

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1956 Session of
1993

INTRODUCED BY M. COHEN, CALTAGIRONE, PETRARCA, COY, VEON, BEBKO-
JONES, MIHALICH, WOGAN, BELFANTI, ROBINSON AND ULIANA,
JUNE 28, 1993

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 28, 1993

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, providing for anatomical
3 gifts; and making a repeal.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Chapter 86 of Title 20 of the Pennsylvania
7 Consolidated Statutes is repealed.

8 Section 2. Title 20 is amended by adding a chapter to read:

9 CHAPTER 86

10 ANATOMICAL GIFTS

11 Subchapter

12 A. General Provisions

13 B. Express Anatomical Gifts

14 C. Presumed Anatomical Gifts

15 SUBCHAPTER A

16 GENERAL PROVISIONS

17 Sec.

18 8601. Definitions.

1 § 8601. Definitions.

2 The following words and phrases when used in this chapter
3 shall have the meanings given to them in this section unless the
4 context clearly indicates otherwise:

5 "Bank or storage facility." A facility licensed, accredited
6 or approved under the laws of any state for storage of human
7 bodies or parts thereof.

8 "Board." The Humanity Gifts Registry.

9 "Decedent." A deceased individual, including a stillborn
10 infant or fetus.

11 "Donor." An individual who makes a gift of all or part of
12 his body.

13 "Hospital." A hospital licensed, accredited or approved
14 under the laws of any state, including a hospital operated by
15 the Federal Government, a state or a subdivision thereof,
16 although not required to be licensed under state laws.

17 "Organ procurement organization." An organization that meets
18 the requirements of section 371 of the Public Health Service Act
19 (58 Stat. 682, 42 U.S.C. § 273).

20 "Part." Organs, tissues, eyes, bones, arteries, blood, other
21 fluids and any other portions of a human body.

22 "Person." An individual, corporation, government or
23 governmental subdivision or agency, business trust, estate,
24 trust, partnership or association or any other legal entity.

25 "Physician" or "surgeon." A physician or surgeon licensed or
26 authorized to practice under the laws of any state.

27 "Registry." The Transplant Organ Registry under section 8632
28 (relating to refusal to donate).

29 "State." Any state, district, commonwealth, territory,
30 insular possession and any other area subject to the legislative

1 authority of the United States of America.

2 SUBCHAPTER B

3 EXPRESS ANATOMICAL GIFTS

4 Sec.

5 8611. Persons who may execute an anatomical gift.

6 8612. Persons who may become donees; purposes for which
7 anatomical gifts may be made.

8 8613. Manner of executing anatomical gifts.

9 8614. Delivery of document of gift.

10 8615. Amendment or revocation of gift.

11 8616. Rights and duties at death.

12 8617. Requests for anatomical gifts.

13 § 8611. Persons who may execute an anatomical gift.

14 (a) General rule.--Any individual of sound mind and 18 years
15 of age or more may give all or any part of his body for any
16 purpose specified in section 8612 (relating to persons who may
17 become donees; purposes for which anatomical gifts may be made),
18 the gift to take effect upon death. A gift of the whole body
19 shall be invalid unless made in writing at least 15 days prior
20 to the date of death. If a gift is not made under this
21 subchapter, a gift of organs or tissues, or both, for
22 transplantation or therapeutic purposes in accordance with
23 Subchapter C (relating to presumed anatomical gifts) shall be
24 presumed.

25 (b) Others entitled to donate anatomy of decedent.--Any of
26 the following persons, in order of priority stated, when persons
27 in prior classes are not available at the time of death, and in
28 the absence of actual notice of contrary indications by the
29 decedent or actual notice of opposition by a member of the same
30 or a prior class, may give all or any part of the decedent's

1 body for any purpose specified in section 8612:

2 (1) The spouse.

3 (2) An adult son or daughter.

4 (3) Either parent.

5 (4) An adult brother or sister.

6 (5) A guardian of the person of the decedent at the time
7 of his death.

8 (6) Any other person authorized or under obligation to
9 dispose of the body.

10 (c) Donee not to accept in certain cases.--If the donee has
11 actual notice of contrary indications by the decedent or that a
12 gift by a member of a class is opposed by a member of the same
13 or a prior class, the donee shall not accept the gift. The
14 persons authorized by subsection (b) may make the gift after or
15 immediately before death.

