

# House Bill 2193

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Health Care)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Makes certain provisions relating to anatomical gifts applicable to gifts of whole body.

Directs Oregon Health Authority to include body donation organizations in standards and registration system related to organ procurement.

## A BILL FOR AN ACT

1  
2 Relating to anatomical gifts of whole bodies; amending ORS 97.953, 97.963, 97.969, 97.972, 97.978,  
3 97.980, 441.079 and 441.082.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 97.953, as amended by section 24, chapter 36, Oregon Laws 2018, is amended  
6 to read:

7 97.953. As used in ORS 97.951 to 97.982:

8 (1) "Adult" means an individual who is 18 years of age or older.

9 (2) "Agent" means:

10 (a) A health care representative or an alternate health care representative appointed under ORS  
11 127.510; or

12 (b) An individual expressly authorized to make an anatomical gift on the principal's behalf by  
13 any record signed by the principal.

14 (3) "Anatomical gift" means a donation of all or part of a human body to take effect after the  
15 donor's death for the purpose of transplantation, therapy, research or education.

16 (4) **"Body donation organization" means an organization accredited by a national associ-**  
17 **ation of tissue banks to facilitate the donation of a whole body to be used for research or**  
18 **education.**

19 [(4)] (5) "Body part" means an organ, an eye or tissue of a human being. The term does not in-  
20 clude the whole body.

21 [(5)] (6) "Decedent" means a deceased individual whose body or body part is or may be the  
22 source of an anatomical gift, and includes a stillborn infant or a fetus.

23 [(6)(a)] (7)(a) "Disinterested witness" means a witness other than:

24 (A) A spouse, child, parent, sibling, grandchild, grandparent or guardian of the individual who  
25 makes, amends, revokes or refuses to make an anatomical gift; or

26 (B) An adult who exhibited special care and concern for the individual.

27 (b) "Disinterested witness" does not include a person to whom an anatomical gift could pass  
28 under ORS 97.969.

29 [(7)] (8) "Document of gift" means a donor card or other record used to make an anatomical gift.  
30 The term includes a statement, symbol or designation on a driver license, identification card or do-

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 nor registry.

2 [(8)] (9) “Donor” means an individual whose body or body part is the subject of an anatomical  
3 gift.

4 [(9)] (10) “Donor registry” means a centralized database that contains records of anatomical  
5 gifts and amendments to or revocations of anatomical gifts.

6 [(10)] (11) “Driver license” means a license or permit issued under ORS 807.021, 807.040, 807.200,  
7 807.280 or 807.730, regardless of whether conditions are attached to the license or permit.

8 [(11)] (12) “Eye bank” means an organization licensed, accredited or regulated under federal or  
9 state law to engage in the recovery, screening, testing, processing, storage or distribution of human  
10 eyes or portions of human eyes.

11 [(12)] (13) “Guardian” means a person appointed by a court to make decisions regarding the  
12 support, care, education, health or welfare of an individual. “Guardian” does not include a guardian  
13 ad litem.

14 [(13)] (14) “Hospital” means a facility licensed as a hospital under the law of any state or a fa-  
15 cility operated as a hospital by the United States, a state or a subdivision of a state.

16 [(14)] (15) “Identification card” means the card issued under ORS 807.021, 807.400 or 807.730,  
17 or a comparable provision of the motor vehicle laws of another state.

18 [(15)] (16) “Know” means to have actual knowledge.

19 [(16)] (17) “Minor” means an individual who is under 18 years of age.

20 [(17)] (18) “Organ procurement organization” means an organization designated by the Secretary  
21 of the United States Department of Health and Human Services as an organ procurement organiza-  
22 tion.

23 [(18)] (19) “Parent” means a parent whose parental rights have not been terminated.

24 [(19)] (20) “Physician” means an individual authorized to practice medicine under the law of any  
25 state.

26 [(20)] (21) “Procurement organization” means an eye bank, organ procurement organization,  
27 **body donation organization** or tissue bank.

