

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4340

BY DELEGATES ROHRBACH, D. JEFFRIES, SUMMERS,

REED, TULLY, PACK, G. WARD, BATES, WORRELL,

ROWAN, AND JENNINGS

[Passed March 12, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §16-19-9, §16-19-14 and §16-19-22 of the Code of West Virginia,
2 1931, as amended; and to amend and reenact §61-12-3 of said code, all relating to
3 anatomical gifts; clarifying who may make an anatomical gift of decedent's body or part;
4 clarifying the duties of procurement organization with regard to state medical examiner;
5 requiring the state medical examiner to cooperate with procurement organizations to
6 maximize the opportunity to recover anatomical gifts; authorizing procurement
7 organizations to conduct a test to evaluate the medical suitability of the body part; and
8 authorizing the state's chief medical examiner to enter into agreements with a
9 procurement organization to facilitate the recovery of anatomical gifts.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 19. ANATOMICAL GIFT ACT.

§16-19-9. Who may make anatomical gift of decedent's body or part.

1 (a) Unless barred by §16-19-7 or §16-19-8 of this code, an anatomical gift of a decedent's
2 body or part for purpose of transplantation, therapy, research, or education may be made by any
3 member of the following classes of persons who is reasonably available in the order of priority
4 listed:

5 (1) A person holding a medical power of attorney or another agent of the decedent at the
6 time of death who could have made an anatomical gift under §16-19-4 of this code immediately
7 before the decedent's death;

8 (2) The spouse of the decedent, unless in the six months prior to the decedent's death the
9 spouse has lived separate and apart from the decedent in a separate place of abode without
10 cohabitation or an action for divorce is pending;

11 (3) Adult children of the decedent;

12 (4) The person acting as the guardian of the decedent at the time of death;

- 13 (5) An appointed health care surrogate;
- 14 (6) Parents of the decedent;
- 15 (7) Adult siblings of the decedent;
- 16 (8) Adult grandchildren of the decedent;
- 17 (9) Grandparents of the decedent;
- 18 (10) An adult who exhibited special care and concern for the decedent; or
- 19 (11) A person authorized or obligated to dispose of the decedent's body.

20 (b) If there is more than one member of a class entitled to make an anatomical gift, any
21 member of the class may make the anatomical gift unless he or she, or a person to whom the
22 anatomical gift may pass pursuant to §16-19-11 of this code, knows of an objection by another
23 member of the class. If an objection is known, the majority of the members of the same class
24 must be opposed to the donation in order for the donation to be revoked. In the event of a tie vote,
25 the anatomical gift may proceed despite the objection by a member or members of a class.

26 (c) A person may not make an anatomical gift if, at the time of the decedent's death, a
27 person in a prior class is reasonably available to make, or to object to the making, of an anatomical
28 gift.

§16-19-14. Rights and duties of procurement organization and others.

1 (a) When a hospital refers an individual at or near death to a procurement organization,
2 the organization shall make a reasonable search of the records of the Division of Motor Vehicles
3 and any donor registry it knows of for the geographical area in which the individual resides to
4 ascertain whether the individual has made an anatomical gift.

5 (b) The Division of Motor Vehicles shall allow a procurement organization reasonable
6 access to information in the division's records to ascertain whether an individual at or near death
7 is a donor. The Commissioner of the Division of Motor Vehicles shall propose legislative rules for
8 promulgation pursuant to §29A-3-1 *et seq.* of this code to facilitate procurement agencies' access
9 to records pursuant to this subsection.

10 (c) When a hospital refers an individual at or near death to a procurement organization,
11 the organization may conduct any reasonable examination necessary to ensure the medical
12 suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy,
13 research, or education from a donor or a prospective donor. During the examination period,
14 measures necessary to ensure the medical suitability of the part may not be withdrawn unless the
15 hospital or procurement organization knows that the prospective donor expressed a contrary
16 intent.

