

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1012

53rd Legislature
1993 Regular Session

Passed by the House April 19, 1993
Yeas 96 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 13, 1993
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1012** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1012

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Appelwick, King and Jacobsen)

Read first time 02/17/93.

1 AN ACT Relating to anatomical gifts; amending RCW 46.20.113,
2 68.50.106, and 68.50.500; adding new sections to chapter 68.50 RCW;
3 repealing RCW 68.50.280, 68.50.340, 68.50.350, 68.50.360, 68.50.370,
4 68.50.380, 68.50.390, 68.50.400, 68.50.410, and 68.50.420; and
5 prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that:

8 (1) The demand for donor organs and body parts exceeds the
9 available supply for transplant.

10 (2) The discussion regarding advance directives including
11 anatomical gifts is most appropriate with the primary care provider
12 during an office visit.

13 (3) Federal law requires hospitals, skilled nursing facilities,
14 home health agencies, and hospice programs to provide information
15 regarding advance directives.

16 (4) Discretion and sensitivity must be used in discussion and
17 requests for anatomical gifts.

18 The legislature declares that it is in the best interest of the
19 citizens of Washington to provide a program that will increase the

1 number of anatomical gifts available for donation, and the legislature
2 further declares that wherever possible policies and procedures
3 required in this chapter shall be consistent with the federal
4 requirements.

5 NEW SECTION. **Sec. 2.** Unless the context requires otherwise, the
6 definitions in this section apply throughout sections 1 through 16 of
7 this act.

8 (1) "Anatomical gift" means a donation of all or part of a human
9 body to take effect upon or after death.

10 (2) "Decedent" means a deceased individual.

11 (3) "Document of gift" means a card, a statement attached to or
12 imprinted on a motor vehicle operator's license, a will, or other
13 writing used to make an anatomical gift.

14 (4) "Donor" means an individual who makes an anatomical gift of all
15 or part of the individual's body.

16 (5) "Enucleator" means an individual who is qualified to remove or
17 process eyes or parts of eyes.

18 (6) "Hospital" means a facility licensed under chapter 70.41 RCW,
19 or as a hospital under the law of any state or a facility operated as
20 a hospital by the United States government, a state, or a subdivision
21 of a state.

22 (7) "Part" means an organ, tissue, eye, bone, artery, blood, fluid,
23 or other portion of a human body.

24 (8) "Person" means an individual, corporation, business trust,
25 estate, trust, partnership, joint venture, association, government,
26 governmental subdivision or agency, or any other legal or commercial
27 entity.

28 (9) "Physician" or "surgeon" means an individual licensed or
29 otherwise authorized to practice medicine and surgery or osteopathy and
30 surgery under chapters 18.71 and 18.57 RCW.

31 (10) "Procurement organization" means a person licensed,
32 accredited, or approved under the laws of any state for procurement,
33 distribution, or storage of human bodies or parts.

34 (11) "State" means a state, territory, or possession of the United
35 States, the District of Columbia, or the Commonwealth of Puerto Rico.

36 (12) "Technician" means an individual who is qualified to remove or
37 process a part.

NEW SECTION.

Sec. 3.

(1) An individual who is at least eighteen years of age may (a) make an anatomical gift for any of the purposes stated in section 6(1) of this act, (b) limit an anatomical gift to one or more of those purposes, or (c) refuse to make an anatomical gift.

(2) An anatomical gift may be made by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other and state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2) of this section. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) The donee or other person authorized to accept the anatomical gift may employ or authorize a physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(6) A donor may amend or revoke an anatomical gift, not made by will, by:

(a) A signed statement;

(b) An oral statement made in the presence of two individuals;

(c) Any form of communication during a terminal illness or injury;

or

(d) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6) of this section.

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of a person after the donor's death.

(9) An individual may refuse to make an anatomical gift of the individual's body or part by (a) a writing signed in the same manner as a document of gift, (b) a statement attached to or imprinted on a donor's motor vehicle operator's license, or (c) another writing used to identify the individual as refusing to make an anatomical gift.

1 During a terminal illness or injury, the refusal may be an oral
2 statement or other form of communication.

3 (10) In the absence of contrary indications by the donor, an
4 anatomical gift of a part is neither a refusal to give other parts nor
5 a limitation on an anatomical gift under section 4 of this act.

6 (11) In the absence of contrary indications by the donor, a
7 revocation or amendment of an anatomical gift is not a refusal to make
8 another anatomical gift. If the donor intends a revocation to be a
9 refusal to make an anatomical gift, the donor shall make the refusal
10 pursuant to subsection (9) of this section.

