

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 613

SENATORS MARONEY, PLYMALE, TAKUBO, JEFFRIES,

HAMILTON, STOLLINGS, ROBERTS, BALDWIN, AND

WOELFEL, *original sponsors*

[Originating in the Committee on Natural Resources;

Reported on February 19, 2019]

1 A BILL to amend and reenact §16-19-3, §16-19-5, and §16-19-19 of the Code of West Virginia,
2 1931, as amended; and to amend and reenact §20-2-31 of said code, all relating to
3 permitting individuals to make an anatomical gift on a hunting or fishing license; adding
4 definition; permitting the Division of Natural Resources to provide donor registrant records
5 collected to the donor registry; requiring the Division of Natural Resources to provide
6 information on the election of organ donation on hunting or fishing licenses; and requiring
7 the Division of Natural Resources to include the election of organ donation on hunting or
8 fishing licenses.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 19. ANATOMICAL GIFT ACT.

§16-19-3. Definitions.

1 As used in this article:

2 “Adult” means an individual who is at least 18 years of age.

3 “Agent” means an individual:

4 (1) Authorized by a medical power of attorney to make health care decisions on behalf of
5 a prospective donor; or

6 (2) Expressly authorized by any other record signed by the donor to make an anatomical
7 gift on his or her behalf.

8 “Anatomical gift” means a donation of all or part of a human body, to take effect after the
9 donor’s death, for the purpose of transplantation, therapy, research, or education.

10 “Authorized person” means a person other than the donor who is authorized to make an
11 anatomical gift of the donor’s body or part by §16-19-4 or §16-19-9 of this code.

12 “Certification of death” means a written pronouncement of death by an attending
13 physician. Certification is required before an attending physician can allow removal of any part
14 from the decedent’s body for transplant purposes.

15 “Decedent” means a deceased individual whose body is or may be the source of an
16 anatomical gift. The term “decedent” includes a stillborn infant and, subject to restrictions imposed
17 by law other than this article, a fetus.

18 “Disinterested witness” means a witness other than the spouse, child, parent, sibling,
19 grandchild, grandparent, or guardian of, or another adult who exhibited special care and concern
20 for, an individual who has made, amended, revoked, or refused to make an anatomical gift. The
21 term “disinterested witness” does not include a person to whom an anatomical gift may pass
22 pursuant to §16-19-11 of this code.

23 “Document of gift” means a donor card or other record used to make an anatomical gift.
24 The term includes a statement or symbol on a driver’s license, identification card, hunting or
25 fishing license, or donor registry.

26 “Donor” means an individual whose body or part is the subject of an anatomical gift.

27 “Donor registry” means a database that contains records of anatomical gifts and
28 amendments to, or revocations, of anatomical gifts.

29 “Driver’s license” means a license or permit issued by the Division of Motor Vehicles to
30 operate a vehicle.

31 “Eye bank” means a person licensed, accredited, or regulated under federal or state law
32 to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes
33 or portions of human eyes.

34 “Guardian” means a person appointed by a court to make decisions regarding the support,
35 care, education, health, or welfare of an individual. The term “guardian” does not include guardian
36 *ad litem*.

37 “Hunting or fishing license” means a license issued by the Division of Natural Resources
38 pursuant to §20-2-1 et seq. of this code, for hunting and fishing in the state of West Virginia.

39 “Hospital” means a facility licensed as a hospital under the law of any state or a facility
40 operated as a hospital by the United States, a state, or a subdivision of a state.

41 “Identification card” means an identification card issued by the Division of Motor Vehicles
42 pursuant to §17B-2-1 of this code.

43 “Know” means to have actual knowledge. It does not include constructive notice and other
44 forms of imputed knowledge.

45 “Medical examiner” means an individual appointed pursuant to §61-12-3 et seq. of this
46 code to perform death investigations and to establish the cause and manner of death. The term
47 “medical examiner” includes any person designated by the medical examiner to perform any
48 duties required by this article.

49 “Minor” means an individual who is under 18 years of age.

50 “Organ procurement organization” means a nonprofit entity designated by the Secretary
51 of the United States Department of Health and Human Services as an organ procurement
52 organization pursuant to 42 U.S.C. §273(b).