17 (d) Unless prohibited by law, at any time after a donor's death, a person to whom a
18 decedent's part passes under §16-19-11 of this code may conduct any reasonable examination
19 necessary to ensure the medical suitability of the body or part for its intended purpose.

20 (e) Unless prohibited by law, an examination under subsection (c) or (d) of this section
21 may include an examination of all medical and dental records of the donor or prospective donor.

22 (f) Upon the death of a minor who was a donor or had signed a refusal, unless a
23 procurement organization knows the minor is emancipated, the procurement organization shall
24 conduct a reasonable search for the parents of the minor and provide the parents with an
25 opportunity to revoke or amend the anatomical gift or revoke the refusal.

26 (g) Upon referral by a hospital under subsection (a) of this section, a procurement
27 organization shall make a reasonable search for any person listed in §16-19-9 of this code having
28 priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization
29 receives information that an anatomical gift to any other person was made, amended, or revoked,
30 it shall promptly advise the other person of all relevant information.

31 (h) Except as provided in §16-19-22 of this code, the rights of the person to whom a part
32 passes under §16-19-11 of this code are superior to the rights of all others. A person may accept
33 or reject an anatomical gift, in whole or in part. Subject to the terms of the document of gift and
34 this article, a person that accepts an anatomical gift of an entire body may allow embalming,
35 burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to

36 whom the part passes under §16-19-11 of this code shall, upon the death of the donor and before
37 embalming, burial, or cremation, cause the part to be removed without unnecessary mutilation.

38 (i) Neither the physician or the physician assistant who attends the decedent at death, nor
39 the physician or the physician assistant who determines the time of death, may participate in the
40 procedures for removing or transplanting a part from the decedent.

41 (j) A physician or technician may remove a donated part from the body of a donor that the
42 physician or technician is qualified to remove.

43 (k) A medical examiner shall cooperate with any procurement organization to maximize
44 the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research,
45 or education.

46 (l) A part may not be removed from the body of a decedent under a medical examiner's
47 jurisdiction for transplantation, therapy, research, or education, nor delivered to a person for
48 research or education, unless the part is the subject of an anatomical gift.

49 (m) Upon the request of a procurement organization, the medical examiner shall release
50 to the procurement organization the name, contact information, name of the next of kin, and
51 available medical and social history of a decedent whose body is under the medical examiner's
52 jurisdiction. If the decedent's body or part is medically suitable for transplantation, therapy,
53 research, or education, the medical examiner shall release the post-mortem examination results
54 to the procurement organization. The procurement organization may not make a subsequent
55 disclosure of the post-mortem examination results or other information received from the medical
56 examiner unless the subsequent disclosure is relevant to transplantation, therapy, research, or
57 education.

58 (n) If a hospital refers an individual whose death is imminent or who has died in a hospital
59 to an organ procurement organization, and the organ procurement organization, in consultation
60 with the individual's attending physician or a designee, determines based upon a medical record

61 review and other information supplied by the individual's attending physician or a designee, that
62 the individual may be a prospective donor; and the individual:

63 (1) Has not indicated in any document an intention to either limit the anatomical gifts of
64 the individual to parts of the body which do not require a ventilator or other life-sustaining
65 measures, or

66 (2) Has not indicated in any document an intention to deny making or refusing to make an
67 anatomical gift; or

68 (3) Amended or revoked an anatomical gift in any document, the organ procurement
69 organization may conduct a blood or tissue test or minimally invasive examination which is
70 reasonably necessary to evaluate the medical suitability of a body part that is or may be the
71 subject of an anatomical gift.

72 (o) Testing and examination conducted pursuant to subsection (n) shall comply with a
73 denial or refusal to make an anatomical gift or any limitation expressed by the individual with
74 respect to the part of the body to donate or a limitation the provision of a ventilator or other life-
75 sustaining measures, or a revocation or amendment to an anatomical gift. The results of tests
76 and examinations conducted pursuant to subsection (n) shall be used or disclosed only:

77 (1) To evaluate medical suitability for donation and to facilitate the donation process; and

78 (2) As otherwise required or permitted by law.

