

By: Dawson, et al. (Senate Sponsor - Zaffirini) H.B. No. 120
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May 8, 2005, read first time and referred to Committee on
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COMMITTEE SUBSTITUTE FOR H.B. No. 120 By: Shapleigh

A BILL TO BE ENTITLED
AN ACT

relating to the creation of a donor education, awareness, and
registry program, the establishment of an organ donor and tissue
council, and anatomical gift donation.

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

SECTION 1. Subsections (b), (c), and (d), Section 521.401,
Transportation Code, are amended to read as follows:

(b) The statement of gift may be shown on a donor's driver's
license or personal identification certificate or by a card
designed to be carried by the donor to evidence the donor's
intentions with respect to organ, tissue, and eye donation. A donor
card signed by the donor shall be given effect as if executed
pursuant to Section 692.003(d), Health and Safety Code.

(c) Donor cards shall be provided to the department by
qualified organ or tissue procurement organizations or eye banks,
as those terms are defined in Section 692.002, Health and Safety
Code, or by the Donor Education, Awareness, and Registry Program of
Texas established under Chapter 49, Health and Safety Code. The
department shall:

(1) provide to each applicant for the issuance of an
original, renewal, corrected, or duplicate driver's license or
personal identification certificate who applies in person, by mail,
over the Internet, or by other electronic means:

(A) the opportunity to indicate on the person's
driver's license or personal identification certificate that the
person is willing to make an anatomical gift, in the event of death,
in accordance with Section 692.003, Health and Safety Code; and

(B) an opportunity for the person to consent in
writing to the department's provision of the person's name, date of
birth, driver's license number, most recent address, and other
information needed for identification purposes at the time of
donation to the organization selected by the commissioner of state
health services under Chapter 49, Health and Safety Code, for
inclusion in the statewide Internet-based registry of organ,
tissue, and eye donors and for release to qualified organ, tissue,
and eye bank organizations; and

(2) provide a means to distribute donor cards to
interested individuals in each office authorized to issue driver's
licenses or personal identification certificates[. The department
and other appropriate state agencies, in cooperation with qualified
organ, tissue, and eye bank organizations shall pursue the
development of a combined statewide database of donors].

(d) ~~An [Effective September 1, 1997, a statement of gift on
driver's licenses or personal identification certificates shall
have no force and effect, provided, however, that an]~~ affirmative
statement of gift on a person's driver's license or personal
identification certificate executed after August 31, 2005 ~~[prior to
September 1, 1997]~~, shall be conclusive evidence of a decedent's
status as a donor and serve as consent for organ, tissue, and eye
removal.

SECTION 2. Section 521.402, Transportation Code, is amended
by amending Subsection (a) and adding Subsection (c) to read as
follows:

(a) To revoke an affirmative statement of gift on a person's
driver's license or personal identification certificate ~~[made~~

prior to September 1, 1997], a person must apply to the department for an amendment to the license or certificate.

(c) To have a person's name deleted from the statewide Internet-based registry of organ, tissue, and eye donors maintained as provided by Chapter 49, Health and Safety Code, a person must provide written notice to the organization selected by the commissioner of state health services under that chapter to maintain the registry directing the deletion of the person's name from the registry. On receipt of a written notice under this subsection, the organization shall promptly remove the person's name and information from the registry.

SECTION 3. Section 521.403, Transportation Code, is amended to read as follows:

Sec. 521.403. INFORMATION PROVIDED TO HOSPITAL. The donor card of a person who is involved in an accident or other trauma shall accompany the person to the hospital or other health care facility. The driver's license or personal identification certificate ~~[issued prior to September 1, 1997]~~ indicating an affirmative statement of gift of a person who is involved in an accident or other trauma~~[r]~~ shall accompany the person to the hospital or health care facility if the person does not have a donor card.

SECTION 4. Chapter 49, Health and Safety Code, is amended to read as follows:

CHAPTER 49. DONOR EDUCATION, AWARENESS, AND REGISTRY

~~[ANATOMICAL GIFT EDUCATIONAL]~~ PROGRAM OF TEXAS

Sec. 49.001. DEFINITIONS ~~[DEVELOPMENT AND IMPLEMENTATION OF PROGRAM]~~. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Registry program" means the Donor Education, Awareness, and Registry Program of Texas.

Sec. 49.002. ESTABLISHMENT OF PROGRAM. (a) In consultation with the Department of Public Safety and organ procurement organizations, the department shall establish the Donor Education, Awareness, and Registry Program of Texas.

