

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 613

BY SENATORS MARONEY, PLYMALE, TAKUBO, JEFFRIES,

HAMILTON, STOLLINGS, ROBERTS, BALDWIN, AND

WOELFEL

[Introduced February 14, 2019; Referred

to the Committee on Natural Resources]

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 license; adding definition;
 4 permitting the Division of Natural Resources to participate in the donor registry; requiring
 5 the Division of Natural Resources to conduct education on the election of organ donation
 6 on hunting licenses; and requiring the Division of Natural Resources to include the election
 7 of organ donation on hunting 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 (1) "Adult" means an individual who is at least 18 years of age.

3 (2) "Agent" means an individual:

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

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

8 (3) "Anatomical gift" means a donation of all or part of a human body, to take effect after
 9 the donor's death, for the purpose of transplantation, therapy, research or education.

10 (4) "Authorized person" means a person other than the donor who is authorized to make
 11 an anatomical gift of the donor's body or part by section four or section nine of this article.

12 (5) "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 (6) "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 (7) "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 section eleven of this article.

23 (8) "Document of gift" means a donor card or other record used to make an anatomical
24 gift. The term includes a statement or symbol on a driver's license, identification card or donor
25 registry.

26 (9) "Donor" means an individual whose body or part is the subject of an anatomical gift.

27 (10) "Donor registry" means a database that contains records of anatomical gifts and
28 amendments to or revocations of anatomical gifts.

29 (11) "Driver's license" means a license or permit issued by the Division of Motor Vehicles
30 to operate a vehicle.

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

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

37 (14) Hunting License is a license issued by the Division of Natural Resources for hunting
38 and fishing in the State of West Virginia;

39 ~~(14)~~ (15) "Hospital" means a facility licensed as a hospital under the law of any state or a
40 facility operated as a hospital by the United States, a state or a subdivision of a state.

41 ~~(15)~~ (16) "Identification card" means an identification card issued by the Division of Motor
42 Vehicles pursuant to §17B-2-1 of this code.

43 ~~(16)~~ (17) "Know" means to have actual knowledge. It does not include constructive notice
44 and other forms of imputed knowledge.

45 ~~(17)~~ (18) "Medical examiner" means an individual appointed pursuant to §61-12-1 *et seq.*
46 of this code to perform death investigations and to establish the cause and manner of death. The
47 term "medical examiner" includes any person designated by the medical examiner to perform any
48 duties required by this article.

49 ~~(18)~~ (19) "Minor" means an individual who is under 18 years of age.

50 ~~(19)~~ (20) "Organ procurement organization" means a nonprofit entity designated by the
51 Secretary of the United States Department of Health and Human Services as an organ
52 procurement organization pursuant to 42 U.S.C. §273(b).

53 ~~(20)~~ (21) "Parent" means another person's natural or adoptive mother or father whose
54 parental rights have not been terminated by a court of law.

55 ~~(21)~~ (22) "Part" means an organ, an eye or tissue of a human being. The term does not
56 include the whole body.

57 ~~(22)~~ (23) "Person" means an individual, corporation, business trust, estate, trust,
58 partnership, limited liability company, association, joint venture, public corporation, government
59 or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

60 ~~(23)~~ (24) "Physician" means an individual authorized to practice medicine or osteopathy
61 under the law of any state.

62 ~~(24)~~ (25) "Physician assistant" has the meaning provided in §30-3-16 of this code.

63 ~~(25)~~ (26) "Procurement organization" means an eye bank, organ procurement organization
64 or tissue bank.

65 ~~(26)~~ (27) "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 ~~(27)~~ (28) “Reasonably available” means able to be contacted by a procurement
70 organization without undue effort and willing and able to act in a timely manner consistent with
71 existing medical criteria necessary for the making of an anatomical gift.

72 ~~(28)~~ (29) “Recipient” means an individual into whose body a decedent’s part has been or
73 is intended to be transplanted.

