

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5233

By Delegate Hornbuckle

[Introduced February 05, 2026; referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §16-19-3, §16-19-4, and §16-19-5 of the Code of West Virginia,
2 1931, as amended, relating to living anatomical gifts; providing definition; establishing who
3 may make a living anatomical gift and for what purposes; and establishing requirements
4 for obtaining consent of the donor to make the gift.

Be it enacted by the Legislature of West Virginia:

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 a
5 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

for, an individual who has made, amended, revoked, or refused to make an anatomical gift. The term "disinterested witness" does not include a person to whom an anatomical gift may pass pursuant to §16-19-11 of this code.

"Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, hunting or fishing license, or donor registry.

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

"Donor registry" means a database that contains records of anatomical gifts and amendments to, or revocations, of anatomical gifts.

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

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

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

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

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

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

"Know" means to have actual knowledge. It does not include constructive notice and other forms of imputed knowledge.

"Living anatomical gift" means the donation of a human body part to take place prior to the

46 death of the donor for the purposes of transplantation or therapy.

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

51 "Minor" means an individual who is under 18 years of age.

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

55 "Parent" means another person's natural or adoptive mother or father whose parental
56 rights have not been terminated by a court of law.

57 "Part" means an organ, an eye, or tissue of a human being. The term does not include the
58 whole body.

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

62 "Physician" means an individual authorized to practice medicine or osteopathy under the
63 law of any state.

64 "Physician assistant" has the meaning provided in §30-3E-1 of this code.

65 "Procurement organization" means an eye bank, organ procurement organization, or
66 tissue bank.

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

71 "Reasonably available" means able to be contacted by a procurement organization without

undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

"Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

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

"Revocation" means the affirmative declaration of the potential donor's withdrawal of their decision to make or not make a document of gift. It does not have the same meaning as a refusal but only establishes that the potential donor chooses not to make an affirmative declaration of their wishes.

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

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

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

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

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

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

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

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

§16-19-4. Who may make anatomical gift before donor's death.

(a) Subject to the provisions of §16-19-8 of this code, an anatomical gift may be made during the life of the donor for the purpose of transplantation, therapy, research, or education by:

(1) The donor, if the donor is an adult;

(2) The donor, if the donor is a minor and is emancipated or ~~sixteen (16)~~ 16 years of age or older;

(3) An agent of the donor, unless the medical power of attorney or other record prohibits the agent from making an anatomical gift;

(4) A parent of the donor, if the donor is an unemancipated minor; or

(5) The donor's guardian.

(b) Subject to §16-19-8 of this code, a living anatomical gift for the transplantation or therapy may only be made by the donor if the donor is an adult or is a minor and is emancipated or 16 years of age or older. The state, an agent of the state, parents, guardians, and persons with a medical power of attorney for another may not make a living anatomical gift on behalf of another individual.

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

(a) A donor may make an anatomical gift:

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

(2) In a will;

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

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

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

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

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

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

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

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

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

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

(e) Subject to the provisions of §16-9-8 of this code, a living anatomical gift for the purpose of transplantation or therapy may only be made by the donor under express written informed consent. Consent shall contain the following elements:

- 27 (1) A certification that the donor has been informed of the risks of any associated medical
28 procedures and long-term effects of the donation for the donor;
- 29 (2) A certification that the donor is of sound mind and is mentally competent to consent to
30 being a donor;
- 31 (3) Specific identification of the donor;
- 32 (4) A medical opinion as to the effect or impact of the donation on the health or prognosis of
33 the recipient, including specific findings regarding whether the living anatomical gift is a match for
34 the intended recipient; and
- 35 (5) That the donor has been provided information at least 24 hours in advance of making
36 any living anatomical gift.

NOTE: The purpose of this bill is to establish procedures and requirements for making a living anatomical gift.

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