16 (d) Examinations.--A gift of all or part of a body
17 authorizes any examination necessary to assure medical
18 acceptability of the gift for the purposes intended.

19 (e) Rights of donee paramount.--The rights of the donee
20 created by the gift are paramount to the rights of others except
21 as provided by section 8616(d) (relating to rights and duties at
22 death).

23 § 8612. Persons who may become donees; purposes for which
24 anatomical gifts may be made.

25 The following persons may become donees of gifts of bodies or
26 parts thereof for the purposes stated:

27 (1) any hospital, surgeon or physician for medical or
28 dental education, research, advancement of medical or dental
29 science, therapy or transplantation;

30 (2) any accredited medical or dental school, college or

1 university for education, research, advancement of medical or
2 dental science or therapy;

3 (3) any bank or storage facility for medical or dental
4 education, research, advancement of medical or dental
5 science, therapy or transplantation;

6 (4) any specified individual for therapy or
7 transplantation needed by him;

8 (5) the board.

9 § 8613. Manner of executing anatomical gifts.

10 (a) Gifts by will.--A gift of all or part of the body under
11 section 8611(a) (relating to persons who may execute an
12 anatomical gift) may be made by will. The gift becomes effective
13 upon the death of the testator without waiting for probate. If
14 the will is not probated or if it is declared invalid for
15 testamentary purposes, the gift, to the extent that it has been
16 acted upon in good faith, is nevertheless valid and effective.

17 (b) Gifts by other documents.--A gift of all or part of the
18 body under section 8611(a) may also be made by document other
19 than a will. The gift becomes effective upon the death of the
20 donor. The document, which may be a card designed to be carried
21 on the person, must be signed by the donor in the presence of
22 two witnesses who must sign the document in his presence. If the
23 donor is mentally competent to signify his desire to sign the
24 document but is physically unable to do so, the document may be
25 signed for him by another at his direction and in his presence
26 in the presence of two witnesses who must sign the document in
27 his presence. Delivery of the document of gift during the
28 donor's lifetime is not necessary to make the gift valid.

29 (c) Specified and unspecified donees.--The gift may be made
30 to a specified donee or without specifying a donee. If the

1 latter, the gift may be accepted by the attending physician as
2 donee upon or following death. If the gift is made to a
3 specified donee who is not available at the time and place of
4 death, the attending physician upon or following death, in the
5 absence of any expressed indication that the donor desired
6 otherwise, may accept the gift as donee. The physician who
7 becomes a donee under this subsection shall not participate in
8 the procedures for removing or transplanting a part.

9 (d) Designation of person to carry out procedures.--

10 Notwithstanding section 8616(b) (relating to rights and duties
11 at death) the donor may designate in his will, card or other
12 document of gift the surgeon or physician to carry out the
13 appropriate procedures. In the absence of a designation or if
14 the designee is not available, the donee or other person
15 authorized to accept the gift may employ or authorize any
16 surgeon or physician for the purpose, or, in the case of a gift
17 of eyes, he may employ or authorize a person who is a funeral
18 director licensed by the State Board of Funeral Directors, an
19 eye bank technician or medical student, if the person has
20 successfully completed a course in eye enucleation approved by
21 the State Board of Medical Education and Licensure, or an eye
22 bank technician or medical student trained under a program in
23 the sterile technique for eye enucleation approved by the State
24 Board of Medical Education and Licensure to enucleate eyes for
25 an eye bank for the gift after certification of death by a
26 physician. A qualified funeral director, eye bank technician or
27 medical student acting in accordance with the terms of this
28 subsection shall not have any liability, civil or criminal, for
29 the eye enucleation.

30 (e) Consent not necessary.--Where a donor card evidencing a

1 gift of the donor's eyes has been validly executed, consent of
2 any person designated in section 8611(b) at the time of the
3 donor's death or immediately thereafter is not necessary to
4 render the gift valid and effective.

5 (f) Documentation of gifts by others.--Any gift by a person
6 designated in section 8611(b) shall be made by a document signed
7 by him or made by his telegraphic, recorded telephonic or other
8 recorded message.

