

HEALTH & SAFETY CODE

CHAPTER 692. TEXAS ANATOMICAL GIFT ACT

Sec. 692.001. SHORT TITLE. This chapter may be cited as the Texas Anatomical Gift Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 692.002. DEFINITIONS. In this chapter:

(1) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state to store human bodies or body parts.

(2) "Decedent" means a deceased person and includes a stillborn infant or fetus.

(3) "Donor" means a person who makes a gift of all or part of the person's body.

(4) "Donor card" means a card designed to be carried by a donor to evidence the donor's intentions with respect to organ, tissue, or eye donations.

(5) "Eye bank" means a nonprofit corporation chartered under the laws of this state to obtain, store, and distribute donor eyes to be used by ophthalmologists for corneal transplants, research, or other medical purposes.

(6) "Hospital" means a hospital:

(A) licensed, accredited, or approved under the laws of any state; or

(B) operated by the federal government, a state government, or a political subdivision of a state government.

(7) "Part" includes an organ, tissue, eye, bone, artery, blood, other fluid, and other parts of a human body.

(8) "Physician" means a physician licensed or authorized to practice under the laws of any state.

(9) "Qualified organ or tissue procurement organization" means an organization that procures and distributes organs or tissues for transplantation, research, or other medical purposes and that:

(A) is affiliated with a university or hospital or registered to operate as a nonprofit organization in this state for the primary purpose of organ or tissue procurement; and

(B) if the organization is an organ procurement organization, is certified to act as an organ procurement organization by the appropriate federal agency.

(10) "Transplant center" means a hospital that:

(A) maintains a waiting list;

(B) receives vascularized organs for the purpose of transplantation; and

(C) transplants organs into patients at the hospital.

(11) "Waiting list" means a patient waiting list of persons who are waiting for a vascular organ transplant.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 225, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 615, Sec. 1, eff. June 18, 1999.

Sec. 692.003. MANNER OF EXECUTING GIFT OF OWN BODY. (a) A person who has testamentary capacity under the Texas Probate Code may give all or part of the person's body for a purpose specified by Section 692.005. In addition, a person younger than 18 years of age who does not have testamentary capacity may make a gift on the person's driver's license or personal identification card, but that gift is not effective without the approval or consent of the person's parents or legal guardian if the person is younger than 18 years of age at the time of death.

(b) A person may make a gift under this section by will or by use of a document other than a will.

(c) A gift made by will is effective on the death of the testator without the necessity of probate. If the will is not probated or if the will is declared invalid for testamentary purposes, the gift is valid to the extent to which it has been acted on in good faith.

(d) A gift made by a document other than a will is effective on the death of the donor. The document may be a card designed to be carried by the donor. To be effective, the document must be signed by the donor in the presence of two witnesses. If the donor cannot sign the document, a person may sign the document for the donor at the donor's direction and in the presence of the donor and two witnesses. The witnesses to the signing of a document under this subsection must sign the document in the presence of the donor. Delivery of the document during the donor's lifetime is not

necessary to make the gift valid.

(e) A gift made under this section by a person 18 years of age or older, including a gift made under Section 521.401, Transportation Code, shall be honored without obtaining the approval or consent of any other person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 291, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 30.211, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 225, Sec. 3, eff. Sept. 1, 1997.

Sec. 692.004. PERSONS WHO MAY EXECUTE GIFT. (a) The following persons, in the following priority, may give all or any part of a decedent's body for a purpose specified by Section 692.005:

- (1) the decedent's spouse;
- (2) the decedent's adult child;
- (3) either of the decedent's parents;
- (4) the decedent's adult brother or sister;
- (5) the guardian of the person of the decedent at the time of death; or
- (6) any other person authorized or under an obligation to dispose of the body.

(b) A person listed in Subsection (a) may make the gift only if:

- (1) a person in a higher priority class is not available at the time of death;
- (2) there is no actual notice of contrary indications by the decedent; and
- (3) there is no actual notice of opposition by a member of the same or a higher priority class.

(c) A person listed in Subsection (a) may make the gift after death or immediately before death. The person must make the gift by a document signed by the person or by a telegraphic, recorded telephonic, or other recorded message.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 692.005. PERSONS WHO MAY BECOME DONEES. (a) The following persons may be donees of gifts of bodies or parts of bodies:

- (1) a qualified organ procurement organization, for distribution to another person who may be a donee under this section, to be used for transplantation;
- (2) a hospital or physician, to be used only for therapy or transplantation;
- (3) a bank or storage facility, to be used only for therapy or transplantation;
- (4) a person specified by a physician, to be used only for therapy or transplantation needed by the person;
- (5) an eye bank the medical activities of which are directed by a physician;
- (6) a forensic science program at:
 - (A) a general academic teaching institution, as defined by Section 61.003(3), Education Code; or
 - (B) a private or independent institution of higher education, as defined by Section 61.003(15), Education Code; or
- (7) the Anatomical Board of the State of Texas.