(b) The department shall enter into an agreement with an organization selected by the commissioner under a competitive proposal process for the establishment and maintenance of a statewide Internet-based registry of organ, tissue, and eye donors. Contingent on the continued availability of appropriations under Subsection (h), the term of the initial agreement is two years and may be renewed for two-year terms thereafter unless terminated in a written notice to the other party by the department or organization not later than the 180th day before the last day of a term.

(c) The Department of Public Safety at least monthly shall electronically transfer to the organization selected by the commissioner as provided by Subsection (b) the name, date of birth, driver's license number, most recent address, and any other relevant information in the possession of the Department of Public Safety for any person who indicates on the person's driver's license application under Section 521.401, Transportation Code, that the person would like to make an anatomical gift and consents in writing to the release of the information by the Department of Public Safety to the organization for inclusion in the statewide Internet-based registry of organ, tissue, and eye donors.

(d) The contract between the department and the organization selected by the commissioner as provided by Subsection (b) must require the organization to:

(1) make information obtained from the Department of Public Safety under Subsection (c) available to qualified organ, tissue, and eye bank organizations;

(2) allow potential donors to submit information in writing directly to the organization for inclusion in the statewide Internet-based registry of organ, tissue, and eye donors;

(3) maintain the statewide Internet-based registry of organ, tissue, and eye donors in a manner that allows qualified

organ, tissue, and eye bank organizations to immediately access organ, tissue, and eye donation information 24 hours a day, seven days a week, through electronic and telephonic methods; and

(4) protect the confidentiality and privacy of the individuals providing information to the statewide Internet-based registry, regardless of the manner in which the information is provided.

(e) Except as otherwise provided by Subsection (d)(3) or this subsection, the Department of Public Safety, the organization selected by the commissioner under Subsection (b), or a qualified organ, tissue, and eye bank organization may not sell, rent, or otherwise share any information provided to the registry. A qualified organ, tissue, and eye bank organization may share any information provided to the registry with an organ procurement organization or a health care provider or facility providing medical care to a potential donor as necessary to properly identify an individual at the time of donation.

(f) The Department of Public Safety, the organization selected by the commissioner under Subsection (b), or the qualified organ, tissue, and eye bank organizations may not use any demographic or specific data provided to the registry for any fund-raising activities. Data may only be transmitted from the selected organization to qualified organ, tissue, and eye bank organizations through electronic and telephonic methods using secure, encrypted technology to preserve the integrity of the data and the privacy of the individuals providing information.

(g) In each office authorized to issue driver's licenses or personal identification certificates, the Department of Public Safety shall make available educational materials developed by the Texas Organ, Tissue, and Eye Donor Council established under Chapter 113.

(h) The Department of Public Safety shall remit to the comptroller the money collected under Sections 521.421(g) and 521.422(c), Transportation Code, as provided by those subsections. A county assessor-collector shall remit to the comptroller any money collected under Section 502.1745, Transportation Code, as provided by that section. Money remitted to the comptroller in accordance with this subsection that is appropriated to the department must be spent in accordance with the priorities established by the department in consultation with the Texas Organ, Tissue, and Eye Donor Council to pay the costs of:

(1) maintaining, operating, and updating the statewide Internet-based donor registry and establishing procedures for an individual to be added to the registry; and

(2) designing and distributing education materials for prospective donors as required under this section.

(i) Any additional money over the amount necessary to accomplish the purposes of Subsections (h)(1) and (2) may be used by the department to provide education under this chapter or may be awarded using a competitive grant process to organizations to conduct organ, eye, and tissue donation education activities in this state. A member of the Texas Organ, Tissue, and Eye Donor Council may not receive a grant under this subsection.

(j) The department shall require the organization selected under Subsection (b) to submit an annual written report to the department that includes:

(1) the number of donors listed on the registry;

(2) changes in the number of donors listed on the registry; and

(3) the demographic characteristics of listed donors, to the extent the characteristics may be determined from information provided on donor registry forms submitted by donors to the organization.

(k) To the extent funds are available and as part of the registry program, the ~~[(a) The]~~ department shall ~~[develop a program to]~~ educate residents about anatomical gifts. The program shall include information about:

(1) the laws governing anatomical gifts, including Subchapter Q, Chapter 521, Transportation Code, and Chapter 692;

(2) the procedures for becoming an organ, eye, or tissue donor or donee; and

(3) the benefits of organ, eye, or tissue donation.

(1) [(b)] In developing the program, the department in consultation with the Texas Organ, Tissue, and Eye Donor Council shall solicit broad-based input reflecting recommendations of all interested groups, including representatives of patients, providers, ethnic groups, and geographic regions.