79 (p) A hospital may not withdraw or withhold any measures necessary to maintain the
80 medical suitability of a body part that may be the subject of an anatomical gift until the organ
81 procurement organization or designated requestor, as appropriate, has had the opportunity to
82 advise the applicable persons under this article of the option to make an anatomical gift and has
83 received or been denied authorization to proceed with recovery of the part.

84 (q) Subject to the individual's wishes under §16-19-11(c)(3) of this code, after an
85 individual's death, persons who may receive anatomical gift pursuant to §16-19-11 of this code

86 may conduct any test or examination reasonably necessary to evaluate the medical suitability of
87 the body or part for its intended purpose.

88 (r) The provisions of this section may not be construed to preclude a medical examiner
89 from performing an investigation of a decedent under the medical examiner's jurisdiction.

**§16-19-22. Facilitation of anatomical gift from decedent whose body is under jurisdiction
of medical examiner.**

1 (a) The medical examiner shall, upon request of a procurement organization, release to
2 the procurement organization the name, contact information, and available medical and social
3 history of a decedent whose body is in the custody of the medical examiner. If the decedent's
4 body or part is medically suitable for transplantation, therapy, research, or education, the medical
5 examiner shall release post-mortem examination results after being paid in accordance with the
6 fee schedule established in rules to the procurement organization. The procurement organization
7 may make a subsequent disclosure of the post-mortem examination results or other information
8 received from the medical examiner only if relevant to transplantation or therapy.

9 (b) The medical examiner may conduct a medicolegal examination by reviewing all
10 medical records, laboratory test results, x-rays, other diagnostic results, and other information
11 that any person possesses about a donor or prospective donor whose body is under the
12 jurisdiction of the medical examiner which the medical examiner determines may be relevant to
13 the investigation.

14 (c) A person with any information requested by a medical examiner pursuant to subsection
15 (b) of this section shall provide that information as soon as possible to allow the medical examiner
16 to conduct the medicolegal investigation within a period compatible with the preservation of parts
17 for the purpose of transplantation, therapy, research, or education.

18 (d) If the medical examiner determines that a post-mortem examination is not required or
19 that a post-mortem examination is required but that the recovery of the part that is the subject of
20 an anatomical gift will not interfere with the examination, the medical examiner and procurement

21 organization shall cooperate in the timely removal of the part from the decedent for the purpose
22 of transplantation, therapy, research or education.

23 (e) If an anatomical gift of a part from the decedent under the jurisdiction of the medical
24 examiner has been or might be made, but the medical examiner initially believes that the recovery
25 of the part could interfere with the post-mortem investigation into the decedent's cause or manner
26 of death, the medical examiner shall consult with the procurement organization about the
27 proposed recovery. After the consultation, the medical examiner may deny the recovery at his or
28 her discretion. The medical examiner may attend the removal procedure for the part before
29 making a final determination not to allow the procurement organization to recover the part.

30 (f) If the medical examiner denies recovery of the part, he or she shall:

31 (1) Provide the procurement organization with a written explanation of the specific reasons
32 for not allowing recovery of the part; and

33 (2) Include in the medical examiner's records the specific reasons for denying recovery of
34 the part.

35 (g) If the medical examiner allows recovery of a part, the procurement organization shall,
36 upon request, cause the physician or technician who removes the part to provide the medical
37 examiner with a written report describing the condition of the part, a biopsy, a photograph or any
38 other information, and observations that would assist in the post-mortem examination.

39 (h) A medical examiner who decides to be present at a removal procedure is entitled to
40 reimbursement for the expenses associated with appearing at the recovery procedure from the
41 procurement organization which requested his or her presence.