(b) Except for donations to a forensic science program under Subsection (a)(6), the Anatomical Board of the State of Texas shall be the donee of gifts of bodies or parts of bodies made for education or research, which are subject to distribution by that board under Chapter 691.

(c) A forensic science program that receives a donation under Subsection (a)(6) must submit a report to the Anatomical Board of the State of Texas on a quarterly basis that lists:

- (1) the number of bodies or parts of bodies the forensic science program received; and
- (2) the method in which the forensic science program used the bodies or parts of bodies for education or research.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 615, Sec. 2, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 948, Sec. 12, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 290, Sec. 1, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 612, Sec. 1, eff. Sept. 1, 2005.

Sec. 692.006. DESIGNATION OF DONEE OR PHYSICIAN. (a) A person may make a gift to a specified donee. If the person dies in this state and does not specify the donee and the gift is a vascular

organ that is suitable for transplantation, a qualified organ procurement organization in this state is considered the specified donee. For any other gift that is not made to a specified donee, the attending physician may accept the gift as donee at the time of death or after death.

(b) If the gift is made to a specified donee who is not available at the time and place of death, the attending physician may accept the gift as donee at the time of death or after death unless the donor expressed an indication that the donor desired a different procedure.

(c) A physician who becomes a donee under Subsection (a) or (b) may not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding Section 692.009, a donor may designate in the donor's will or document of gift the physician to perform the appropriate procedures. If the donor does not designate the physician, or if the physician is not available, the donee or other person authorized to accept the gift may employ or authorize any physician to perform the appropriate procedures.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 615, Sec. 3, eff. June 18, 1999.

Sec. 692.007. DELIVERY OF DOCUMENT. (a) If a donor makes a gift to a specified donee, the donor may deliver the will or document, or an executed copy, to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to make the gift valid.

(b) The donor may deposit the will or other document, or an executed copy, in a hospital, registry office, or bank or storage facility that accepts the document for safekeeping or to facilitate the procedures after death.

(c) On or after the donor's death and on the request of an interested party, the person in possession of the document shall produce the document for examination.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 692.008. AMENDMENT OR REVOCATION OF GIFT. (a) If the donor has delivered the will or other document, or executed copy, to a specified donee, the donor may amend or revoke the gift by:

(1) executing and delivering to the donee a signed statement;

(2) making an oral statement in the presence of two persons that is communicated to the donee;

(3) making a statement to an attending physician that is communicated to the donee; or

(4) executing a signed document that is found on the donor or found in the donor's effects.

(b) If the donor has not delivered the document of gift to the donee, the donor may revoke the gift in a manner prescribed by Subsection (a) or by destroying, canceling, or mutilating the document and each executed copy of the document.

(c) If the donor made the gift by will, the donor may revoke or amend the gift in a manner prescribed by Subsection (a) or in a manner prescribed for the amendment or revocation of a will.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 692.009. DETERMINATION OF TIME OF DEATH. The attending physician or, if none, the physician who certifies the death shall determine the time of death. That physician may not participate in the procedures for removing or transplanting a part.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 692.010. ACCEPTANCE OR REJECTION OF GIFT. (a) A donee may accept or reject a gift.

(b) If the donee or the donee's physician has actual notice of contrary indications by the decedent or has actual notice that a gift made under Section 692.004 is opposed by a member of the same or a higher priority class, the donee may not accept the gift.

(c) If a donee accepts a gift of an entire body, the decedent's surviving spouse or any other person authorized to give all or part of the body may authorize the body's embalming and have the use of the body for funeral services, subject to the terms of the gift.

(d) If a donee accepts a gift of a part, the donee shall cause the part to be removed from the body without unnecessary mutilation after death occurs and before the body is embalmed. After the part is removed, the surviving spouse, next of kin, or other person under obligation to dispose of the body has custody of the body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 692.011. EXAMINATION FOR MEDICAL ACCEPTABILITY AUTHORIZED. A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the intended purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 692.012. DONEE'S RIGHTS SUPERIOR. Except as prescribed by Section 692.015(a), a donee's rights that are created by a gift are superior to the rights of other persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 692.013. HOSPITAL PROTOCOL. (a) Each hospital shall develop a protocol for identifying potential organ and tissue donors from among those persons who die in the hospital. The hospital shall make its protocol available to the public during the hospital's normal business hours.