(m) In consultation with the Texas Organ, Tissue, and Eye Donor Council, the department may implement a training program for all appropriate Department of Public Safety and Texas Department of Transportation employees on the benefits of organ, tissue, and eye donation and the procedures for individuals to be added to the statewide Internet-based registry of organ, tissue, and eye donors. The department shall implement the training program before the date that the statewide Internet-based registry is operational and shall conduct the training on an ongoing basis for new employees.

Sec. 49.003 [(c) The department shall implement the program only to the extent that funds are available from Section 521.421(g) or 521.422(c), Transportation Code.

[Sec. 49.002]. EDUCATION FOR HEALTH CARE PROVIDERS AND ATTORNEYS. (a) The department shall develop a program to educate health care providers and attorneys in this state regarding anatomical gifts.

(b) The department through the program shall encourage attorneys to provide organ donation information to clients seeking legal advice for end-of-life decisions.

(c) The department shall encourage medical schools and nursing schools in this state to include mandatory organ donation education in the schools' curriculums.

(d) The department shall encourage medical schools in this state to require a physician in a neurology or neurosurgery residency program to complete an advanced course in organ donation education.

[(e) The department shall implement the program only to the extent that:

[(1) funds are available from Section 521.421(g) or 521.422(c), Transportation Code;

[(2) money or in-kind donations are donated to the department for the purpose of implementing the program; or

[(3) the legislature specifically appropriates money from another source for the purpose of implementing the program.]

SECTION 5. Subtitle E, Title 2, Health and Safety Code, is amended by adding Chapter 113 to read as follows:

CHAPTER 113. TEXAS ORGAN, TISSUE, AND EYE DONOR COUNCIL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.001. DEFINITIONS. In this chapter:

(1) "Council" means the Texas Organ, Tissue, and Eye Donor Council.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(4) "Public safety director" means the public safety director of the Department of Public Safety.

Sec. 113.002. SUNSET PROVISION; ABOLISHMENT. The Texas Organ, Tissue, and Eye Donor Council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2017, unless the department and the council mutually determine that the public interest is best served by abolition of the council and agree to abolish the council on an earlier date.

[Sections 113.003-113.050 reserved for expansion]

SUBCHAPTER B. COUNCIL

Sec. 113.051. COMPOSITION OF COUNCIL. (a) The council is composed of:

(1) a representative of the department appointed by the commissioner;

(2) a representative of the Department of Public Safety appointed by the public safety director;

(3) a representative of the Texas Department of Transportation appointed by the executive director of that agency;

(4) five professional members appointed by the commissioner as follows:

(A) one representative from each of the state's three federally qualified organ procurement organizations nominated by each organization;

(B) one representative who is a transplant physician or nurse licensed in this state; and

(C) one representative of an acute care hospital in this state; and

(5) two public members appointed by the commissioner.

(b) A public member of the council must:

(1) be a donor, recipient, or member of a donor's family; and

(2) be selected from a pool of members compiled from the recommendations of the following nonprofit organizations in the field of transplantation and organ donor education:

(A) the Texas Medical Association;

(B) the Texas Transplantation Society;

(C) the Transplant Nurses' Association;

(D) the National Kidney Foundation;

(E) the National Minority Organ Tissue Transplant Education Program; and

(F) the American Society of Minority Health and Transplant Professionals.

(c) A member of the council who is a representative of an agency of this state is a nonvoting member of the council.

(d) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 113.052. MEMBERSHIP ELIGIBILITY. A person is not eligible for appointment as a professional or public member of the council if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the council or from the department regarding a matter on which the council advises the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the council or from the department regarding a matter on which the council advises the department; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the council or from the department regarding a matter on which the council advises the department, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

Sec. 113.053. TERMS; VACANCY. (a) Council members appointed by the commissioner serve for staggered six-year terms, with the terms of two or three members, as applicable, expiring February 1 of each odd-numbered year.

(b) A council member appointed as a representative of an agency serves at the will of the appointing agency.

(c) If a vacancy occurs, the commissioner or other appropriate appointing authority shall appoint a person, in the same manner as the original appointment, to serve for the remainder of the unexpired term.

(d) An appointed member may not serve more than one term consecutively.

Sec. 113.054. PRESIDING OFFICER. The commissioner shall designate a public member of the council as the presiding officer of the council to serve in that capacity at the will of the commissioner.

Sec. 113.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the council that a member:

(1) does not have at the time of taking office the

6-1 qualifications required by this chapter;

6-2 (2) does not maintain during service on the council
6-3 the qualifications required by this chapter;

6-4 (3) cannot, because of illness or disability,
6-5 discharge the member's duties for a substantial part of the member's
6-6 term; or

6-7 (4) is absent from more than half of the regularly
6-8 scheduled council meetings that the member is eligible to attend
6-9 during a calendar year without an excuse approved by a majority vote
6-10 of the council.

