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HOUSE BILL NO. 202

Offered January 13, 2016

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A *BILL to amend and reenact §§ 32.1-291.4, 32.1-291.9, 32.1-291.11, 32.1-291.14, 32.1-291.22, and 32.1-291.23 of the Code of Virginia, relating to anatomical gift; human remains detection dog training.*

Patron—Knight

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-291.4, 32.1-291.9, 32.1-291.11, 32.1-291.14, 32.1-291.22, and 32.1-291.23 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-291.4. Who may make anatomical gift before donor's death.

Subject to § 32.1-291.8, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, ~~or~~ education, *or training of human remains detection dogs* in the manner provided in § 32.1-291.5 by:

1. The donor, if the donor is an adult or if the donor is a minor and is:

a. Emancipated; or

b. Authorized under state law to apply for a driver's license because the donor is at least 15 years and six months of age;

2. An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

3. A parent of the donor, if the donor is an unemancipated minor; or

4. The donor's guardian.

§ 32.1-291.9. Who may make anatomical gift of decedent's body or part.

A. Subject to subsections B and C and unless barred by § 32.1-291.7 or 32.1-291.8, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, ~~or~~ education, *or training of human remains detection dogs* may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

1. An agent of the decedent at the time of death who could have made an anatomical gift under subdivision 2 of § 32.1-291.4 immediately before the decedent's death;

2. The persons who were acting as the guardians of the person of the decedent at the time of death;

3. The spouse of the decedent;

4. Adult children of the decedent;

5. Parents of the decedent;

6. Adult siblings of the decedent;

7. Adult grandchildren of the decedent;

8. Grandparents of the decedent;

9. An adult who exhibited special care and concern for the decedent; and

10. Any other person having the authority to dispose of the decedent's body.

B. If there is more than one member of a class listed in subdivisions A 1, A 2, A 4, A 5, A 6, A 7, or A 8 entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under § 32.1-291.11 knows of an objection by another member of the class. If an objection is known, the gift may be made only by those members who constitute at least 50 percent of the class who are reasonably available.

C. A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection A is reasonably available to make or to object to the making of an anatomical gift.

§ 32.1-291.11. Persons that may receive anatomical gift; purpose of anatomical gift.

A. An anatomical gift may be made to the following persons named in the document of gift:

1. A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person authorized by the Virginia Transplant Council, for research or education;

2. Subject to subsection B, an individual designated by the person making the anatomical gift if the individual is the recipient of the part; ~~or~~

3. An eye bank or tissue bank; *or*

4. A canine search and rescue organization that has entered into a memorandum of understanding

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59 *with the Department of Emergency Management pursuant to § 44-146.18 that includes requirements*
60 *related to the receipt, maintenance, storage, use, and disposal of anatomical gifts made pursuant to this*
61 *subdivision for the purpose of training of human remains detection dogs.*

62 B. If an anatomical gift to an individual under subdivision A 2 cannot be transplanted into the
63 individual, the part passes in accordance with subsection G in the absence of an express, contrary
64 indication by the person making the anatomical gift.

65 C. If an anatomical gift of one or more specific parts or of all parts is made in a document of gift
66 that does not name a person described in subsection A but identifies the purpose for which an
67 anatomical gift may be used, the following rules apply:

68 1. If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to
69 the appropriate eye bank.

70 2. If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to
71 the appropriate tissue bank.

72 3. If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes
73 to the appropriate organ procurement organization as custodian of the organ.

74 4. If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education,
75 the gift passes to the appropriate procurement organization.

76 5. *If the purpose of the gift is training of human remains detection dogs, the gift passes to an*
77 *appropriate canine search and rescue organization that has entered into a memorandum of*
78 *understanding with the Department of Emergency Management pursuant to § 44-146.18 that includes*
79 *requirements related to the receipt, maintenance, storage, use, and disposal of parts.*

80 D. For the purpose of subsection C, if there is more than one purpose of an anatomical gift set forth
81 in the document of gift but the purposes are not set forth in any priority, the gift shall be used for
82 transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift
83 may be used for research ~~or~~, education, *or training of human remains detection dogs.*

84 E. If an anatomical gift of one or more specific parts is made in a document of gift that does not
85 name a person described in subsection A and does not identify the purpose of the gift, the gift may be
86 used for transplantation, therapy, research and education, and the gift passes in accordance with
87 subsection G. The gift shall be used first for transplantation or therapy, if suitable. If the gift cannot be
88 used for transplantation or therapy, the gift may be used for research or education.

