

By: Goolsby

H.B. No. 2167

A BILL TO BE ENTITLED

AN ACT

relating to organ donation.

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

SECTION 1. Subtitle B, Title 8, Health and Safety Code, is amended by adding Chapter 695 to read as follows:

CHAPTER 695. ORGAN DONATION INCENTIVE ACT

Sec. 695.001. SHORT TITLE. This chapter may be cited as the Organ Donation Incentive Act.

Sec. 695.002. DEFINITIONS. In this chapter:

(1) "Death benefit" means a monetary payment made under this chapter to a beneficiary designated by a registered donor.

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

(3) "Organ" means the human heart, kidney, liver, pancreas, bowel, or cornea.

(4) "Organ procurement" includes acquiring, harvesting, preserving, storing, transporting, distributing, and tissue typing organs.

(5) "Organ procurement organization" means a qualified organ procurement organization as defined by 42 U.S.C. Section 273.

(6) "Organ transplant services" includes organ procurement, inpatient hospital services, physician services, and

1 laboratory services related to an organ transplant procedure.

2 (7) "Program" means the organ donation incentive
3 program.

4 (8) "Registered donor" means a resident of this state
5 who has registered with the department under Section 695.006, and
6 who has not revoked the person's registration or anatomical gift.

7 Sec. 695.003. ADMINISTRATION OF PROGRAM. (a) The
8 department shall administer the organ donation incentive program.

9 (b) The executive commissioner of the Health and Human
10 Services Commission shall adopt rules necessary to establish a
11 procedure for:

12 (1) a donor to register with the department as an organ
13 donor and designate a beneficiary to receive any death benefit
14 payable by reason of the donor's death; and

15 (2) a beneficiary of a deceased donor to make a claim
16 for a death benefit payment.

17 (c) The department may employ staff to administer the
18 program.

19 Sec. 695.004. ORGAN DONATION INCENTIVE FUND. (a) The organ
20 donation incentive fund is an account in the general revenue fund
21 and is composed of money collected under Section 695.005 and
22 contributions to the fund from any other source.

23 (b) Money in the fund may be used only for purposes
24 authorized by this chapter, including collection of the tax under
25 Section 695.005.

26 (c) The department may use the money deposited in the fund
27 to pay death benefits under the program and the administrative

1 costs of administering the program.

2 Sec. 695.005. TAX ON ORGAN TRANSPLANT SERVICES. (a) A tax
3 is imposed on each provider of organ transplant services in this
4 state equal to five percent of the provider's gross revenues
5 received for performance of organ transplant services. The
6 proceeds of the tax collected under this section shall be deposited
7 to the credit of the organ donation incentive fund.

8 (b) A provider required to pay the tax collected under this
9 section shall pay the comptroller the tax based on the total amount
10 of gross revenues collected during the preceding calendar year not
11 later than May 1 of the following calendar year. At the time
12 payment is made, the provider shall file with the comptroller a
13 report stating:

14 (1) the total amount of gross revenues collected
15 during the reporting period; and

16 (2) any other information that the comptroller may
17 require.

18 (c) The comptroller may adopt the rules necessary to
19 administer this section.

20 Sec. 695.006. REGISTRATION AS ORGAN DONOR. (a) A resident
21 of this state who makes an anatomical gift for transplantation
22 purposes under Chapter 692 may register as a registered donor with
23 the department by filing a copy of the gift document and any other
24 information or documentation the department may require. The
25 registration documentation must include:

26 (1) the donor's designation of a beneficiary to
27 receive any death benefit payments; and

1 (2) the signature of the person or persons who would
2 have priority to make a gift of the donor's organs under Section
3 692.004 if the donor died at the time of registration.

4 (b) Registration with the department is not necessary for an
5 anatomical gift made under Chapter 692 to be valid.

6 (c) A registered donor may revoke an anatomical gift in
7 accordance with Chapter 692 and notify the department that the
8 donor wishes to withdraw from the donor registry. Failure to
9 withdraw from the donor registry does not affect the validity of the
10 revocation.