28 [(21)] (22) “Prospective donor” means an individual who is dead or near death and has been  
29 determined by a procurement organization to have a **body or** body part that could be medically  
30 suitable for transplantation, therapy, research or education. The term does not include an individual  
31 who has made a refusal.

32 [(22)] (23) “Reasonably available” means able to be contacted by a procurement organization  
33 without undue effort and willing and able to act in a timely manner consistent with existing medical  
34 criteria necessary for the making of an anatomical gift.

35 [(23)] (24) “Recipient” means an individual into whose body a decedent’s body part has been or  
36 is intended to be transplanted.

37 [(24)] (25) “Record” means information that is inscribed on a tangible medium or that is stored  
38 in an electronic or other medium and is retrievable in perceivable form.

39 [(25)] (26) “Refusal” means a record that expressly states an intent to prohibit other persons  
40 from making an anatomical gift of an individual’s body or body part.

41 [(26)] (27) “Sign” means, with the present intent to authenticate or adopt a record:

42 (a) To execute or adopt a tangible symbol; or

43 (b) To attach to or logically associate with the record an electronic symbol, sound or process.

44 [(27)] (28) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
45 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the

1 United States.

2 [(28)] (29) “Technician” means an individual determined to be qualified to remove or process  
 3 body parts by an appropriate organization that is licensed, accredited or regulated under federal or  
 4 state law. The term includes an enucleator.

5 [(29)] (30) “Tissue” means a portion of the human body other than an organ or an eye. The term  
 6 does not include blood unless the blood is donated for the purpose of research or education.

7 [(30)] (31) “Tissue bank” means a person that is licensed, accredited or regulated under federal  
 8 or state law to engage in the recovery, screening, testing, processing, storage or distribution of tis-  
 9 sue.

10 [(31)] (32) “Transplant hospital” means a hospital that furnishes organ transplants and other  
 11 medical and surgical specialty services required for the care of transplant patients.

12 **SECTION 2.** ORS 97.963 is amended to read:

13 97.963. (1) An anatomical gift of a donor’s body or body part, if the donor or another person  
 14 made an anatomical gift of the donor’s body or body part under ORS 97.957 or an amendment to an  
 15 anatomical gift of the donor’s body or body part under ORS 97.959, may not be revoked except in  
 16 accordance with ORS 97.959.

17 (2) A donor’s revocation of an anatomical gift of the donor’s body or body part under ORS 97.959  
 18 is not a refusal and does not prohibit another person specified in ORS 97.955 or 97.965 from making  
 19 an anatomical gift of the donor’s body or body part under ORS 97.957 or 97.967.

20 (3) If a person other than the donor makes an unrevoked anatomical gift of the donor’s body or  
 21 body part under ORS 97.957 or an amendment to an anatomical gift of the donor’s body or body part  
 22 under ORS 97.959, another person may not make, amend or revoke the gift of the donor’s body or  
 23 body part under ORS 97.967.

24 (4) A revocation of an anatomical gift of a donor’s body or body part under ORS 97.959 by a  
 25 person other than the donor does not prohibit another person from making an anatomical gift of the  
 26 body or body part under ORS 97.957 or 97.967.

27 (5) In the absence of an express, contrary indication by the donor or other person authorized  
 28 to make an anatomical gift under ORS 97.955, an anatomical gift of a body part is neither a refusal  
 29 to give another body part nor a limitation on the making of an anatomical gift of another body part  
 30 at a later time by the donor or other person.

31 (6) In the absence of an express, contrary indication by the donor or other person authorized  
 32 to make an anatomical gift under ORS 97.955, an anatomical gift of a **body or** body part for one or  
 33 more of the purposes set forth in ORS 97.955 is not a limitation on the making of an anatomical gift  
 34 of the **body or** body part for any of the other purposes by the donor or other person under ORS  
 35 97.957 or 97.967.

36 **SECTION 3.** ORS 97.969 is amended to read:

37 97.969. (1) An anatomical gift may be made to the following persons named in the document of  
 38 gift:

39 (a) A hospital, accredited medical school, dental school, college, university, organ procurement  
 40 organization, **body donation organization** or other appropriate person, for research or education;

41 (b) Subject to subsection (2) of this section, an individual designated by the person making the  
 42 anatomical gift if the individual is the recipient of the body part; or

43 (c) An eye bank or tissue bank.