89 F. If a document of gift specifies only a general intent to make an anatomical gift by words such as
90 "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be
91 used for transplantation, therapy, research and education and the gift passes in accordance with
92 subsection G. The gift shall be used first for transplantation or therapy, if suitable. If the gift cannot be
93 used for transplantation or therapy, the gift may be used for research or education.

94 G. For purposes of subsections B, E, and F the following rules apply:

95 1. If the part is an eye, the gift passes to the appropriate eye bank.

96 2. If the part is tissue, the gift passes to the appropriate tissue bank.

97 3. If the part is an organ, the gift passes to the appropriate organ procurement organization as
98 custodian of the organ.

99 H. An anatomical gift of an organ for transplantation, therapy, research or education other than an
100 anatomical gift under subdivision A 2, passes to the organ procurement organization as custodian of the
101 organ.

102 I. If an anatomical gift does not pass pursuant to subsections A through H or the decedent's body or
103 part is not used for transplantation, therapy, research, ~~or~~ education, *or training of human remains*
104 *detection dogs*, custody of the body or part passes to the surviving spouse, next of kin or other person
105 under obligation to dispose of the body or part.

106 J. A person may not accept an anatomical gift if the person knows that the gift was not effectively
107 made under § 32.1-291.5 or 32.1-291.10 or if the person knows that the decedent made a refusal under
108 § 32.1-291.7 that was not revoked. For purposes of this subsection, if a person knows that an anatomical
109 gift was made on a document of gift, the person is deemed to know of any amendment or revocation of
110 the gift or any refusal to make an anatomical gift on the same document of gift.

111 K. Except as otherwise provided in subdivision A 2, nothing in this Act affects the allocation of
112 organs for transplantation therapy, research or education.

113 **§ 32.1-291.14. Rights and duties of procurement organization and others.**

114 A. When a hospital refers an individual who is dead or whose death is imminent to a procurement
115 organization, the organization shall make a reasonable search of the records of the Virginia Department
116 of Motor Vehicles and any donor registry that it knows exists for the geographical area in which the
117 individual resides to ascertain whether the individual has made an anatomical gift.

118 B. A procurement organization shall be allowed reasonable access to information in the records of
119 the Virginia Department of Motor Vehicles to ascertain whether an individual who is dead or whose
120 death is imminent is a donor.

C. When a hospital refers an individual who is dead or whose death is imminent to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, ~~or~~ education, *or training of human remains detection dogs* from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

D. Unless prohibited by law other than this Act, at any time after a donor's death, the person to which a part passes under § 32.1-291.11 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

E. Unless prohibited by law other than this Act, an examination under subsection C or D may include an examination of all medical and dental records of the donor or prospective donor.

F. 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 reasonable 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.

G. Upon referral by a hospital under subsection A, a procurement organization shall make a reasonable search for any person listed in § 32.1-291.9 having priority to make an anatomical 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.

H. Subject to subsection I of § 32.1-291.11 and § 32.1-291.23, the rights of the person to which a part passes under § 32.1-291.11 are superior to the rights of all others with respect to the 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 this Act, a person that 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 part, the person to which the part passes under § 32.1-291.11, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

I. 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 part from the decedent.

J. A donated part from the body of a donor may be removed only by a physician or technician. The physician or technician performing the removal shall be qualified to remove the donated part from the body. For the purposes of this section, "qualified" means:

1. If the part is an organ, a physician or technician who is authorized by the appropriate organ procurement organization;

2. If the part is an eye, a physician or technician who is approved by an eye bank as qualified to perform the act of eye recovery; or

3. If the part is tissue, any physician or technician who is approved by LifeNet as qualified to perform the act of tissue recovery.

An organ procurement organization may screen, test, and recover eyes and tissue on behalf of an eye bank or tissue bank. Any person authorized by this subsection to recover organs, tissues or eyes may draw blood from the donor and order such tests as may be appropriate to protect his health and the health of the recipients of the organs, tissues or eyes.

§ 32.1-291.22. Cooperation between Office of the Chief Medical Examiner and procurement organization.

A. The Office of the Chief Medical Examiner and procurement organizations shall cooperate with each other to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, ~~or~~ education, *or training of human remains detection dogs*.

B. If the Office of the Chief Medical Examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the Office of the Chief Medical Examiner and a postmortem examination is going to be performed, unless the Chief Medical Examiner or an Assistant Chief Medical Examiner denies recovery in accordance with § 32.1-291.23, the Office of the Chief Medical Examiner shall, when practicable, cause a postmortem examination of the body or the part to be conducted in a manner and within a period compatible with its preservation for the purposes of the gift.