11 Sec. 695.007. DEATH BENEFITS. (a) Death benefits are:

12 (1) paid through the department in accordance with
13 this chapter and rules adopted by the executive commissioner of the
14 Health and Human Services Commission; and

15 (2) due and payable only to the extent provided by this
16 chapter.

17 (b) The department shall determine the amount of the death
18 benefit payable under this chapter each fiscal year in accordance
19 with this section. The amount for any given year must be the same
20 amount for each registered donor who dies during the year and
21 qualifies for a death benefit payment.

22 (c) The department shall employ an actuary, as an employee
23 or consultant, to make a recommendation not later than August 1 of
24 each year on the amount of death benefit to be paid during the
25 following state fiscal year, based on an actuarial analysis of
26 relevant factors, including:

27 (1) the number and ages of registered donors;

1 (2) the expected number of new registered donors
2 during the following state fiscal year;

3 (3) any reserve funds;

4 (4) the expected administration costs of the program;
5 and

6 (5) the expected contributions to the fund during the
7 following state fiscal year.

8 (d) Based on the actuary's recommendation, the department
9 shall set the amount of the death benefit payment for a state fiscal
10 year not later than August 31 of the preceding calendar year.

11 (e) An actuary employed under this section must be a fellow
12 of the Society of Actuaries, a member of the American Academy of
13 Actuaries, or an enrolled actuary under the Employee Retirement
14 Income Security Act of 1974 (29 U.S.C. Section 1001, et seq.).

15 Sec. 695.008. QUALIFICATION FOR DEATH BENEFIT PAYMENT. (a)
16 If a registered donor dies and any of the donor's organs are offered
17 for transplantation through the Organ Procurement and
18 Transplantation Network established under 42 U.S.C. Section 274
19 without regard to whether any offered organs are actually accepted
20 for transplantation, the registered donor's named beneficiary is
21 entitled to a death benefit payment.

22 (b) Before the department approves a claim, the department
23 shall obtain a written certification from the organ procurement
24 organization that offered the donor's organs for transplantation to
25 verify the organization made the offer.

26 (c) Death benefits are due and payable only to the extent
27 money is available for that purpose in the organ donation incentive

1 fund. This state and the department are not liable for any death
2 benefit in excess of the amount in the fund. If a claim is approved
3 in an amount that exceeds the amount actually in the fund at that
4 time, the department shall postpone payment of the claim until
5 sufficient money to pay the benefit is in the fund.

6 SECTION 2. Section 48.02(c), Penal Code, is amended to read
7 as follows:

8 (c) It is an exception to the application of this section
9 that the valuable consideration is: (1) a fee paid to a physician
10 or to other medical personnel for services rendered in the usual
11 course of medical practice or a fee paid for hospital or other
12 clinical services; (2) reimbursement of legal or medical expenses
13 incurred for the benefit of the ultimate receiver of the organ; [~~or~~]
14 (3) reimbursement of expenses of travel, housing, and lost wages
15 incurred by the donor of a human organ in connection with the
16 donation of the organ; or (4) payment of a death benefit under
17 Chapter 695, Health and Safety Code.

18 SECTION 3. (a) The executive commissioner of the Health and
19 Human Services Commission shall adopt the rules and the Department
20 of State Health Services shall establish the procedures necessary
21 to implement Chapter 695, Health and Safety Code, as added by this
22 Act, not later than June 1, 2006.

23 (b) Notwithstanding Chapter 695, Health and Safety Code, a
24 person may not register as a registered donor with the Department of
25 State Health Services under that chapter before September 1, 2006.

26 (c) Section 695.005, Health and Safety Code, as added by
27 this Act, applies only to organ transplant services provided on or

1 after January 1, 2006.

2 SECTION 4. The change in law made by this Act to Section
3 48.02, Penal Code, applies only to an offense committed on or after
4 the effective date of this Act. An offense committed before the
5 effective date of this Act is covered by the law in effect when the
6 offense was committed, and the former law is continued in effect for
7 that purpose. For purposes of this section, an offense was
8 committed before the effective date of this Act if any element of
9 the offense was committed before that date.

10 SECTION 5. This Act takes effect September 1, 2005.