

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4340

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REED, TULLY, PACK, G. WARD, BATES, WORRELL,
ROWAN, AND JENNINGS

[Introduced January 21, 2022; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §16-19-9, §16-19-14 and §16-19-22 of the Code of West Virginia,
2 1931, as amend; and to amend and reenact §61-12-3 of said code, all relating to
3 anatomical gifts; authorizing the Department of Health and Human Resources as guardian
4 to make an anatomical gift without a court order; clarifying the duties of procurement
5 organization with regard to state medical examiner; requiring the state medical examiner
6 to cooperate with procurement organizations to maximize the opportunity to recover
7 anatomical gifts; authorizing procurement organizations to conduct a test or examination
8 which is reasonably necessary to evaluate the medical suitability of the body or part for its
9 intended purpose; requiring a prosecuting attorney who denies the release of a body or
10 part that is the subject of an anatomical gift to consult with the procurement organization
11 about the proposed recovery; and authorizing the state's chief medical examiner to enter
12 into contracts and agreements with a procurement organization when necessary to
13 facilitate the efficient and economical 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 section seven or section eight of this article, an anatomical gift of a
2 decedent's body or part for purpose of transplantation, therapy, research or education may be
3 made by any member of the following classes of persons who is reasonably available, in the order
4 of priority 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 section four of this article
7 immediately before the decedent's death;

8 (2) The spouse of the decedent, unless ~~in the six (6) months prior to the decedent's death~~

9 ~~the spouse has lived separate and apart from the decedent in a separate place of abode without~~
10 ~~cohabitation~~ 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. If the guardian
13 is the Department of Health and Human Resources, the department may make an anatomical gift
14 of a decedent's body or part for purpose of transplantation, therapy, research or education without
15 a court order;

16 (5) An appointed health care surrogate;

17 (6) Parents of the decedent;

18 (7) Adult siblings of the decedent;

19 (8) Adult grandchildren of the decedent;

20 (9) Grandparents of the decedent; or

21 (10) An adult who exhibited special care and concern for the decedent; or

22 (11) A person authorized or obligated to dispose of the decedent's body.

23 (b) If there is more than one member of a class entitled to make an anatomical gift, any
24 member of the class may make the anatomical gift unless he or she, or a person to whom the
25 anatomical gift may pass pursuant to section eleven of this section, knows of an objection by
26 another member of the class. If an objection is known, the majority of the members of the same
27 class must be opposed to the donation in order for the donation to be revoked. In the event of a
28 tie vote, ~~the attending physician or advanced nurse practitioner shall appoint a health care~~
29 ~~surrogate to decide whether to make an anatomical gift of the decedent's body or part for the~~
30 ~~purpose of transplantation, therapy, research or education~~ the anatomical gift may proceed
31 despite the objection by a member or members of a class.

32 (c) A person may not make an anatomical gift if, at the time of the decedent's death, a
33 person in a prior class is reasonably available to make or to object to the making of an anatomical
34 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 section eleven of this article may conduct any reasonable
19 examination necessary to ensure the medical suitability of the body or part for its intended
20 purpose.

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

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

26 opportunity to revoke or amend the anatomical gift or revoke the refusal.

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

32 (h) Except as provided in and section twenty-two of this article, the rights of the person to
33 whom a part passes under section eleven of this article are superior to the rights of all others. A
34 person may accept or reject an anatomical gift, in whole or in part. Subject to the terms of the
35 document of gift and this article, a person that accepts an anatomical gift of an entire body may
36 allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a
37 part, the person to whom the part passes under section eleven of this article shall, upon the death
38 of the donor and before embalming, burial or cremation, cause the part to be removed without
39 unnecessary mutilation.

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

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

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

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

51 (m) Upon the request of a procurement organization, the medical examiner shall release

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

60 (n) If a hospital refers an individual whose death is imminent or who has died in a hospital
61 to an organ procurement organization, and the organ procurement organization, in consultation
62 with the individual's attending physician or a designee, determines based upon a medical record
63 review and other information supplied by the individual's attending physician or a designee, that
64 the individual may be a prospective donor; and the individual:

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

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

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

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

78 and examinations conducted pursuant to subsection (n) shall be used or disclosed only:

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

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

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

86 (q) Subject to the individual's wishes under §16-19-11(c)(3) of this code, after an
87 individual's death persons who may receive anatomical gift pursuant to §16-19-11 of this code
88 may conduct any test or examination reasonably necessary to evaluate the medical suitability of
89 the body or part for its intended purpose.

