoke the person's elections regarding organ donation.

The bill also would require hospitals to set up procedures that would facilitate the organ donation process and would criminalize the sale of organs for profit. HB 2027 would establish a process for conflicts between advanced directives and elections regarding anatomical gifts to be resolved through communication among physicians, patients, families, and other health officials as necessary.

It is appropriate that HB 2027 would add hospital administrators and adults who exhibited special care and concern for the decedent to the list of those who could authorize organ or tissue donation. These individuals could authorize donation only in the event that no family member could be found to authorize organ donation. Hospital administrators are responsible actors bound to make decisions according to professional ethics standards. In addition, there are many people who could have been close to the

deceased but were not relatives who would be aware of the deceased's wishes regarding the donation of his organs.

HB 2027 would focus on enhancing the availability of anatomical gifts and would not alter existing practice for medical examiners. Any changes to law regarding the authority of medical examiners with respect to potential anatomical gifts should be addressed in separate legislation.

Medical examiners do not need additional authority to restrict donation of cardiac tissue because doctors know better than to harvest a heart for transplant if a heart condition could have been the cause of death. In addition, surgeons have new and innovative ways of harvesting organs that do not interfere with the evidence medical examiners need to collect. By following careful harvesting procedures, the surgeon can achieve the life-saving benefit of obtaining a donor organ and simultaneously maintain the integrity of forensic evidence.

OPPONENTS
SAY:

HB 2027 should not allow hospital administrators to authorize organ donation because they would not know the will of a family or deceased person nor would they be aware if the donor had religious beliefs that might conflict with organ donation. Hospital administrators would have incentive to authorize anatomical gifts because their facilities would receive more income by keeping their operating rooms occupied with donation-related surgeries.

In addition, the bill should not allow any "adult who exhibited special care and concern for the decedent" to authorize an anatomical gift. This provision would be too broad and could produce conflict over who would qualify. This provision also could allow someone who was involved in a crime against the deceased leading to the person's death to authorize organ donation in the hopes that the harvesting procedure would conceal the evidence of the crime.

OTHER
OPPONENTS
SAY:

HB 2027 should allow medical examiners to restrict designation of cardiac tissue for organ donation without being required to be present at the hospital to examine the deceased. A medical examiner is qualified to determine, in certain instances, if the heart would pose a danger to a recipient and should not be harvested. For example, someone who passed away suddenly during a sporting event likely died from a cardiac problem, but normal heart rhythm sometimes could be restored despite loss of brain function. Such a heart should not be donated, and the medical examiner

should be afforded the opportunity to confirm any heart condition of which someone else in the family should be aware.

In addition, the bill should correct the lack of deference in current law to medical examiners in cases that are known homicides. Organ harvesting can result in the same bodily injuries that would arise from criminal abuse and the infliction of bodily harm. This interferes with accurate evidence collection and could prevent a medical examiner from being able to prove a murder case beyond a reasonable doubt. Medical examiners should be able to maintain the integrity of forensic evidence.

NOTES:

The companion bill, SB 2091 by Harris, has been referred to the Senate Health and Human Services Committee.