44 (2) If an anatomical gift to an individual under subsection (1)(b) of this section cannot be  
 45 transplanted into the individual, the body part passes in accordance with subsection (7) of this sec-

1 tion in the absence of an express, contrary indication by the person making the anatomical gift.

2 (3) If an anatomical gift of one or more specific body parts or of all body parts is made in a  
 3 document of gift that does not name a person described in subsection (1) of this section but identifies  
 4 the purpose for which an anatomical gift may be used, the following rules apply:

5 (a) If the body part is an eye and the gift is for the purpose of transplantation or therapy, the  
 6 gift passes to the appropriate eye bank.

7 (b) If the body part is tissue and the gift is for the purpose of transplantation or therapy, the  
 8 gift passes to the appropriate tissue bank.

9 (c) If the body part is an organ and the gift is for the purpose of transplantation or therapy, the  
 10 gift passes to the appropriate organ procurement organization as custodian of the organ.

11 (d) If the body part is an organ, an eye or tissue, **or if the gift is of the whole body**, and the  
 12 gift is for the purpose of research or education, the gift passes to the appropriate procurement or-  
 13 ganization.

14 (4) For the purposes of subsection (3) of this section, if there is more than one purpose of an  
 15 anatomical gift set forth in the document of gift but the purposes are not set forth in any priority,  
 16 the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for  
 17 transplantation or therapy, the gift may be used for research or education.

18 (5) If an anatomical gift of one or more specific body parts is made in a document of gift that  
 19 does not name a person described in subsection (1) of this section and does not identify the purpose  
 20 of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accord-  
 21 ance with subsection (7) of this section.

22 (6) If a document of gift specifies only a general intent to make an anatomical gift by words such  
 23 as “donor,” “organ donor” or “body donor” or by a symbol or statement of similar import, the gift  
 24 may be used only for transplantation or therapy, and the gift passes in accordance with subsection  
 25 (7) of this section.

26 (7) For purposes of subsections (2), (5) and (6) of this section, the following rules apply:

27 (a) If the body part is an eye, the gift passes to the appropriate eye bank.

28 (b) If the body part is tissue, the gift passes to the appropriate tissue bank.

29 (c) If the body part is an organ, the gift passes to the appropriate organ procurement organiza-  
 30 tion as custodian of the organ.

31 (8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift  
 32 under subsection (1)(b) of this section, passes to the organ procurement organization as custodian  
 33 of the organ.

34 (9) If an anatomical gift does not pass pursuant to subsections (1) to (8) of this section or the  
 35 decedent’s body or body part is not used for transplantation, therapy, research or education, custody  
 36 of the body or body part passes to the person under obligation to dispose of the body or body part.

37 (10) A person may not accept an anatomical gift if the person knows that the gift was not ef-  
 38 fectively made under ORS 97.957 or 97.967 or if the person knows that the decedent made a refusal  
 39 under ORS 97.961 that was not revoked. For purposes of this subsection, if a person knows that an  
 40 anatomical gift was made on a document of gift, the person is deemed to know of any amendment  
 41 or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

42 (11) Except as otherwise provided in subsection (1)(b) of this section, ORS 97.951 to 97.982 do  
 43 not affect the allocation of organs for transplantation or therapy.

44 **SECTION 4.** ORS 97.972 is amended to read:

45 97.972. (1) When a hospital refers an individual at or near death to a procurement organization,

1 the organization shall make a reasonable search of the records of the Department of Transportation  
2 and any donor registry that it knows exists for the geographical area in which the individual resides  
3 to ascertain whether the individual has made an anatomical gift.

4 (2) A procurement organization must be allowed reasonable access to information in the records  
5 of the Department of Transportation to ascertain whether an individual at or near death is a donor.