9 § 8614. Delivery of document of gift.

10 If the gift is made by the donor to a specified donee, the
11 will, card or other document, or an executed copy thereof, may
12 be delivered to the donee to expedite the appropriate procedures
13 immediately after death. Delivery is not necessary to the
14 validity of the gift. The will, card or other document, or an
15 executed copy thereof, may be deposited in any hospital, bank or
16 storage facility that accepts it for safekeeping or for
17 facilitation of procedures after death. On request of any
18 interested party upon or after the donor's death, the person in
19 possession shall produce the document for examination. Absent
20 such a document, a gift shall be presumed under Subchapter C
21 (relating to presumed anatomical gifts).

22 § 8615. Amendment or revocation of gift.

23 (a) Document delivered to donee.--If the will, card or other
24 document, or executed copy thereof, has been delivered to a
25 specified donee, the donor may amend or revoke the gift by:

26 (1) the execution and delivery to the donee of a signed
27 statement;

28 (2) an oral statement made in the presence of two
29 persons and communicated to the donee;

30 (3) a statement during a terminal illness or injury

1 addressed to an attending physician and communicated to the
2 donee; or

3 (4) a signed card or document found on his person or in
4 his effects.

5 (b) Document not delivered to donee.--Any document of gift
6 which has not been delivered to the donee may be revoked by the
7 donor in the manner set out in subsection (a) or by destruction,
8 cancellation or mutilation of the document and all executed
9 copies thereof.

10 (c) Gifts by will.--Any gift made by a will may also be
11 amended or revoked in the manner provided for amendment or
12 revocation of wills, or as provided in subsection (a).

13 § 8616. Rights and duties at death.

14 (a) Donees and relatives.--The donee may accept or reject
15 the gift. If the donee accepts a gift of the entire body, he
16 shall, subject to the terms of the gift, authorize embalming and
17 the use of the body in funeral services if the surviving spouse
18 or next of kin as determined in section 8611(b) (relating to
19 persons who may execute an anatomical gift) requests embalming
20 and use of the body for funeral services. If the gift is of a
21 part of the body, the donee, upon the death of the donor and
22 prior to embalming, shall cause the part to be removed without
23 unnecessary mutilation. After removal of the part, custody of
24 the remainder of the body vests in the surviving spouse, next of
25 kin or other persons under obligation to dispose of the body.

26 (b) Physicians.--The time of death shall be determined by a
27 physician who tends the donor at his death or, if none, the
28 physician who certifies the death. The physician who certifies
29 death or any of his professional partners or associates shall
30 not participate in the procedures for removing or transplanting

1 a part.

2 (c) Certain liability limited.--A person who acts in good
3 faith in accordance with the terms of this subchapter or with
4 the anatomical gift laws of another state or a foreign country
5 is not liable for damages in any civil action or subject to
6 prosecution in any criminal proceeding for his act.

7 (d) Law on autopsies applicable.--The provisions of this
8 subchapter are subject to the laws of this State prescribing
9 powers and duties with respect to autopsies.

10 § 8617. Requests for anatomical gifts.

11 (a) Procedure.--On or before the occurrence of death in an
12 acute care general hospital, the hospital shall request consent
13 to a gift of all or any part of the decedent's body for any
14 purpose specified under this subchapter. The request and its
15 disposition shall be noted in the patient's medical record.
16 Whenever medical criteria developed by organ procurement
17 organizations establishes that a body or body part donation
18 would not be suitable for use, a request need not be made.

19 (b) Limitation.--Where the hospital administrator, or his
20 designee, has received actual notice of opposition from any of
21 the persons named in section 8611(b) (relating to persons who
22 may execute an anatomical gift) and the decedent was not in
23 possession of a validly executed donor card, the gift of all or
24 any part of the decedent's body shall not be requested.

25 (c) Donor card.--Notwithstanding any provision of law to the
26 contrary, the intent of a decedent to participate in an organ
27 donor program as evidenced by the possession of a validly
28 executed donor card shall not be revoked by any member of any of
29 the classes specified in section 8611(b).