53 “Parent” means another person’s natural or adoptive mother or father whose parental
54 rights have not been terminated by a court of law.

55 “Part” means an organ, an eye, or tissue of a human being. The term does not include the
56 whole body.

57 “Person” means an individual, corporation, business trust, estate, trust, partnership,
58 limited liability company, association, joint venture, public corporation, government or
59 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

60 “Physician” means an individual authorized to practice medicine or osteopathy under the
61 law of any state.

62 “Physician assistant” has the meaning provided in §30-3E-1 of this code.

63 “Procurement organization” means an eye bank, organ procurement organization, or
64 tissue bank.

65 “Prospective donor” means an individual who is dead or near death and has been
66 determined by a procurement organization to have a part that could be medically suitable for
67 transplantation, therapy, research, or education. The term “prospective donor” does not include
68 an individual who has made a refusal.

69 “Reasonably available” means able to be contacted by a procurement organization without
70 undue effort and willing and able to act in a timely manner consistent with existing medical criteria
71 necessary for the making of an anatomical gift.

72 “Recipient” means an individual into whose body a decedent’s part has been or is intended
73 to be transplanted.

74 “Record” means information that is inscribed on a tangible medium or that is stored in an
75 electronic or other medium and is retrievable in perceivable form.

76 “Revocation” means the affirmative declaration of the potential donor’s withdrawal of their
77 decision to make or not make a document of gift. It does not have the same meaning as a refusal
78 but only establishes that the potential donor chooses not to make an affirmative declaration of
79 their wishes.

80 “Refusal” means a record created under §16-19-7 of this code that expressly states an
81 individual’s intent to bar other persons from making an anatomical gift of his or her body or part.

82 “Sign” means to execute or adopt a tangible symbol or attach to or logically associate with
83 the record an electronic symbol, sound or process, with the present intent to authenticate or adopt
84 a record.

85 “State” means a state of the United States, the District of Columbia, Puerto Rico, the
86 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
87 United States.

88 “Surrogate” means an individual 18 years of age or older who is reasonably available, is
89 willing to make health care decisions on behalf of an incapacitated person, possesses the
90 capacity to make health care decisions, and is identified or selected by the attending physician or
91 advanced nurse practitioner in accordance with ~~the provisions of §16-30-1 et seq.~~ of this code as
92 the person who is to make those decisions in accordance with the provisions of this article.

93 “Technician” means an individual qualified to remove or process parts by an organization
94 that is licensed, accredited, or regulated under federal or state law. The term “technician” includes
95 an enucleator, *i.e.*, an individual who removes or processes eyes or parts of eyes.

96 “Tissue” means a portion of the human body other than an organ or an eye. The term
97 “tissue” does not include blood unless the blood is donated for the purpose of research or
98 education.

99 “Tissue bank” means a person that is licensed, accredited, or regulated under federal or
100 state law to engage in the recovery, screening, testing, processing, storage, or distribution of
101 tissue.

102 “Transplant hospital” means a hospital that furnishes organ transplants and other medical
103 and surgical specialty services required for the care of transplant patients.

§16-19-5. Manner of making anatomical gift before donor’s death.

1 (a) A donor may make an anatomical gift:

2 (1) By authorizing a statement or symbol to be imprinted on his or her driver’s license, or
3 identification card, or hunting or fishing license indicating that he or she has made an anatomical
4 gift;

5 (2) In a will;

6 (3) During a terminal illness or injury, by any form of communication addressed to at least
7 two adults, at least one of whom is a disinterested witness; or

8 (4) As provided in subsection (b) of this section.

9 (b) (1) A donor or a person authorized by §16-9-4 of this code may make a gift by:

10 (A) A donor card or other record signed by the donor or the authorized person; or

11 (B) Authorizing a statement or symbol indicating that the donor has made an anatomical
12 gift to be included on a donor registry.

