

By: Nelson

S.B. No. 1225

A BILL TO BE ENTITLED

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AN ACT

relating to the removal of a body part or tissue from a decedent who died under circumstances requiring an inquest.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 693.002 and 693.005, Health and Safety Code, are amended to read as follows:

Sec. 693.002. REMOVAL OF BODY PART OR TISSUE FROM DECEDENT WHO DIED UNDER CIRCUMSTANCES REQUIRING AN INQUEST. (a)(1) On a request from a qualified organ procurement organization, as defined in Section 692.002, the medical examiner, justice of the peace, county judge, or physician designated by the justice of the peace or county judge may permit the removal of organs from a decedent who died under circumstances requiring an inquest by the medical examiner, justice of the peace, or county judge if consent is obtained pursuant to Section 693.003.

(2) If no autopsy is required, the organs to be transplanted shall be released in a timely manner to the qualified organ procurement organization, as defined in Section 692.002, for removal and transplantation.

(3) If an autopsy is required and the medical examiner, justice of the peace, county judge, or designated physician determines that the removal of the organs will not interfere with the subsequent course of an investigation or autopsy, the organs shall be released in a timely manner for removal

1 and transplantation. The autopsy will be performed in a timely
2 manner following the removal of the organs.

3 (4) If the medical examiner is considering withholding
4 one or more organs of a potential donor for any reason, the medical
5 examiner shall be present during the removal of the organs. In such
6 case, the medical examiner may request a biopsy of those organs or
7 deny removal of the anatomical gift. If the medical examiner denies
8 removal of the anatomical gift, the medical examiner shall explain
9 in writing the reasons for the denial. The medical examiner [~~and~~]
10 shall provide the explanation to:

11 (A) the qualified organ procurement
12 organization; and

13 (B) any person listed in Section 693.004 who
14 consented to the removal.

15 (5) If the autopsy is not being performed by a medical
16 examiner and one or more organs may be withheld, the justice of the
17 peace, county judge, or designated physician shall be present
18 during the removal of the organs and may request the biopsy or deny
19 removal of the anatomical gift. If removal of the anatomical gift
20 is denied, the justice of the peace, county judge, or physician
21 shall provide the written explanation required by Subdivisions
22 (4)(A) and (B).

23 (6) If, in performing the duties required by this
24 subsection, the medical examiner or, in those cases in which an
25 autopsy is not performed by a medical examiner, the justice of the
26 peace, county judge, or designated physician is required to be
27 present at the hospital to examine the decedent prior to removal of

1 the organs or during the procedure to remove the organs, the
2 qualified organ procurement organization shall on request
3 reimburse the county or the entity designated by the county for the
4 actual costs incurred in performing such duties, not to exceed
5 \$1,000. Such reimbursements shall be deposited in the general fund
6 of the county. The payment shall be applied to the additional costs
7 incurred by the office of the medical examiner, justice of the
8 peace, or county judge [~~examiner's office~~] in performing such
9 duties, including the cost of providing coverage beyond [~~the~~]
10 regular business hours [~~of the medical examiner's office~~]. The
11 payment shall be used to facilitate the timely procurement of
12 organs in a manner consistent with the preservation of the organs
13 for the purposes of transplantation.

14 (7) [~~(6)~~] At the request of the medical examiner or,
15 in those cases in which an autopsy is not performed by a medical
16 examiner, the justice of the peace, county judge, or designated
17 physician [~~examiner's request~~], the health care professional
18 removing organs from a decedent who died under circumstances
19 requiring an inquest shall file with the medical examiner, justice
20 of the peace, or county judge a report detailing the condition of
21 the organs removed and their relationship, if any, to the cause of
22 death.

23 (b) On a request from a qualified tissue procurement
24 organization, as defined in Section 692.002, the medical examiner
25 may permit the removal of tissue believed to be clinically usable
26 for transplants or other therapy or treatment from a decedent who
27 died under circumstances requiring an inquest [~~by the medical~~

1 ~~examiner]~~ if consent is obtained pursuant to Section 693.003 or, if
2 consent is not required by that section, no objection by a person
3 listed in Section 693.004 is known by the medical examiner. If the
4 medical examiner denies removal of the tissue, the medical examiner
5 shall explain in writing the reasons for the denial. The medical
6 examiner shall provide the explanation to:

7 (1) the qualified tissue procurement organization;

8 and

9 (2) the person listed in Section 693.004 who consented
10 to the removal.

11 (c) If the autopsy is not being performed by a medical
12 examiner, the justice of the peace, county judge, or designated
13 physician may permit the removal of tissue in the same manner as a
14 medical examiner under Subsection (b). If removal of the
15 anatomical gift is denied, the justice of the peace, county judge,
16 or physician shall provide the written explanation required by
17 Subsections (b)(1) and (2).

18 Sec. 693.005. IMMUNITY FROM DAMAGES IN CIVIL ACTION. In a
19 civil action brought by a person listed in Section 693.004 who did
20 not object before the removal of tissue or a body part specified by
21 Section 693.002, a medical examiner, justice of the peace, county
22 judge, medical facility, physician acting on permission of a
23 medical examiner, justice of the peace, or county judge, or person
24 assisting a physician is not liable for damages on a theory of civil
25 recovery based on a contention that the plaintiff's consent was
26 required before the body part or tissue could be removed.

27 SECTION 2. This Act applies to an inquest conducted on or

1 after the effective date of this Act. An inquest conducted before
2 the effective date of this Act is governed by the law as it existed
3 immediately before the effective date of this Act, and that law is
4 continued in effect for this purpose.

5 SECTION 3. This Act takes effect July 1, 2003, if it
6 receives a vote of two-thirds of all the members elected to each
7 house, as provided by Section 39, Article III, Texas Constitution.
8 If this Act does not receive the vote necessary for effect on that
9 date, this Act takes effect September 1, 2003.