C. A part may not be removed from the body of a decedent under the jurisdiction of the Office of the Chief Medical Examiner for transplantation, therapy, research, ~~or~~ education, *or training of human remains detection dogs* unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the Office of the Chief Medical Examiner may not be delivered to a person for research ~~or~~ education, *or training of human remains detection dogs* unless the body is the subject of an

182 anatomical gift. This subsection does not preclude the Chief Medical Examiner or an Assistant Chief
183 Medical Examiner from performing the medicolegal autopsy upon the body or parts of a decedent under
184 the jurisdiction of the Office of the Chief Medical Examiner or from using the body or parts of a
185 decedent under the jurisdiction of the Office of the Chief Medical Examiner for the purposes of
186 education, training, and research.

187 **§ 32.1-291.23. Facilitation of anatomical gift from decedent whose body is under jurisdiction of**
188 **the Office of the Chief Medical Examiner.**

189 A. Upon request of a procurement organization, the Office of the Chief Medical Examiner shall
190 release to the procurement organization the name, contact information, and available medical and social
191 history of a decedent whose body is under the jurisdiction of the Office of the Chief Medical Examiner.
192 If the decedent's body or part is medically suitable for transplantation, therapy, research, ~~or~~ education, *or*
193 *training of human remains detection dogs*, the Office of the Chief Medical Examiner shall release
194 postmortem examination results to the procurement organization. The procurement organization may
195 make a subsequent disclosure of the postmortem examination results or other information received from
196 the Office of the Chief Medical Examiner only if relevant to transplantation, therapy, research, ~~or~~
197 education, *or training of human remains detection dogs*.

198 B. The Office of the Chief Medical Examiner may conduct a medicolegal investigation by reviewing
199 all medical records, laboratory test results, x-rays, other diagnostic results, and other information that
200 any person possesses about a donor or prospective donor whose body is under the jurisdiction of the
201 Office of the Chief Medical Examiner.

202 C. A person that has any information requested by the Office of the Chief Medical Examiner
203 pursuant to subsection B shall provide that information as expeditiously as possible to allow the Office
204 of the Chief Medical Examiner to conduct the medicolegal investigation within a period compatible with
205 the preservation of parts for the purpose of transplantation, therapy, research, ~~or~~ education, *or training of*
206 *human remains detection dogs*.

207 D. If an anatomical gift has been or might be made of a part of a decedent whose body is under the
208 jurisdiction of the Office of the Chief Medical Examiner and a postmortem examination is not required,
209 or the Office of the Chief Medical Examiner determines that a postmortem examination is required but
210 that the recovery of the part that is the subject of an anatomical gift will not interfere with the
211 examination, the Office of the Chief Medical Examiner and procurement organization shall cooperate in
212 the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, ~~or~~
213 education, *or training of human remains detection dogs*.

214 E. The Office of the Chief Medical Examiner and procurement organizations shall enter into an
215 agreement setting forth protocols and procedures to govern relations between the parties when an
216 anatomical gift of a part from a decedent under the jurisdiction of the Office of the Chief Medical
217 Examiner has been or might be made, but the Office of the Chief Medical Examiner believes that the
218 recovery of the part could interfere with the postmortem investigation into the decedent's cause or
219 manner of death. Decisions regarding the recovery of organs, tissue and eyes from such a decedent shall
220 be made in accordance with the agreement. In the event that an Assistant Chief Medical Examiner
221 denies recovery of an anatomical gift, the procurement organization may request the Chief Medical
222 Examiner to reconsider the denial and to permit the recovery to proceed. The parties shall evaluate the
223 effectiveness of the protocols and procedures at regular intervals but no less frequently than every two
224 years.

225 F. If the Office of the Chief Medical Examiner allows recovery of a part under subsection D or E,
226 the procurement organization, upon request, shall cause the physician or technician who removes the
227 part to provide the Office of the Chief Medical Examiner with a record describing the condition of the
228 part, a biopsy, a photograph, and any other information and observations that would assist in the
229 postmortem examination.

230 G. If the Office of the Chief Medical Examiner is required to be present at a removal procedure
231 under subsection E, upon request the procurement organization requesting the recovery of the part shall
232 reimburse the Office of the Chief Medical Examiner for the additional costs incurred in complying with
233 subsection E.