11 NEW SECTION. **Sec. 4.** (1) A member of the following classes of
12 persons, in the order of priority listed, absent contrary instructions
13 by the decedent, may make an anatomical gift of all or a part of the
14 decedent's body for an authorized purpose, unless the decedent, at the
15 time of death, had made an unrevoked refusal to make that anatomical
16 gift:

17 (a) The appointed guardian of the person of the decedent at the
18 time of death;

19 (b) The individual, if any, to whom the decedent had given a
20 durable power of attorney that encompassed the authority to make health
21 care decisions;

22 (c) The spouse of the decedent;

23 (d) A son or daughter of the decedent who is at least eighteen
24 years of age;

25 (e) Either parent of the decedent;

26 (f) A brother or sister of the decedent who is at least eighteen
27 years of age;

28 (g) A grandparent of the decedent.

29 (2) An anatomical gift may not be made by a person listed in
30 subsection (1) of this section if:

31 (a) A person in a prior class is available at the time of death to
32 make an anatomical gift;

33 (b) The person proposing to make an anatomical gift knows of a
34 refusal or contrary indications by the decedent; or

35 (c) The person proposing to make an anatomical gift knows of an
36 objection to making an anatomical gift by a member of the person's
37 class or a prior class.

1 (3) An anatomical gift by a person authorized under subsection (1)
2 of this section must be made by (a) a document of gift signed by the
3 person or (b) the person's telegraphic, recorded telephonic, or other
4 recorded message, or other form of communication from the person that
5 is contemporaneously reduced to writing and signed by the recipient of
6 the communication.

7 (4) An anatomical gift by a person authorized under subsection (1)
8 of this section may be revoked by a member of the same or a prior class
9 if, before procedures have begun for the removal of a part from the
10 body of the decedent, the physician, surgeon, technician, or enucleator
11 removing the part knows of the revocation.

12 (5) A failure to make an anatomical gift under subsection (1) of
13 this section is not an objection to the making of an anatomical gift.

14 NEW SECTION. **Sec. 5.** (1) On or before admission to a hospital, or
15 as soon as possible thereafter, a person designated by the hospital
16 shall ask each patient who is at least eighteen years of age: "Are you
17 an organ or tissue donor?" If the answer is affirmative the person
18 shall request a copy of the document of gift. If the answer is
19 negative or there is no answer, the person designated shall provide the
20 patient information about the right to make a gift and shall ask the
21 patient if he or she wishes to become an anatomical parts donor. If
22 the answer is affirmative, the person designated shall provide a
23 document of gift to the patient. The answer to the questions, an
24 available copy of any document of gift or refusal to make an anatomical
25 gift, and any other relevant information shall be placed in the
26 patient's medical record.

27 (2) If, at or near the time of death of a patient, there is no
28 medical record that the patient has made or refused to make an
29 anatomical gift, the hospital administrator or a representative
30 designated by the administrator shall discuss the option to make or
31 refuse to make an anatomical gift and request the making of an
32 anatomical gift under section 4(1) of this act. The request shall be
33 made with reasonable discretion and sensitivity to the circumstances of
34 the family. A request is not required if the gift is not suitable,
35 based upon accepted medical standards, for a purpose specified in
36 section 6 of this act. An entry shall be made in the medical record of
37 the patient, stating the name and affiliation of the individual making
38 the request, and of the name, response, and relationship to the patient

1 of the person to whom the request was made. The secretary of the
2 department of health shall adopt rules to implement this subsection.

3 (3) The following persons shall make a reasonable search of the
4 individual and his or her personal effects for a document of gift or
5 other information identifying the bearer as a donor or as an individual
6 who has refused to make an anatomical gift:

7 (a) The agency assuming jurisdiction over the decedent, such as the
8 coroner or medical examiner; or

9 (b) A hospital, upon the admission of an individual at or near the
10 time of death, if there is not immediately available another source of
11 that information.

12 (4) If a document of gift or evidence of refusal to make an
13 anatomical gift is located by the search required by subsection (3)(a)
14 of this section, and the individual or body to whom it relates is taken
15 to a hospital, the hospital shall be notified of the contents and the
16 document or other evidence shall be sent to the hospital.

17 (5) If, at or near the time of death of a patient, a hospital knows
18 that an anatomical gift has been made under section 4(1) of this act,
19 or that a patient or an individual identified as in transit to the
20 hospital is a donor, the hospital shall notify the donee if one is
21 named and known to the hospital; if not, it shall notify an appropriate
22 procurement organization. The hospital shall cooperate in the
23 procurement of the anatomical gift or release and removal of a part.

24 (6) A person who fails to discharge the duties imposed by this
25 section is not subject to criminal or civil liability.

26 (7) Hospitals shall develop policies and procedures to implement
27 this section.