6 (3) When a hospital refers an individual at or near death to a procurement organization, the  
7 organization may conduct any reasonable examination necessary to ensure the medical suitability  
8 of a **body or** body part that is or could be the subject of an anatomical gift for transplantation,  
9 therapy, research or education from a donor or a prospective donor. During the examination period,  
10 measures necessary to ensure the medical suitability of the **body or** body part may not be with-  
11 drawn unless the hospital or procurement organization knows that the individual expressed a con-  
12 trary intent.

13 (4)(a) Unless otherwise prohibited by law, at any time after a donor's death, the person to whom  
14 a **body or** body part passes under ORS 97.969 may conduct any reasonable examination necessary  
15 to ensure the medical suitability of the body or body part for its intended purpose.

16 (b) A transplant hospital may not deny a recipient from receiving an anatomical gift exclusively  
17 on the basis that the recipient is a registry identification cardholder as defined in ORS 475B.791.

18 (5) Unless otherwise prohibited by law, an examination under subsection (3) or (4)(a) of this  
19 section may include an examination of all medical and dental records of the donor or prospective  
20 donor.

21 (6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement  
22 organization knows the minor is emancipated, the procurement organization shall conduct a rea-  
23 sonable search for the parents of the minor and provide the parents with an opportunity to revoke  
24 or amend the anatomical gift or revoke the refusal.

25 (7) Upon referral by a hospital under subsection (1) of this section, a procurement organization  
26 shall make a reasonable search for any person listed in ORS 97.965 having priority to make an an-  
27 atomical gift on behalf of a prospective donor. If a procurement organization receives information  
28 that an anatomical gift to any other person was made, amended or revoked, it shall promptly advise  
29 the other person of all relevant information.

30 (8) Subject to ORS 97.969 (9) and 97.980, the rights of the person to whom a **body or** body part  
31 passes under ORS 97.969 are superior to the rights of all others with respect to the **body or** body  
32 part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms  
33 of the document of gift and ORS 97.951 to 97.982, a person who accepts an anatomical gift of an  
34 entire body may allow embalming, burial or cremation and use of remains in a funeral service. If the  
35 gift is of a body part, the person to whom the body part passes under ORS 97.969, upon the death  
36 of the donor and before embalming, burial or cremation, shall cause the body part to be removed  
37 without unnecessary mutilation.

38 (9) Neither the physician who attends the decedent at death nor the physician who determines  
39 the time of the decedent's death may participate in the procedures for removing or transplanting a  
40 body part from the decedent.

41 (10) A physician or technician may remove from the body of a donor a donated body part that  
42 the physician or technician is qualified to remove.

43 **SECTION 5.** ORS 97.978 is amended to read:

44 97.978. (1) As used in this section:

45 (a) "Advance directive" has the meaning given that term in ORS 127.505.

1 (b) "Declaration" means a record signed by a prospective donor specifying the circumstances  
2 under which a life support system may be withheld or withdrawn from the prospective donor.

3 (c) "Health care decision" means any decision regarding the health care of a prospective donor.

4 (2) If a prospective donor has a declaration or advance directive and the terms of the declara-  
5 tion or advance directive and the express or implied terms of a potential anatomical gift are in  
6 conflict regarding administration of measures necessary to ensure the medical suitability of a **body**  
7 **or** body part for transplantation, therapy, research or education, the prospective donor and the  
8 prospective donor's attending physician shall confer to resolve the conflict.

9 (3) If the prospective donor is incapable of resolving the conflict, one of the following persons  
10 shall act for the prospective donor to resolve the conflict:

11 (a) An agent acting under the prospective donor's declaration or advance directive; or

12 (b) If an agent is not named in the declaration or advance directive or the agent is not reason-  
13 ably available, another person authorized by law, other than in ORS 97.951 to 97.982, to make health  
14 care decisions for the prospective donor.

15 (4) The conflict must be resolved as expeditiously as possible.

16 (5) Information relevant to the resolution of the conflict may be obtained from the appropriate  
17 procurement organization and any person authorized under ORS 97.965 to make an anatomical gift  
18 for the prospective donor.