13 (2) If the donor or the authorized person is physically unable to sign a record, another
14 individual may sign at the direction of the donor or the authorized person if the document of gift:

15 (A) Is witnessed and signed by at least two adults, at least one of whom is a disinterested
16 witness; and

17 (B) Contains a statement that it has been signed and witnessed as required by paragraph
18 (A) of this subdivision.

19 (c) Revocation, suspension, expiration, or cancellation of a driver's license or identification
20 card upon which an anatomical gift is indicated does not invalidate the gift.

21 (d) An anatomical gift made by will takes effect upon the donor's death regardless of
22 whether the will is probated. Invalidation of the will after the donor's death does not invalidate the
23 gift.

§16-19-19. Donor registry.

1 (a) The Division of Motor Vehicles may establish or contract for the establishment of a
2 donor registry.

3 (b) The Division of Motor Vehicles shall cooperate with a person that administers any
4 donor registry established or contracted for pursuant to this section or recognized for the purpose
5 of transferring to the donor registry all relevant information regarding a donor's making,
6 amendment to, or revocation of an anatomical gift.

7 (c) The Division of Natural Resources shall provide all relevant information regarding a
8 donor's making, amendment to, or revocation of an anatomical gift to a donor registry established
9 or contracted for pursuant to this section.

10 ~~(e)~~ (d) A donor registry must:

11 (1) Allow a donor or person authorized under §16-19-4 of this code to include on the donor
12 registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;

13 (2) Be accessible to a procurement organization to allow it to obtain relevant information
14 on the donor registry to determine, at or near death of the donor or a prospective donor, whether
15 the donor or prospective donor has made, amended, or revoked an anatomical gift; and

16 (3) Be accessible for purposes of subdivisions (1) and (2) of this subsection 24 hours a
17 day, seven days a week.

18 ~~(d)~~ (e) Personally identifiable information on a donor registry about a donor or prospective
19 donor may not be used or disclosed without the express consent of the donor, prospective donor,
20 or person that made the anatomical gift for any purpose other than to determine, at or near death
21 of the donor or prospective donor, whether the donor or prospective donor has made, amended,
22 or revoked an anatomical gift.

23 (f) The Director of the Division of Natural Resources shall provide information regarding
24 the existence of the anatomical organ donation program, the procedures for a hunting or fishing
25 license applicant to indicate his or her desire to make an anatomical gift, and having document of
26 gift affixed to his or her hunting or fishing license pursuant to this article.

27 (g) The Division of Natural Resources shall be reimbursed for all costs relating to the
28 creation and administration of an anatomical gift record by the Center for Organ Recovery and
29 Education: *Provided*, That the division is absolved of all responsibilities to collect and provide
30 donor registrant records pursuant to this article if not reimbursed according to this subsection.

31 ~~(e)~~ (h) This section does not prohibit any person from creating or maintaining a donor
32 registry that is not established by or under contract with the state. Any private donor registry must
33 comply with subsections ~~(e)~~ (d) and ~~(d)~~ (e) of this section.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-31. Size and form of license and tag; contents; unlawful to alter licenses or permits; penalty.

1 (a) The size, content, and form of all licenses, tags, and permits shall be prescribed by the
2 director. The information which a licensee is required to furnish shall be placed upon the license
3 by the license issuing authority before delivery of such license to the licensee: Provided, That all
4 hunting or fishing licenses as defined in §16-19-3 of this code include document of gift indicating
5 the applicant has made an anatomical gift, as defined in §16-19-3 of this code.

6 (b) It ~~shall be~~ is unlawful for any person to alter, mutilate, or deface any license, tag, or
7 permit, or the entries thereon, for the purpose of evading the provisions of this chapter.

8 Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon
9 conviction thereof, shall be fined not less than \$20 nor more than \$300; and upon a second and
10 subsequent conviction thereof, shall be fined not less than \$20 nor more than \$300, or confined
11 in ~~the county or regional~~ jail not less than 10 nor more than 100 days, or both fined and confined.

NOTE: The purpose of this bill is to permit individuals to make an anatomical gift on a hunting license. To require the Commissioner of the Division of Natural Resources to include an election for organ donation on hunting and fishing licenses and to require publication of the ability to make an election for organ donation on hunting and fishing licenses.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.