6-11 (b) The validity of an action of the council is not affected
6-12 by the fact that it is taken when a ground for removal of a council
6-13 member exists.

6-14 (c) If the commissioner has knowledge that a potential
6-15 ground for removal exists, the commissioner shall notify the
6-16 presiding officer of the council of the potential ground. The
6-17 presiding officer shall then notify the attorney general that a
6-18 potential ground for removal exists. If the potential ground for
6-19 removal involves the presiding officer, the director shall notify
6-20 the next highest ranking officer or most senior member of the
6-21 council, who shall then notify the attorney general that a
6-22 potential ground for removal exists.

6-23 Sec. 113.056. MEETINGS; QUORUM. (a) The council shall
6-24 meet at least twice each calendar year and at the call of the
6-25 presiding officer.

6-26 (b) The council shall adopt bylaws for the conduct of its
6-27 meetings.

6-28 (c) Any action taken by the council requires two-thirds of
6-29 the members to be present and the action must be approved by a
6-30 majority of the members present.

6-31 Sec. 113.057. COMPENSATION. (a) A member of the council
6-32 may not receive compensation for service on the council.

6-33 (b) A member shall be reimbursed for the member's actual and
6-34 necessary expenses for meals, lodging, transportation, and
6-35 incidental expenses incurred while performing council business,
6-36 subject to any applicable limitation on reimbursement prescribed by
6-37 the General Appropriations Act.

6-38 Sec. 113.058. INFORMATION ABOUT STANDARDS OF CONDUCT. The
6-39 commissioner or the commissioner's designee shall provide to
6-40 members of the council, as often as necessary, information
6-41 regarding the requirements for membership on the council under this
6-42 chapter, including information regarding a person's
6-43 responsibilities under laws relating to applicable standards of
6-44 conduct.

6-45 [Sections 113.059-113.100 reserved for expansion]

6-46 SUBCHAPTER C. COUNCIL POWERS AND DUTIES

6-47 Sec. 113.101. GENERAL DUTIES. The council as required by
6-48 the department shall:

6-49 (1) advise the department concerning the Donor
6-50 Education, Awareness, and Registry Program of Texas established
6-51 under Chapter 49;

6-52 (2) advise the department on priorities for the
6-53 initiatives to be implemented under the Donor Education, Awareness,
6-54 and Registry Program of Texas established under Chapter 49;

6-55 (3) advise the department regarding donor education,
6-56 awareness, and registry outreach specifically targeted at African
6-57 American and Hispanic populations;

6-58 (4) advise the commissioner, public safety director,
6-59 and director of the Texas Department of Transportation on the
6-60 allocation of money received by the comptroller for the activities
6-61 authorized under Chapter 49; and

6-62 (5) advise the department, Department of Public
6-63 Safety, and the Texas Department of Transportation regarding
6-64 necessary performance standards and quality control measures
6-65 concerning the operation of the statewide Internet-based donor
6-66 registry, as well as related donor educational programs.

6-67 Sec. 113.102. REPORT. Before December 1 of each
6-68 even-numbered year, the council shall submit a report of the
6-69 council's activities and recommendations to the governor,

lieutenant governor, speaker of the house of representatives, and members of the legislature.

Sec. 113.103. AUDIT. The financial transactions pertaining to the council are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Sec. 113.104. COSTS IN ADMINISTERING PROGRAM. Ten percent of all money collected under Sections 521.421(g), 521.422(c), and 502.1745, Transportation Code, may be appropriated only to the department to administer this chapter.

SECTION 6. Subsection (g), Section 521.421, Transportation Code, is amended to read as follows:

(g) The department shall collect an additional fee of \$1 for the issuance or renewal of a license, including a duplicate license, a license issued to reflect an additional authorization or a change in classification, or a license issued or renewed over the Internet or by other electronic means, to pay the costs of the Donor Education, Awareness, and Registry Program of Texas, established under Chapter 49, Health and Safety Code, and, subject to Section 113.104, Health and Safety Code, of the Texas Organ, Tissue, and Eye Donor Council, established under Chapter 113 [~~fund the anatomical gift educational program established under Chapter 49~~], Health and Safety Code, if the person applying for, [~~or~~] renewing, or changing a license opts to pay the additional fee. The department shall remit fees collected under this subsection to the comptroller, who shall maintain the identity of the source of the fees. Subject to appropriation, the department may retain three percent of the money collected under this subsection to cover the costs in administering this subsection.