19 (6) During the resolution of the conflict, measures necessary to ensure the medical suitability  
20 of the **body or** body part may not be withheld or withdrawn from the prospective donor unless  
21 withholding or withdrawing the measures is medically indicated by appropriate end of life care.

22 **SECTION 6.** ORS 97.980 is amended to read:

23 97.980. (1) Upon request of a procurement organization, a medical examiner shall release to the  
24 procurement organization the name, contact information and available medical and social history  
25 of a decedent whose body is under the jurisdiction of the medical examiner. If the decedent's body  
26 or body part is medically suitable for transplantation, therapy, research or education, the medical  
27 examiner shall release post-mortem examination results to the procurement organization. The pro-  
28 curement organization may make a subsequent disclosure of the post-mortem examination results or  
29 other information received from the medical examiner only if relevant to transplantation, therapy,  
30 research or education.

31 (2) The medical examiner may conduct a medicolegal examination by reviewing all medical re-  
32 cords, laboratory test results, X-rays, other diagnostic results and other information that any person  
33 possesses about a donor or prospective donor whose body is under the jurisdiction of the medical  
34 examiner that the medical examiner determines may be relevant to the investigation.

35 (3) A person who has any information requested by a medical examiner pursuant to subsection  
36 (2) of this section shall provide that information as expeditiously as possible to allow the medical  
37 examiner to conduct the medicolegal investigation within a period compatible with the preservation  
38 of **the body or** body parts for the purpose of transplantation, therapy, research or education.

39 (4) If an anatomical gift has been or might be made of a body part of a decedent whose body is  
40 under the jurisdiction of the medical examiner and a post-mortem examination is not required, or  
41 the medical examiner determines that a post-mortem examination is required but that the recovery  
42 of the body part that is the subject of an anatomical gift will not interfere with the examination, the  
43 medical examiner and procurement organization shall cooperate in the timely removal of the body  
44 part from the decedent for the purpose of transplantation, therapy, research or education.

45 (5) If an anatomical gift of a body part from the decedent under the jurisdiction of the medical

1 examiner has been or might be made, but the medical examiner initially believes that the recovery  
2 of the body part could interfere with the post-mortem investigation into the decedent's cause or  
3 manner of death, the medical examiner shall consult with the procurement organization, or physician  
4 or technician designated by the procurement organization, about the proposed recovery. The pro-  
5 curement organization shall provide the medical examiner with all of the information that the pro-  
6 curement organization possesses that could relate to the decedent's cause or manner of death.

7 (6)(a) The medical examiner and the procurement organization may enter into an agreement es-  
8 tablishing protocols and procedures governing their relationship when:

9 (A) An anatomical gift of a body part from a decedent whose body is under the jurisdiction of  
10 the medical examiner has been or might be made; and

11 (B) The medical examiner believes that the recovery of the body part could interfere with the  
12 post-mortem investigation into the decedent's cause or manner of death or the documentation or  
13 preservation of evidence.

14 (b) A decision regarding the recovery of the body part from the decedent shall be made in ac-  
15 cordance with the agreement.

16 (c) The medical examiner and the procurement organization shall evaluate the effectiveness of  
17 the agreement at regular intervals but not less frequently than every two years.

18 (7)(a) In the absence of an agreement establishing protocols and procedures governing the re-  
19 lationship between the medical examiner and the procurement organization when an anatomical gift  
20 of an eye or tissue from a decedent whose body is under the jurisdiction of the medical examiner  
21 has been or might be made, and following the consultation under subsection (5) of this section, the  
22 medical examiner may delay the recovery of the eye or tissue until after the collection of evidence  
23 or the post-mortem examination, in order to preserve and collect evidence, to maintain a proper  
24 chain of custody and to allow an accurate determination of the decedent's cause or manner of death.

25 (b) When a determination to delay the recovery of an eye or tissue is made, every effort possible  
26 shall be made by the medical examiner to complete the collection of evidence or the post-mortem  
27 examination in a timely manner compatible with the preservation of the eye or tissue for the pur-  
28 pose of transplantation, therapy, research or education.

29 (c) The collection of evidence or the post-mortem examination shall occur during the normal  
30 business hours of the medical examiner and, when possible and practicable, at times other than the  
31 normal business hours of the medical examiner.

32 (d) If the collection of evidence or the post-mortem examination occurs at times other than the  
33 normal business hours of the medical examiner, the procurement organization shall reimburse the  
34 medical examiner a mutually agreed-upon reasonable fee.

35 (8) If the medical examiner denies or delays recovery under subsection (6) or (7) of this section,  
36 the medical examiner shall:

37 (a) Explain in a record the specific reasons for not allowing or for delaying recovery of the body  
38 part;

39 (b) Include the specific reasons in the records of the medical examiner; and

40 (c) Provide a record with the specific reasons to the procurement organization.

41 (9) If the medical examiner allows recovery of a body part, the procurement organization shall  
42 cooperate with the medical examiner in any documentation of injuries and the preservation and  
43 collection of evidence prior to and during the recovery of the body part and, upon request of the  
44 medical examiner, shall cause the physician or technician who removes the body part to provide the  
45 medical examiner with a record describing the condition of the body part, a photograph and any

1 other information and observations that would assist in the post-mortem examination.

2 **SECTION 7.** ORS 441.079 is amended to read:

3 441.079. (1) As used in this section and ORS 441.082:

4 (a) **“Body donation organization” means an organization accredited by a national associ-**  
 5 **ation of tissue banks to facilitate the donation of a whole body to be used for research or**  
 6 **education.**

7 [(a)] (b) **“Entity” means an individual, corporation, business trust, partnership, limited liability**  
 8 **company, association, joint venture or an instrumentality of an entity.**

9 [(b)] (c) **“Eye bank” means an entity that is licensed or regulated under federal or state law to**  
 10 **engage in the recovery, screening, testing, processing, storage or distribution of human eyes or parts**  
 11 **of human eyes.**

12 [(c)] (d) **“Health care facility” has the meaning given that term in ORS 442.015.**

13 [(d)] (e) **“Organ procurement organization” means an entity designated by the United States**  
 14 **Secretary of Health and Human Services as an organ procurement organization.**

15 [(e)] (f) **“Tissue bank” means an entity that is licensed or regulated under federal or state law**  
 16 **to engage in the recovery, screening, testing, processing, storage or distribution of tissue for trans-**  
 17 **plants.**

18 (2) Tissue banks and eye banks must be registered with and regulated by the United States Food  
 19 and Drug Administration.

20 (3) A health care facility that performs organ transplants must:

21 (a) Be a member of the Organ Procurement and Transplantation Network established by the  
 22 National Organ Transplant Act of 1984;

23 (b) Be regulated by the United States Department of Health and Human Services; and

24 (c) Use an organ procurement organization to obtain organs for transplants.

25 (4) A health care facility that performs tissue or corneal transplants must obtain the tissue or  
 26 corneas from a tissue bank or an eye bank that is registered with and regulated by the United  
 27 States Food and Drug Administration.

28 **SECTION 8.** ORS 441.082 is amended to read:

29 441.082. (1) The Oregon Health Authority shall adopt by rule standards and a system of regis-  
 30 tration for every organ procurement organization, **body donation organization**, tissue bank and eye  
 31 bank doing business in this state.

32 (2) An organ procurement organization, **body donation organization**, tissue bank or eye bank  
 33 may not do business in this state unless it has registered with the authority.

34 (3) Each organ procurement organization, **body donation organization**, tissue bank and eye  
 35 bank shall provide to the authority at least every three years current documentation of designation,  
 36 certification and inspection as evidence of compliance with national standards and requirements  
 37 under federal law.

38 (4) The authority may impose a civil penalty not to exceed \$1,000 against an organ procurement  
 39 organization, **body donation organization**, tissue bank or eye bank doing business in this state for  
 40 failure to:

41 (a) Register with the authority;

42 (b) Report loss of designation, accreditation or certification within 60 days of the loss; or

43 (c) Supply the authority with requested current documentation of designation, certification and  
 44 inspection.

45 (5) Civil penalties under this section shall be imposed in the manner provided under ORS



1 183.745.

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