90 (r) The provisions of this section may not be construed to preclude a medical examiner
91 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) Except as provided in subsection (e) of this section, the medical examiner shall, upon
2 request of a procurement organization, release to the procurement organization the name, contact
3 information and available medical and social history of a decedent whose body is in the custody
4 of the medical examiner. If the decedent's body or part is medically suitable for transplantation,
5 therapy, research or education, the medical examiner shall release post-mortem examination
6 results after being paid in accordance with the fee schedule established in rules to the
7 procurement organization, subject to subsection (e) of this section. The procurement organization
8 may make a subsequent disclosure of the post-mortem examination results or other information
9 received from the medical examiner only if relevant to transplantation or therapy.

10 (b) The medical examiner may conduct a medicolegal examination by reviewing all

11 medical records, laboratory test results, x-rays, other diagnostic results and other information that
12 any person possesses about a donor or prospective donor whose body is under the jurisdiction
13 of the medical examiner which the medical examiner determines may be relevant to the
14 investigation.

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

19 (d) If the medical examiner determines that a post-mortem examination is not required or
20 that a post-mortem examination is required but that the recovery of the part that is the subject of
21 an anatomical gift will not interfere with the examination, the medical examiner and procurement
22 organization shall cooperate in the timely removal of the part from the decedent for the purpose
23 of transplantation, therapy, research or education.

24 ~~(e) If the decedent's death is the subject of a criminal investigation, the medical examiner~~
25 ~~may not release the body or part that is the subject of an anatomical gift or the social history,~~
26 ~~medical history or post-mortem examination results without the express authorization of the~~
27 ~~prosecuting attorney of the county having jurisdiction over the investigation~~

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

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

36 (1) Provide the procurement organization with a written explanation of the specific reasons

37 for not allowing recovery of the part; and

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

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

44 ~~(i)~~ (h) A medical examiner who decides to be present at a removal procedure pursuant to
45 subsection (f) of this section is entitled to reimbursement for the expenses associated with
46 appearing at the recovery procedure from the procurement organization which requested his or
47 her presence.

48 ~~(j)~~ (i) A medical examiner performing any of the functions specified in this section shall
49 comply with all applicable provisions of article twelve, chapter sixty-one 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 hereby established within the division of health
2 in the Department of Health and Human Resources. The office shall be directed by a chief medical
3 examiner, who may employ pathologists, toxicologists, other forensic specialists, laboratory
4 technicians, and other staff members, as needed to fulfill the responsibilities set forth in this article.

5 (b) All persons employed by the chief medical examiner shall be responsible to him or her
6 and may be discharged for any reasonable cause. The chief medical examiner shall specify the
7 qualifications required for each position in the office of chief medical examiner, and each position
8 shall be subject to rules prescribed by the secretary of the Department of Health and Human

9 Resources.

10 (c) The chief medical examiner shall be a physician licensed to practice medicine or
11 osteopathic medicine in the State of West Virginia, who is a diplomat of the American board of
12 pathology in forensic pathology, and who has experience in forensic medicine. The chief medical
13 examiner shall be appointed by the director of the division of health to serve a five-year term
14 unless sooner removed, but only for cause, by the Governor or by the director.

15 (d) The chief medical examiner shall be responsible to the ~~director of the division of health~~
16 Commissioner of the Bureau for Public Health in all matters except that the chief medical examiner
17 shall operate with independent authority for the purposes 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 examiner.

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

31 (g) The Secretary of the Department of Health and Human Resources is hereby directed
32 to propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-
33 a 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; ~~and~~
- 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 ~~(g)~~ (h) The chief medical examiner is authorized to prescribe specific forms for record
43 books and official papers which are necessary to the functions and responsibilities of the office of
44 the chief medical examiner.
- 45 ~~(h)~~ (i) The chief medical examiner, or his or her designee, is authorized to order and
46 conduct an autopsy in accordance with the provisions of this article and this code. The chief
47 medical examiner, or his or her designee, shall perform an autopsy upon the lawful request of any
48 person authorized by the provisions of this code to request the performance of the autopsy.
- 49 ~~(i)~~ (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 and provide a bond
52 as required by law. Within the discretion of the ~~director of the division of health~~ Commissioner of
53 the Bureau for Public Health, the chief medical examiner and his or her assistants shall lecture or
54 instruct in the field of legal medicine and other related subjects to the West Virginia University or
55 Marshall university school of medicine, the West Virginia school of osteopathic medicine, the West
56 Virginia state police, other law-enforcement agencies and other interested groups.

NOTE: The purpose of this bill is to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

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