

# VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

## CHAPTER 82

*An Act to amend and reenact §§ 32.1-291.21, 32.1-292.2, and 46.2-342 of the Code of Virginia and to repeal § 32.1-290.1 of the Code of Virginia, relating to the Revised Uniform Anatomical Gift Act.*

[H 1299]

Approved March 2, 2008

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-291.21, 32.1-292.2, and 46.2-342 of the Code of Virginia are amended and reenacted as follows:**

§ 32.1-291.21. Effect of anatomical gift on advance health-care directive.

A. In this section:

"Advance health-care directive" means an advance directive executed by a prospective donor as provided in the Health Care Decisions Act (§ 54.1-2981 et seq.).

"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record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

"Health care decision" means any decision regarding the health care of the prospective donor.

B. If a prospective donor has a declaration or an advance health-care directive, and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and the prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if there is no declaration or directive, or the agent is not reasonably available, another person authorized by law other than this Act, to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict shall be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under § 32.1-291.9. Before resolution of the conflict, measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor, ~~unless the advance health-care directive expressly provides to the contrary~~ if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

§ 32.1-292.2. The Virginia Donor Registry.

A. In order to save lives by reducing the shortage of organs and tissues for transplantation and to implement cost savings for patients and various state agencies by eliminating needless bureaucracy, there is hereby established the Virginia Donor Registry (hereinafter referred to as the Registry), which shall be created, compiled, maintained, and modified as necessary by the Virginia Transplant Council in accordance with the regulations of the Board of Health and the administration of the Department of Health. Pertinent information on all Virginians who have indicated a willingness to donate organs and tissues in accordance with the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.) shall be compiled, maintained, and modified as necessary in the Registry by the Virginia Transplant Council.

B. The Registry and all information therein shall be confidential and subject to access only by personnel of the Department of Health and designated organ procurement organizations, eye banks, and tissue banks, operating in or serving Virginia that are members of the Virginia Transplant Council, for the purpose of identifying and determining the suitability of a potential donor according to the provisions of subdivision B 4 of § 32.1-127 or subsection F of § 46.2-342.

C. The purpose of the Registry shall include, but not be limited to:

1. Providing a means of recovering an anatomical gift for transplantation, *therapy, education* or research as authorized by the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.) and subsection F of § 46.2-342; and

2. Collecting data to develop and evaluate the effectiveness of educational initiatives promoting organ, eye, and tissue donation that are conducted or coordinated by the Virginia Transplant Council or its members.

D. The Board, in consultation with the Virginia Transplant Council, shall promulgate regulations necessary to create, compile, maintain, modify as necessary, and administer the Virginia Donor Registry. The regulations shall include, but not be limited to:

1. Recording the data subject's full name, address, sex, birth date, age, driver's license number or unique identifying number, and other pertinent identifying personal information;

2. Authorizing the Virginia Transplant Council to analyze Registry data under research protocols that are designed to identify and assess the effectiveness of mechanisms to promote and increase organ, eye,

and tissue donation within the Commonwealth; and

3. Providing that any Virginian whose name has been placed in the registry may have his name deleted by filing an appropriate form with the Virginia Transplant Council or in accordance with the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.) or subsection G of § 46.2-342.

§ 46.2-342. What license to contain; organ donor information; Uniform Donor Document.

A. Every license issued under this chapter shall bear:

1. For licenses issued or renewed on or after July 1, 2003, a license number which shall be assigned by the Department to the licensee and shall not be the same as the licensee's social security number;

2. A color photograph of the licensee;

3. The licensee's full name, year, month, and date of birth;

4. The licensee's address, subject to the provisions of subsection A1 of this section;

5. A brief description of the licensee for the purpose of identification;

6. A space for the signature of the licensee; and

7. Any other information deemed necessary by the Commissioner for the administration of this title.

No abbreviated names or nicknames shall be shown on any license.

A1. At the option of the licensee, the address shown on the license may be either the post office box, business, or residence address of the licensee, provided such address is located in Virginia. However, regardless of which address is shown on the license, the licensee shall supply the Department with his residence address, which shall be an address in Virginia. This residence address shall be maintained in the Department's records. Whenever the licensee's address shown either on his license or in the Department's records changes, he shall notify the Department of such change as required by § 46.2-324.

B. The license shall be made of a material and in a form to be determined by the Commissioner.

C. Licenses issued to persons less than 21 years old shall be immediately and readily distinguishable from those issued to persons 21 years old or older. Distinguishing characteristics shall include unique design elements of the document and descriptors within the photograph area to identify persons who are at least 15 years old but less than 21 years old. These descriptors shall include the month, day, and year when the person will become 21 years old.

D. The Department shall establish a method by which an applicant for a driver's license or an identification card may designate his willingness to be an organ donor as provided in Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1 and shall cooperate with the Virginia Transplant Council to ensure that such method is designed to encourage organ donation with a minimum of effort on the part of the donor and the Department.

E. If an applicant designates his willingness to be a donor pursuant to subsection D, the Department may make a notation of this designation on his license or card and shall make a notation of this designation in his driver record.

F. The donor designation authorized in subsection E shall be sufficient legal authority for the removal, following death, of the subject's organs or tissues without additional authority from the donor, or his family or estate. No family member, guardian, agent named pursuant to an advance directive or person responsible for the decedent's estate shall refuse to honor the donor designation or, in any way, seek to avoid honoring the donor designation.

G. The donor designation provided pursuant to subsection D may be rescinded by notifying the Department.

H. With the written consent of his parent or legal guardian, a minor may make a donor designation *as authorized by the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.)*.

I. When requested by the applicant, and upon presentation of a signed statement by a licensed physician confirming the applicant's condition, the Department shall indicate on the applicant's driver's license that the applicant is (i) an insulin-dependent diabetic, or (ii) hearing or speech impaired.

J. In the absence of gross negligence or willful misconduct, the Department and its employees shall be immune from any civil or criminal liability in connection with the making of or failure to make a notation of donor designation on any license or card or in any person's driver record.

K. Notwithstanding the foregoing provisions of this section, the Department shall continue to use the uniform donor document, as formerly set forth in subsection D above, for organ donation designation until such time as a new method is fully implemented, which shall be no later than July 1, 1994. Any such uniform donor document shall, when properly executed, remain valid and shall continue to be subject to all conditions for execution, delivery, amendment, and revocation as set out in Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

L. The Department shall, in coordination with the Virginia Transplant Council, prepare an organ donor information brochure describing the organ donor program and providing instructions for completion of the uniform donor document information describing the bone marrow donation program and instructions for registration in the National Bone Marrow Registry. The Department shall include a copy of such brochure with every driver's license renewal notice or application mailed to licensed drivers in Virginia.

**2. That § 32.1-290.1 of the Code of Virginia is repealed.**