28 NEW SECTION. **Sec. 6.** (1) The following persons may become donees
29 of anatomical gifts for the purposes stated:

30 (a) A hospital, physician, surgeon, or procurement organization for
31 transplantation, therapy, medical or dental education, research, or
32 advancement of medical or dental science;

33 (b) An accredited medical or dental school, college, or university
34 for education, research, or advancement of medical or dental science;
35 or

36 (c) A designated individual for transplantation or therapy needed
37 by that individual.

1 (2) An anatomical gift may be made to a designated donee or without
2 designating a donee. If a donee is not designated or if the donee is
3 not available or rejects the anatomical gift, the anatomical gift may
4 be accepted by any hospital.

5 (3) If the donee knows of the decedent's refusal or contrary
6 indications to make an anatomical gift or that an anatomical gift made
7 by a member of a class having priority to act is opposed by a member of
8 the same class or a prior class under section 4(1) of this act, the
9 donee may not accept the anatomical gift.

10 NEW SECTION. **Sec. 7.** (1) Delivery of a document of gift during
11 the donor's lifetime is not required for the validity of an anatomical
12 gift.

13 (2) If an anatomical gift is made to a designated donee, the
14 document of gift, or a copy, may be delivered to the donee to expedite
15 the appropriate procedures after death. The document of gift, or a
16 copy, may be deposited in a hospital, procurement organization, or
17 registry office that accepts it for safekeeping or for facilitation of
18 procedures after death. On request of an interested person, upon or
19 after the donor's death, the person in possession shall allow the
20 interested person to examine or copy the document of gift.

21 NEW SECTION. **Sec. 8.** (1) Rights of a donee created by an
22 anatomical gift are superior to rights of others except when under the
23 jurisdiction of the coroner or medical examiner. A donee may accept or
24 reject an anatomical gift. If a donee accepts an anatomical gift of an
25 entire body, the donee, subject to the terms of the gift, may allow
26 embalming and use of the body in funeral services. If the gift is of
27 a part of a body, the donee, upon the death of the donor and before
28 embalming, shall cause the part to be removed without unnecessary
29 mutilation. After removal of the part, custody of the remainder of the
30 body vests in the person under obligation to dispose of the body.

31 (2) The time of death must be determined by a physician or surgeon
32 who attends the donor at death or, if none, the physician or surgeon
33 who certifies the death. Neither the physician or surgeon who attends
34 the donor at death nor the physician or surgeon who determines the time
35 of death may participate in the procedures for removing or
36 transplanting a part.

1 (3) If there has been an anatomical gift, a technician may remove
2 any donated parts and an enucleator may remove any donated eyes or
3 parts of eyes, after determination of death by a physician or surgeon.

4 NEW SECTION. **Sec. 9.** Each hospital in this state, after
5 consultation with other hospitals and procurement organizations, shall
6 establish agreements or affiliations for coordination of procurement
7 and use of human bodies and parts.

8 NEW SECTION. **Sec. 10.** (1) A person may not knowingly, for
9 valuable consideration, purchase or sell a part for transplantation or
10 therapy, if removal of the part is intended to occur after the death of
11 the decedent.

12 (2) Valuable consideration does not include reasonable payment for
13 the removal, processing, disposal, preservation, quality control,
14 storage, transportation, or implantation of a part.

15 (3) A person who violates this section is guilty of a felony and
16 upon conviction is subject to a fine not exceeding fifty thousand
17 dollars or imprisonment not exceeding five years, or both.

18 NEW SECTION. **Sec. 11.** (1) An anatomical gift authorizes
19 reasonable examination necessary to assure medical acceptability of the
20 gift for the purposes intended.

21 (2) The provisions of sections 1 through 16 of this act are subject
22 to the laws of this state governing the jurisdiction of the coroner or
23 medical examiner.

24 (3) A hospital, physician, surgeon, coroner, medical examiner,
25 local public health officer, enucleator, technician, or other person,
26 who acts in accordance with sections 1 through 16 of this act or with
27 the applicable anatomical gift law of another state or a foreign
28 country or attempts in good faith to do so, is not liable for that act
29 in a civil action or criminal proceeding.

30 (4) An individual who makes an anatomical gift under section 3 or
31 4 of this act and the individual's estate are not liable for injury or
32 damage that may result from the making or the use of the anatomical
33 gift.

34 NEW SECTION. **Sec. 12.** Sections 1 through 16 of this act apply to
35 a document of gift, revocation, or refusal to make an anatomical gift

1 signed by the donor or a person authorized to make or object to making
2 an anatomical gift before, on, or after the effective date of this
3 section.

4 NEW SECTION. **Sec. 13.** This act shall be applied and construed to
5 effectuate its general purpose to make uniform the law with respect to
6 the subject of this act among states enacting it.