74 ~~(29)~~ (30) “Record” means information that is inscribed on a tangible medium or that is
75 stored in an electronic or other medium and is retrievable in perceivable form.

76 ~~(30)~~ (31) “Revocation” means the affirmative declaration of the potential donor’s
77 withdrawal of their decision to make or not make a document of gift. It does not have the same
78 meaning as a refusal but only establishes that the potential donor chooses not to make an
79 affirmative declaration of their wishes.

80 ~~(31)~~ (32) “Refusal” means a record created under section seven of this article that
81 expressly states an individual’s intent to bar other persons from making an anatomical gift of his
82 or her body or part.

83 ~~(32)~~ (33) “Sign” means to execute or adopt a tangible symbol or attach to or logically
84 associate with the record an electronic symbol, sound or process, with the present intent to
85 authenticate or adopt a record.

86 ~~(33)~~ (34) “State” means a state of the United States, the District of Columbia, Puerto Rico,
87 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
88 of the United States.

89 ~~(34)~~ (35) “Surrogate” means an individual 18 years of age or older who is reasonably
90 available, is willing to make health care decisions on behalf of an incapacitated person, possesses
91 the capacity to make health care decisions and is identified or selected by the attending physician
92 or advanced nurse practitioner in accordance with ~~the provisions of~~ §16-30-1 *et seq.* of this code

93 as the person who is to make those decisions in accordance with the provisions of this article.

94 ~~(35)~~ (36) "Technician" means an individual qualified to remove or process parts by an
95 organization that is licensed, accredited or regulated under federal or state law. The term
96 "technician" includes an enucleator, *i.e.*, an individual who removes or processes eyes or parts of
97 eyes.

98 ~~(36)~~ (37) "Tissue" means a portion of the human body other than an organ or an eye. The
99 term "tissue" does not include blood unless the blood is donated for the purpose of research or
100 education.

101 ~~(37)~~ (38) "Tissue bank" means a person that is licensed, accredited or regulated under
102 federal or state law to engage in the recovery, screening, testing, processing, storage or
103 distribution of tissue.

104 ~~(38)~~ (39) "Transplant hospital" means a hospital that furnishes organ transplants and other
105 medical 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 license indicating that he or she has made an anatomical gift;

4 (2) In a will;

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

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

8 (b) (1) A donor or a person authorized by section four of this article may make a gift by:

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

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

12 (2) If the donor or the authorized person is physically unable to sign a record, another

13 individual may sign at the direction of the donor or the authorized person if the document of gift:

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

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

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

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

§16-19-19. Donor registry.

1 (a) The Division of Motor Vehicles, acting in conjunction with the Division of Natural
2 Resources may establish or contract for the establishment of a donor registry.

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

7 (c) A donor registry must:

8 (1) Allow a donor or person authorized under section four of this article to include on the
9 donor registry a statement or symbol that the donor has made, amended or revoked an anatomical
10 gift;

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

14 (3) Be accessible for purposes of paragraphs (1) and (2) of this subsection 24 hours a
15 day, seven days a week.

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

21 (e) The Commissioner of the Division of Natural Resources shall provide education by
 22 distributing information about organ and tissue donation, how to register as a donor, and use the
 23 registry. The commissioner shall distribute through print and digital communications targeting
 24 those who hunt and fish. The commissioner shall prepare the materials in conjunction with the
 25 Center for Organ Recovery and Education.

26 ~~(e)~~ (f) This section does not prohibit any person from creating or maintaining a donor
 27 registry that is not established by or under contract with the state. Any private donor registry must
 28 comply with subsections (c) and (d) 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 licenses as defined §16-19-3 of this code include an election for organ donation.

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

7 Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon
 8 conviction thereof, shall be fined not less than \$20 nor more than \$300; and upon a second and
 9 subsequent conviction thereof, shall be fined not less than \$20 nor more than \$300, or confined

10 ~~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.