

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2352

By Delegate Hornbuckle

[Introduced January 11, 2023; 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, all relating to living anatomical gifts; providing definition; establishing
 3 who may make a living anatomical gift and for what purposes; and establishing
 4 requirements 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

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 §16-19-11 of this code.

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

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

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

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

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

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

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

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

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

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

45 "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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (5) The donor's guardian.

10 (b) Subject to §16-19-8 of this code, a living anatomical gift for the transplantation or
11 therapy may only be made by the donor if the donor is an adult or is a minor and is emancipated or
12 16 years of age or older. The state, an agent of the state, parents, guardians and persons with a
13 medical power of attorney for another may not make a living anatomical gift on behalf of another
14 individual.

§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,
3 identification card, or hunting or fishing license indicating that he or she has made an anatomical
4 gift;

5 (2) In a will;

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

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

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

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

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

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

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

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

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

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

24 (e) Subject to the provisions of §16-9-8 of this code, a living anatomical gift for the purpose
25 of transplantation or therapy may only be made by the donor under express written informed
26 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.