30 (d) Identification of potential donors.--Each acute care

1 general hospital shall develop, with the concurrence of the
2 hospital medical staff and an organ procurement organization, a
3 protocol for identifying potential organ and tissue donors. It
4 shall require that, at or near the time of notification of
5 death, persons designated under section 8611(a) and (b) be asked
6 whether the deceased was an organ donor or if the family is a
7 donor family. If not, such persons shall be informed of the
8 option to donate organs and tissues. Pursuant to this
9 subchapter, the hospital shall then notify an organ and tissue
10 procurement organization and cooperate in the procurement of the
11 anatomical gift or gifts. The protocol shall encourage
12 discretion and sensitivity to family circumstances in all
13 discussions regarding donations of tissue or organs. The
14 protocol shall take into account the deceased individual's
15 religious beliefs or nonsuitability for organ and tissue
16 donation. In the event an organ and tissue procurement
17 organization does not exist in a region, the hospital shall
18 contact an organ or a tissue procurement organization in an
19 alternative region.

20 (e) Guidelines.--The Department of Health in conjunction
21 with organ procurement organizations shall establish guidelines
22 regarding efficient procedures facilitating the delivery of
23 anatomical gift donations from receiving hospitals to potential
24 recipients and appropriate training concerning the manner and
25 conduct of employees making requests for anatomical gift
26 donations.

27 SUBCHAPTER C

28 PRESUMED ANATOMICAL GIFTS

29 Sec.

30 8631. Presumption of anatomical gift.

1 8632. Refusal to donate.

2 8633. Donees.

3 8634. Physician obligations.

4 8635. Confidentiality requirement.

5 8636. Limitation of liability.

6 8637. Applicability.

7 § 8631. Presumption of anatomical gift.

8 Organs and tissues may be removed, upon death, from the body
9 of any Commonwealth resident by a physician, surgeon or
10 technician for transplantation or for the preparation of
11 therapeutic substances, unless it is established that a refusal
12 was expressed in accordance with this subchapter.

13 § 8632. Refusal to donate.

14 (a) General rule.--An individual may refuse to donate organs
15 or tissues for any reason, including, but not limited to,
16 religious purposes.

17 (b) Form of refusal.--

18 (1) The refusal may be expressed in a document, which
19 may be a card designed to be carried on the person, including
20 a card issued by the Department of Health under subsection
21 (e). If the individual is mentally competent to signify his
22 desire to sign the document but is physically unable to do
23 so, the document may be signed for him by another at his
24 direction.

25 (2) Any of the following persons, in the order of
26 priority stated, when persons in prior classes are not
27 available at the time of death, may refuse to donate the
28 decedent's organs or tissues.

29 (i) The spouse.

30 (ii) An adult son or daughter.

- (iii) Either parent.
- (iv) An adult brother or sister.
- (v) A guardian of the decedent at the time of death.
- (vi) Any person authorized or under obligation to dispose of the body.

Persons under this paragraph shall be notified of their rights of refusal by the person who will carry out the removal procedures. All reasonable efforts shall be made to carry out this notification.

(c) Capacity.--Any individual who is 18 years of age or older and capable of making known his wishes may express a refusal under this section. A minor who is capable of making known his wishes may also express a refusal under this section, or, during his lifetime, his parent or guardian may express the refusal. A refusal by a parent or guardian of a minor shall override any contrary indication by the minor. If a minor is incapable of making known his wishes, a refusal may be expressed by the minor's parent or guardian.

(d) Mental incompetence.--If an individual is incapable of making known his wishes by reason of a mental condition, a refusal under this section may be expressed by the individual's guardian or, in the absence of a guardian, next of kin.

(e) Nondonor cards and stickers.--An individual may attach to the reverse side of his driver's license or identification card issued by the Department of Transportation a card or sticker supplied by the Department of Health or an organ procurement organization which indicates the individual's refusal to make a gift of organs or tissues for transplantation or therapeutic purposes. In the first year following the effective date of this subsection, the Department of Revenue

1 shall insure that individuals in this Commonwealth receive this
2 card and sticker along with their personal income tax return
3 forms. The Department of Transportation shall distribute these
4 cards and stickers at all photo license centers and make the
5 cards and stickers available to any political subdivision or
6 organization upon request.