(b) The protocol must:

(1) provide that the hospital use appropriately trained persons from an organ or tissue procurement organization to make inquiries relating to donations;

(2) encourage sensitivity to families' beliefs and circumstances in all discussions relating to the donations;

(3) establish guidelines based on accepted medical standards for determining if a person is medically suitable to donate organs or tissues; and

(4) provide for documentation of the inquiry and of its disposition in the decedent's medical records.

(c) The protocol must provide that an organ or tissue procurement organization is not required to make an inquiry under Section 692.014 if:

(1) the decedent is not medically suitable for donation based on the suitability guidelines established by the protocol; or

(2) the hospital or organ or tissue procurement organization has actual notice of an objection to the donation made by:

(A) the decedent;

(B) the person authorized to make the donation under Section 692.004, according to the priority established by that section; or

(C) an unavailable member of a higher priority class.

(d) An organ or tissue procurement organization that makes inquiries relating to donations shall develop a protocol for making those inquiries.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 291, Sec. 3, eff. Sept. 1, 1991.

Sec. 692.014. PROCEDURES. (a) At or near the time of notification of death, if it is unclear whether the decedent is or is not a donor, the organ or tissue procurement organization or its designee shall ask the person authorized to make an anatomical gift on behalf of the decedent under Section 692.004, according to the priority established by that section, whether the decedent is or is not a donor. The inquiry shall be made in accordance with the protocol established under Section 692.013 and with the procedures established under Subchapter Q, Chapter 521, Transportation Code.

(b) If the decedent is a donor 18 years of age or older, the decedent's anatomical gift made under Section 692.003, including a gift made under Section 521.401, Transportation Code, shall be honored without obtaining the approval or consent of any other person.

(c) A copy of the decedent's donor card or a decedent's driver's license or personal identification certificate with an affirmative statement of gift issued prior to September 1, 1997, is conclusive evidence of the decedent's status as a donor and serves as consent for the organ, tissue, or eye removal.

(d) If the decedent is not a declared donor, the organ or tissue procurement organization or its designee shall inform the person of the option to donate the decedent's organs, tissues, and eyes according to the procedures established under this chapter and under Subchapter Q, Chapter 521, Transportation Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 291, Sec. 4, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 928, Sec. 2, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 30.212, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 225, Sec. 30.212, eff. Sept. 1, 1997.

Sec. 692.0145. DISTRIBUTION OF VASCULAR ORGANS FOR TRANSPLANTATION. (a) A qualified organ procurement organization that receives the gift of a vascular organ that is suitable for transplantation shall distribute the organ for transplantation to an individual on a waiting list to be transplanted at a transplant center in this state.

(b) The qualified organ procurement organization may transfer a vascular organ to an out-of-state organ procurement organization or a suitable out-of-state recipient for transplantation if:

(1) a suitable recipient in this state cannot be found in a reasonable amount of time; or

(2) the transfer is made in accordance with a reciprocal agreement with an out-of-state organ procurement organization.

Added by Acts 1999, 76th Leg., ch. 615, Sec. 4, eff. June 18, 1999.

Sec. 692.015. EFFECT OF OTHER LAWS. (a) This chapter is subject to the laws of this state prescribing the powers and duties relating to autopsies.

(b) Sections 692.013 and 692.014 do not affect the laws relating to notification of the medical examiner or justice of the peace of each case of reportable death.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 692.016. LIMITATION OF LIABILITY. (a) A person who acts in good faith in accordance with this chapter is not liable for civil damages or subject to criminal prosecution for the person's action if the prerequisites for an anatomical gift are met under the laws applicable at the time and place the gift is made.

(b) A person who acts in good faith in accordance with Sections 692.013 and 692.014 is not liable as a result of the action except in the case of an act or omission of the person that is intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard. For purposes of this subsection, "good faith" in determining the appropriate person authorized to make a donation under Section 692.004 means making a reasonable effort to locate and contact the member or members of the highest priority class who are available at or near the time of death.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1388, Sec. 1, eff. June 16, 2001.

Sec. 692.017. CIVIL PENALTY. (a) A person who removes corneal tissue from a decedent knowing that a gift authorizing the removal has not been made in accordance with Section 692.003 or 692.004 is liable to the state for a civil penalty.

(b) A person authorized to accept a gift under Section 692.005 or the agent or employee of a person authorized to accept a gift under Section 692.005 who accepts corneal tissue removed from a decedent knowing that a gift authorizing the removal has not been made in accordance with Section 692.003 or 692.004 is liable to the state for a civil penalty.

(c) A civil penalty under this section may not exceed \$500 for each violation. In assessing a penalty under this section, the court shall consider the seriousness of the violation.

(d) The attorney general may sue to collect the penalty.

Added by Acts 2005, 79th Leg., ch. 1069, Sec. 1, eff. Sept. 1, 2005.