

CHAPTER 28

S.B. No. 16

AN ACT

relating to hospital protocols for identifying potential organ and tissue donors and for informing persons of the option to donate.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, Texas Anatomical Gift Act, as amended (Article 4590-2, Vernon's Texas Civil Statutes), is amended by adding Subsection (j) to read as follows:

(j) "Qualified organ or tissue procurement organization" means an organization that procures and distributes organs and/or tissues for transplantation, research, or other medical purposes and is either (1) affiliated with a university or hospital or (2) registered to operate as a nonprofit organization in the State of Texas for the primary purpose of organ and/or tissue procurement.

SECTION 2. The Texas Anatomical Gift Act, as amended (Article 4590-2, Vernon's Texas Civil Statutes), is amended by adding Section 8A to read as follows:

Sec. 8A. **DUTIES OF A HOSPITAL.** (a) *Each hospital shall develop a protocol for identifying potential organ and tissue donors when deaths occur in the hospital. Pursuant to the protocol, and except as provided in Subsection (d) of this section, the person authorized to make an anatomical gift on behalf of a decedent according to the priority set out in Subsection (b) of Section 3 of this Act shall be asked at or near the time of notification of death if the decedent is a donor. If not, this family member or other person shall be informed of the option to donate organs and tissues. With the approval of this person, the hospital shall then notify a qualified organ or tissue procurement organization of the potential donation. If there are two or more people in the class authorized to make a gift, the inquiry shall be made to those class members reasonably available at or near the time of notification of death.*

(b) *The protocol shall establish guidelines based on accepted medical standards for determining whether a person is medically suitable to donate organs or tissues.*

(c) *The protocol shall provide that appropriately trained individuals make the inquiries and shall encourage sensitivity to families' beliefs and circumstances in all discussions regarding donation of organs or tissues.*

(d) *The protocol shall provide that no inquiry is required if:*

(1) *the decedent is medically unsuitable for donation according to the suitability guidelines established in the protocol;*

(2) *there is actual notice of objections to donation by the decedent, by the person or persons authorized to make a donation according to the priority set forth in Subsection (b) of Section 3 of this Act, or by an unavailable member of a higher class; or*

(3) *the hospital administrator has not been notified by a qualified organ or tissue procurement organization that there is a current medical need for organs or tissues and that the organization is available for retrieval consistent with accepted medical standards.*

(e) *The protocol shall provide for documentation of the inquiry and of its disposition in the decedent's medical records.*

(f) *The protocol shall be available to the public during the hospital's normal business hours.*

(g) *The provisions of this section are subject to the laws of this state regarding notification of the medical examiner or justice of the peace in all cases of reportable deaths.*

(h) *Any person who acts in good faith in accordance with this section shall not be liable as a result of that activity, except in the case of the person's own negligence. "Good faith" in determining the appropriate family member or other person under Subsection (b) of Section 3 of this Act means making reasonable efforts to locate and*

contact the highest prioritized class member or members available at or near the time of death.

SECTION 3. This Act takes effect January 1, 1988, except that Subsection (h), Section 8A, Texas Anatomical Gift Act (Article 4590-2, Vernon's Texas Civil Statutes), takes effect immediately.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed the Senate on February 10, 1987, by the following vote: Yeas 29, Nays 0.

Passed the House on April 9, 1987, by the following vote: Yeas 131, Nays 0, one present not voting.

Approved April 22, 1987.

Effective January 1, 1988, except as provided in § 3.