SECTION 7. Subsection (c), Section 521.422, Transportation Code, is amended to read as follows:

(c) The department shall collect an additional fee of \$1 for the issuance or renewal of a personal identification card, including a duplicate personal identification card or a personal identification card issued or renewed over the Internet or by other electronic means, to pay the costs of the Donor Education, Awareness, and Registry Program of Texas, established under Chapter 49, Health and Safety Code, and, subject to Section 113.104, Health and Safety Code, of the Texas Organ, Tissue, and Eye Donor Council, established under Chapter 113 [~~fund the anatomical gift educational program established under Chapter 49~~], Health and Safety Code, if the person applying for or renewing a personal identification card opts to pay the additional fee. The department shall remit fees collected under this subsection to the comptroller, who shall maintain the identity of the source of the fees. Subject to appropriation, the department may retain three percent of the money collected under this subsection to cover the costs in administering this subsection.

SECTION 8. Subchapter D, Chapter 502, Transportation Code, is amended by adding Section 502.1745 to read as follows:

Sec. 502.1745. VOLUNTARY FEE. (a) The department shall provide to each county assessor-collector the educational materials for prospective donors provided as required by the Donor Education, Awareness, and Registry Program of Texas under Chapter 49, Health and Safety Code. A county assessor-collector shall make the educational materials available in each office authorized to accept applications for registration of motor vehicles.

(b) A county assessor-collector shall collect an additional fee of \$1 for the registration or renewal of registration of a motor vehicle to pay the costs of the Donor Education, Awareness, and Registry Program of Texas, established under Chapter 49, Health and Safety Code, and of the Texas Organ, Tissue, and Eye Donor Council, established under Chapter 113, Health and Safety Code, if the person registering or renewing the registration of a motor vehicle opts to pay the additional fee. Notwithstanding any other provision of this chapter, the county assessor-collector shall remit all fees collected under this subsection to the comptroller, who shall maintain the identity of the source of the fees.

(c) Three percent of all money collected under this section may be appropriated only to the department to administer this

8-1 section.

8-2 SECTION 9. Notwithstanding any other provision of law, 25
8-3 percent of the money collected under Section 502.1745,
8-4 Transportation Code, as added by this Act, shall be deposited in the
8-5 state highway fund for the initial costs estimated to be incurred by
8-6 the Texas Department of Transportation in the state fiscal biennium
8-7 beginning September 1, 2005, to implement the changes in law made by
8-8 this Act.

8-9 SECTION 10. (a) Promptly after this Act takes effect, the
8-10 following shall appoint a representative of their agency to serve
8-11 as a member of the Texas Organ, Tissue, and Eye Donor Council:

8-12 (1) the commissioner of state health services for the
8-13 Department of State Health Services;

8-14 (2) the public safety director of the Department of
8-15 Public Safety of the State of Texas; and

8-16 (3) the executive director of the Texas Department of
8-17 Transportation.

8-18 (b) Promptly after this Act takes effect, the commissioner
8-19 of state health services shall appoint five professional and two
8-20 public members to the Texas Organ, Tissue, and Eye Donor Council.
8-21 In appointing the professional members, the commissioner shall
8-22 appoint one person to a term expiring February 1, 2007, two persons
8-23 to a term expiring February 1, 2009, and two persons to a term
8-24 expiring February 1, 2011. In appointing the public members, the
8-25 commissioner shall appoint one person to a term expiring February
8-26 1, 2007, and one person to a term expiring February 1, 2009.

8-27 SECTION 11. (a) The Department of State Health Services
8-28 shall contract with an organization for the establishment and
8-29 maintenance of a registry for organ, tissue, and eye donors in
8-30 accordance with Chapter 49, Health and Safety Code, as amended by
8-31 this Act, and ensure the organization establishes the registry not
8-32 later than September 1, 2006.

8-33 (b) The Department of Public Safety of the State of Texas
8-34 must be in compliance with the changes in law made by this Act to
8-35 Subsection (g), Section 521.421, and Subsection (c), Section
8-36 521.422, Transportation Code, related to duplicate or changed
8-37 licenses or personal identification cards and related to
8-38 transactions conducted over the Internet or by other electronic
8-39 means not later than June 1, 2006.

8-40 SECTION 12. (a) Except as provided by Subsection (b) of
8-41 this section, this Act takes effect immediately if it receives a
8-42 vote of two-thirds of all the members elected to each house, as
8-43 provided by Section 39, Article III, Texas Constitution. If this
8-44 Act does not receive the vote necessary for immediate effect, this
8-45 Act takes effect September 1, 2005.

8-46 (b) Section 8 of this Act takes effect September 1, 2005.

8-47 * * * * *