7 (f) Tax return form designation.--The Department of Revenue
8 shall provide a space on the face of the individual tax return
9 form whereby an individual may designate nondonor status. The
10 Department of Revenue shall coordinate with the registry to
11 ensure the registration of individual's nondonor status.

12 (g) Transplant Organ Registry.--The card or other document
13 indicative of an individual's nondonor status, or an executed
14 copy thereof, may be deposited in the Transplant Organ Registry
15 which shall be established and maintained by the Department of
16 Health. Upon registration of an individual's nondonor status,
17 the registry shall send confirmation of that status to the
18 individual. The registry shall be equipped at all times, that
19 is, 24 hours a day, each day of the year, to furnish and shall
20 furnish to any qualified hospital, physician or organ
21 procurement organization, upon request, information relating to
22 an individual's nondonor status. The Department of Health shall
23 promulgate regulations necessary to implement the registry. The
24 Department of Health shall establish a single Statewide toll-
25 free telephone number to handle requests for registry
26 information.

27 (h) Definition.--As used in this section, the term "minor"
28 means an individual under 18 years of age.

29 § 8633. Donees.

30 Organs and tissues removed in accordance with this subchapter

1 shall be made available to donees who are located in this
2 Commonwealth whenever possible. If no suitable Commonwealth
3 donee is available, the organs and tissues shall be distributed
4 using Organ Procurement and Transplantation Network (OPTN)
5 guidelines. A donee under Subchapter A (relating to express
6 anatomical gifts) is an eligible donee under this subchapter if
7 the donee is able to accept the organ or tissue removed for
8 transplantation or therapeutic purposes.

9 § 8634. Physician obligations.

10 (a) Conditions for removal.--A physician may not proceed to
11 carry out a removal under this subchapter:

12 (1) If a refusal has been expressed under section 8632
13 (relating to refusal to donate).

14 (2) If a refusal has been expressed in any other manner
15 by the potential donor or other authorized person and has
16 been communicated to the physician.

17 (3) Unless the death of the donor has been established
18 by a physician. The physician may not be the attending
19 physician of the recipient or those who will carry out the
20 removal or transplantation.

21 (b) Respect for remains.--The removal of organs and tissues
22 and the suturing of the body shall be carried out in such a way
23 as to respect the remains of the decedent and not alter the
24 appearance of the decedent.

25 (c) Autopsies and investigations.--In case of violent death,
26 the physician carrying out the removal of organs or tissues
27 shall not interfere with the course of an autopsy or
28 investigation. In case of death from unknown causes or under
29 suspicious circumstances which falls under the jurisdiction of a
30 medical examiner or coroner, removal of organs or tissues shall

1 precede an autopsy as long as the removal does not interfere
2 with an investigation. In medical examiner and coroner cases, an
3 operative report shall be made available by the physician,
4 surgeon or technician removing the organs or tissues.

5 § 8635. Confidentiality requirement.

6 The identity of the donor and of the recipient may not be
7 communicated unless expressly authorized by the recipient and
8 next of kin of the decedent.

9 § 8636. Limitation of liability.

10 A person who acts in good faith in accordance with the
11 provisions of this subchapter shall not be subject to criminal
12 or civil liability arising from any action taken under this
13 subchapter. The immunity provided by this section shall not
14 extend to persons if damages result from the gross negligence,
15 recklessness or intentional misconduct of the person.

16 § 8637. Applicability.

17 This subchapter shall not apply to the transfer of embryos,
18 the removal and transplantation of testicles and ovaries and the
19 use of ova and sperm.

20 Section 3. The Department of Public Welfare shall, within
21 one year of the effective date of this act, establish and
22 disseminate guidelines for mental health and mental retardation
23 facilities to use in counseling clients and their guardians as
24 to the method for effectuating a right of refusal under 20
25 Pa.C.S. Ch. 86 Subch. C.

26 Section 4. The Department of Education, in cooperation with
27 the Department of Health and organ procurement organizations,
28 shall establish a program that can be used for secondary
29 education purposes, which shall include:

30 (1) Information about State law relating to anatomical

1 gifts, including how to effectuate a right of refusal.

2 (2) General information about organ transplantation in
3 the United States.

4 Section 5. This act shall take effect July 1, 1994, or
5 immediately, whichever is later.