7 NEW SECTION. **Sec. 14.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 15.** In any case where a patient is in need of
12 corneal tissue for a transplantation, corneal tissue may be provided by
13 eye banks licensed by the secretary of health under rules promulgated
14 by the department of health.

15 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act may be
16 cited as the "uniform anatomical gift act."

17 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act are each
18 added to chapter 68.50 RCW.

19 **Sec. 18.** RCW 46.20.113 and 1987 c 331 s 81 are each amended to
20 read as follows:

21 The department of licensing shall provide a statement whereby the
22 licensee may certify (~~(in the presence of two witnesses)~~) his or her
23 willingness to make an anatomical gift under (~~(RCW 68.50.370)~~) section
24 3 of this act, as now or hereafter amended. The department shall
25 provide the statement in at least one of the following ways:

- 26 (1) On each driver's license; or
27 (2) With each driver's license; or
28 (3) With each in-person driver's license application.

29 **Sec. 19.** RCW 68.50.106 and 1987 c 331 s 59 are each amended to
30 read as follows:

31 In any case in which an autopsy or post mortem is performed, the
32 coroner or medical examiner, upon his or her own authority or upon the

1 request of the prosecuting attorney or other law enforcement agency
2 having jurisdiction, may make or cause to be made an analysis of the
3 stomach contents, blood, or organs, or tissues of a deceased person and
4 secure professional opinions thereon and retain or dispose of any
5 specimens or organs of the deceased which in his or her discretion are
6 desirable or needful for anatomic, bacteriological, chemical, or
7 toxicological examination or upon lawful request are needed or desired
8 for evidence to be presented in court. (~~When the autopsy or post~~
9 ~~mortem requires examination in the region of the pituitary gland, that~~
10 ~~gland may be removed and utilized for any desirable or needful purpose:~~
11 ~~PROVIDED, That a reasonable effort to obtain consent as required under~~
12 ~~RCW 68.50.350 shall be made if that organ is to be so utilized.))
13 Costs shall be borne by the county.~~

14 **Sec. 20.** RCW 68.50.500 and 1987 c 331 s 71 are each amended to
15 read as follows:

16 Each hospital shall develop procedures for identifying potential
17 (~~organ and tissue~~) anatomical parts donors. The procedures shall
18 require that any deceased individual's next of kin or other individual,
19 as set forth in (~~RCW 68.50.350~~) section 4 of this act, and the
20 medical record does not specify the deceased as a donor, at or near the
21 time of notification of death be asked whether the deceased was (~~an~~
22 ~~organ~~) a part donor. If not, the family shall be informed of the
23 option to donate (~~organs and tissues~~) parts pursuant to the uniform
24 anatomical gift act. With the approval of the designated next of kin
25 or other individual, as set forth in (~~RCW 68.50.350~~) section 4 of
26 this act, the hospital shall then notify an established (~~eye bank,~~
27 ~~tissue bank, or organ procurement agency~~) procurement organization
28 including those organ procurement agencies associated with a national
29 organ procurement transportation network or other eligible donee, as
30 specified in (~~RCW 68.50.360~~) section 6 of this act, and cooperate in
31 the procurement of the anatomical gift or gifts. The procedures shall
32 encourage reasonable discretion and sensitivity to the family
33 circumstances in all discussions regarding donations of (~~tissue or~~
34 ~~organs~~) parts. The procedures may take into account the deceased
35 individual's religious beliefs or obvious nonsuitability for (~~organ~~
36 ~~and tissue~~) an anatomical parts donation. Laws pertaining to the
37 jurisdiction of the coroner shall be complied with in all cases of
38 reportable deaths pursuant to RCW 68.50.010.

1 NEW SECTION. **Sec. 21.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 68.50.280 and 1989 1st ex.s. c 9 s 224, 1987 c 331 s 64, &
4 1975-'76 2nd ex.s. c 60 s 1;

5 (2) RCW 68.50.340 and 1981 c 44 s 1 & 1969 c 80 s 2;

6 (3) RCW 68.50.350 and 1987 c 331 s 66 & 1969 c 80 s 3;

7 (4) RCW 68.50.360 and 1982 c 9 s 1, 1979 c 37 s 1, & 1969 c 80 s 4;

8 (5) RCW 68.50.370 and 1987 c 331 s 67, 1975 c 54 s 2, & 1969 c 80
9 s 5;

10 (6) RCW 68.50.380 and 1969 c 80 s 6;

11 (7) RCW 68.50.390 and 1969 c 80 s 7;

12 (8) RCW 68.50.400 and 1987 c 331 s 68 & 1969 c 80 s 8;

13 (9) RCW 68.50.410 and 1987 c 331 s 69 & 1969 c 80 s 9; and

14 (10) RCW 68.50.420 and 1987 c 331 s 70 & 1969 c 80 s 11.

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