42 (i) A medical examiner performing any of the functions specified in this section shall
43 comply with all applicable provisions of §61-12-1 *et seq.* of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-3. Office of Chief Medical Examiner established; appointment, duties, etc., of Chief Medical Examiner; assistants and employees; promulgation of rules.

1 (a) The Office of Chief Medical Examiner is continued within the Bureau of Public Health
2 in the Department of Health and Human Resources. The office shall be directed by a Chief
3 Medical Examiner, who may employ pathologists, toxicologists, other forensic specialists,
4 laboratory technicians, and other staff members as needed to fulfill the responsibilities set forth in
5 this article.

6 (b) All persons employed by the Chief Medical Examiner shall be responsible to him or
7 her and may be discharged for any reasonable cause. The Chief Medical Examiner shall specify
8 the qualifications required for each position in the Office of Chief Medical Examiner

9 (c) The chief medical examiner shall be a physician licensed to practice medicine or
10 osteopathic medicine in the State of West Virginia, who is a diplomat of the American Board of
11 Pathology in forensic pathology, or equivalent, and who has experience in forensic medicine. The
12 Chief Medical Examiner shall be appointed by the Commissioner for the Bureau of Public Health
13 to serve a five-year term unless sooner removed, but only for cause, by the Governor or by the
14 commissioner.

15 (d) The Chief Medical Examiner shall be responsible to the commissioner in all matters
16 except that the chief medical examiner shall operate with independent authority for the purposes
17 of:

18 (1) The performance of death investigations conducted pursuant to section eight of this
19 article;

20 (2) The establishment of cause and manner of death; and

21 (3) The formulation of conclusions, opinions, or testimony in judicial proceedings.

22 (e) The Chief Medical Examiner, or his or her designee, shall be available at all times for
23 consultation as necessary for carrying out the functions of the Office of the Chief Medical
24 Examiner.

25 (f) The Chief Medical Examiner shall cooperate with procurement organizations as defined
26 in §16-19-3 of this code to maximize the opportunity to recover anatomical gifts for the purpose
27 of transplantation, therapy, research, or education. The Chief Medical Examiner may enter into
28 contracts and agreements with a procurement organization when necessary to facilitate the
29 efficient and economical recovery of anatomical gifts, including contracts or agreements
30 authorizing persons approved or assigned by the procurement organization to perform a specific
31 type of duty or duties at the office of the chief medical examiner.

32 (g) The Secretary of the Department of Health and Human Resources shall propose
33 legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code concerning:

34 (1) The proper conduct of medical examinations into the cause of death;

35 (2) The proper methods and procedures for postmortem inquiries conducted by county
36 medical examiners and coroners;

37 (3) The examination of substances taken from human remains in order to determine the
38 cause and manner of death;

39 (4) The training and certification of county medical examiners and coroners; and

40 (5) The procedures necessary to maximize the recovery of anatomical gifts for the purpose
41 of transplantation, therapy, research, or education.

42 (h) The Chief Medical Examiner may prescribe specific forms for record books and official
43 papers which are necessary to the functions and responsibilities of the office of the Chief Medical
44 Examiner.

45 (i) The Chief Medical Examiner, or his or her designee, may order and conduct an autopsy
46 in accordance with the provisions of this code. The Chief Medical Examiner, or his or her

47 designee, shall perform an autopsy upon the lawful request of any person authorized by the
48 provisions of this code to request the performance of the autopsy.

49 (j) The salary of the Chief Medical Examiner and the salaries of all assistants and
50 employees of the office of the Chief Medical Examiner shall be fixed by the Legislature from funds
51 appropriated for that purpose. The Chief Medical Examiner shall take an oath as required by law.
52 The Chief Medical Examiner and his or her assistants may lecture or instruct in the field of legal
53 medicine and other related subjects to the West Virginia University or Marshall University School
54 of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia State Police,
55 other law-enforcement agencies and other interested groups.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor