Senate Bill 144

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate 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

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

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

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

97.953. As used in ORS 97.951 to 97.982:

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

(2) “Agent” means:

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

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

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

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

(5) “Body part” means an organ, an eye or tissue of a human being. The term does not include the whole body.

(6) “Decedent” means a deceased individual whose body or body part is or may be the source of an anatomical gift, and includes a stillborn infant or a fetus.

(7)(a) “Disinterested witness” means a witness other than:

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

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

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

(8) “Document of gift” means a donor card or other record used to make an anatomical gift. 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.

LC 3089
nor registry.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. ORS 97.963 is amended to read:

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

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

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

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

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

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

SECTION 3. ORS 97.969 is amended to read:

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

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

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

(c) An eye bank or tissue bank.

(2) If an anatomical gift to an individual under subsection (1)(b) of this section cannot be transplanted into the individual, the body part passes in accordance with subsection (7) of this sec-
tion in the absence of an express, contrary indication by the person making the anatomical gift.

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

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

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

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

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

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

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

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

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

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

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

(c) If the body part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

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

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

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

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

SECTION 4. ORS 97.972 is amended to read:

97.972. (1) When a hospital refers an individual at or near death to a procurement organization,
the organization shall make a reasonable search of the records of the Department of Transportation
and any donor registry that it knows exists for the geographical area in which the individual resides
to ascertain whether the individual has made an anatomical gift.

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

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

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

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

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

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

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

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

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

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

SECTION 5. ORS 97.978 is amended to read:

97.978. (1) As used in this section:

(a) “Advance directive” has the meaning given that term in ORS 127.505.
(b) “Declaration” means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

c) “Health care decision” means any decision regarding the health care of a prospective donor.

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

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

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

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

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

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

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

SECTION 6. ORS 97.980 is amended to read:

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

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

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

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

(5) If an anatomical gift of a body part from the decedent under the jurisdiction of the medical
examiner has been or might be made, but the medical examiner initially believes that the recovery
of the body part could interfere with the post-mortem investigation into the decedent’s cause or
manner of death, the medical examiner shall consult with the procurement organization, or physician
or technician designated by the procurement organization, about the proposed recovery. The pro-
curement organization shall provide the medical examiner with all of the information that the pro-
curement organization possesses that could relate to the decedent’s cause or manner of death.

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) If the medical examiner allows recovery of a body part, the procurement organization shall
cooperate with the medical examiner in any documentation of injuries and the preservation and
collection of evidence prior to and during the recovery of the body part and, upon request of the
medical examiner, shall cause the physician or technician who removes the body part to provide the
medical examiner with a record describing the condition of the body part, a photograph and any
other information and observations that would assist in the post-mortem examination.

SECTION 7. ORS 441.079 is amended to read:

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

(a) “Body donation organization” means an organization accredited by a national association of tissue banks to facilitate the donation of a whole body to be used for research or education.

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

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

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

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

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

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

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

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

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

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

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

SECTION 8. ORS 441.082 is amended to read:

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

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

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

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

(a) Register with the authority;

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

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

(5) Civil penalties under this section shall be imposed in the manner provided under ORS
(6) This section does not apply to a body donation organization operated by Oregon Health and Science University or a public university listed in ORS 352.002.