

By: Zaffirini, et al.

S.B. No. 24

A BILL TO BE ENTITLED

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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

1 driver's license or personal identification certificate that the
2 person is willing to make an anatomical gift, in the event of death,
3 in accordance with Section 692.003, Health and Safety Code; and

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

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

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

27 SECTION 2. Section 521.402, Transportation Code, is amended

1 by amending Subsection (a) and adding Subsection (c) to read as
2 follows:

3 (a) To revoke an affirmative statement of gift on a person's
4 driver's license or personal identification certificate [~~made~~
5 ~~prior to September 1, 1997~~], a person must apply to the department
6 for an amendment to the license or certificate.

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

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

18 Sec. 521.403. INFORMATION PROVIDED TO HOSPITAL. The donor
19 card of a person who is involved in an accident or other trauma
20 shall accompany the person to the hospital or other health care
21 facility. The driver's license or personal identification
22 certificate [~~issued prior to September 1, 1997~~] indicating an
23 affirmative statement of gift of a person who is involved in an
24 accident or other trauma[~~7~~] shall accompany the person to the
25 hospital or health care facility if the person does not have a donor
26 card.

27 SECTION 4. Chapter 49, Health and Safety Code, is amended to

1 read as follows:

2 CHAPTER 49. DONOR EDUCATION, AWARENESS, AND REGISTRY

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

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

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

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

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

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

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

25 (c) The Department of Public Safety at least monthly shall
26 electronically transfer to the organization selected by the
27 commissioner as provided by Subsection (b) the name, date of birth,

1 driver's license number, most recent address, and any other
2 relevant information in the possession of the Department of Public
3 Safety for any person who indicates on the person's driver's license
4 application under Section 521.401, Transportation Code, that the
5 person would like to make an anatomical gift and consents in writing
6 to the release of the information by the Department of Public Safety
7 to the organization for inclusion in the statewide Internet-based
8 registry of organ, tissue, and eye donors.

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

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

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

18 (3) maintain the statewide Internet-based registry of
19 organ, tissue, and eye donors in a manner that allows qualified
20 organ, tissue, and eye bank organizations to immediately access
21 organ, tissue, and eye donation information 24 hours a day, seven
22 days a week, through electronic and telephonic methods; and

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

27 (e) Except as otherwise provided by Subsection (d)(3) or

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

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

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

24 (h) The Department of Public Safety shall remit to the
25 comptroller the money collected under Sections 521.421(g) and
26 521.422(c), Transportation Code, as provided by those subsections.
27 A county assessor-collector shall remit to the comptroller any

1 money collected under Section 502.1745, Transportation Code, as
2 provided by that section. Money remitted to the comptroller in
3 accordance with this subsection that is appropriated to the
4 department must be spent in accordance with the priorities
5 established by the department in consultation with the Texas Organ,
6 Tissue, and Eye Donor Council to pay the costs of:

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

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

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

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

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

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

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

1 the organization.

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

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

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

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

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

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

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

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

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

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

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

15 ~~[(c) The department shall implement the program only to the
16 extent that:~~

17 ~~[(1) funds are available from Section 521.421(g) or
18 521.422(c), Transportation Code,~~

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

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

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

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

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Sec. 113.001. DEFINITIONS. In this chapter:

1 (A) one representative from each of the state's
2 three federally qualified organ procurement organizations
3 nominated by each organization and appointed by the governor;

4 (B) one representative who is a transplant
5 physician or nurse licensed in this state appointed by the
6 governor; and

7 (C) one representative of an acute care hospital
8 in this state appointed by the governor; and

9 (5) two public members appointed by the governor.

10 (b) A public member of the council must:

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

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

16 (A) the Texas Medical Association;

17 (B) the Texas Transplantation Society;

18 (C) the Transplant Nurses' Association;

19 (D) the National Kidney Foundation;

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

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

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

26 (d) Appointments to the council shall be made without regard
27 to the race, color, disability, sex, religion, age, or national

1 origin of the appointee.

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

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

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

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

19 Sec. 113.053. TERMS; VACANCY. (a) Council members
20 appointed by the governor serve for staggered six-year terms, with
21 the terms of two or three members, as applicable, expiring February
22 1 of each odd-numbered year.

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

25 (c) If a vacancy occurs, the governor or other appropriate
26 appointing authority shall appoint a person, in the same manner as
27 the original appointment, to serve for the remainder of the

1 unexpired term.

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

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

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

9 (1) does not have at the time of taking office the
10 qualifications required by this chapter;

11 (2) does not maintain during service on the council
12 the qualifications required by this chapter;

13 (3) cannot, because of illness or disability,
14 discharge the member's duties for a substantial part of the member's
15 term; or

16 (4) is absent from more than half of the regularly
17 scheduled council meetings that the member is eligible to attend
18 during a calendar year without an excuse approved by a majority vote
19 of the council.

20 (b) The validity of an action of the council is not affected
21 by the fact that it is taken when a ground for removal of a council
22 member exists.

23 (c) If the commissioner has knowledge that a potential
24 ground for removal exists, the commissioner shall notify the
25 presiding officer of the council of the potential ground. The
26 presiding officer shall then notify the governor and the attorney
27 general that a potential ground for removal exists. If the

1 potential ground for removal involves the presiding officer, the
2 director shall notify the next highest ranking officer or most
3 senior member of the council, who shall then notify the governor and
4 the attorney general that a potential ground for removal exists.

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

8 (b) The council shall adopt bylaws for the conduct of its
9 meetings.

10 (c) Any action taken by the council requires two-thirds of
11 the members to be present and the action must be approved by a
12 majority of the members present.

13 Sec. 113.057. COMPENSATION. (a) A member of the council
14 may not receive compensation for service on the council.

15 (b) A member shall be reimbursed for the member's actual and
16 necessary expenses for meals, lodging, transportation, and
17 incidental expenses incurred while performing council business,
18 subject to any applicable limitation on reimbursement prescribed by
19 the General Appropriations Act.

20 Sec. 113.058. INFORMATION ABOUT STANDARDS OF CONDUCT. The
21 commissioner or the commissioner's designee shall provide to
22 members of the council, as often as necessary, information
23 regarding the requirements for membership on the council under this
24 chapter, including information regarding a person's
25 responsibilities under laws relating to applicable standards of
26 conduct.

27 [Sections 113.059-113.100 reserved for expansion]

1 SUBCHAPTER C. COUNCIL POWERS AND DUTIES

2 Sec. 113.101. GENERAL DUTIES. The council as required by
3 the department shall:

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

7 (2) advise the department on priorities for the
8 initiatives to be implemented under the Donor Education, Awareness,
9 and Registry Program of Texas established under Chapter 49;

10 (3) advise the department regarding donor education,
11 awareness, and registry outreach specifically targeted at African
12 American and Hispanic populations;

13 (4) advise the commissioner, public safety director,
14 and director of the Texas Department of Transportation on the
15 allocation of money received by the comptroller for the activities
16 authorized under Chapter 49; and

17 (5) advise the department, Department of Public
18 Safety, and the Texas Department of Transportation regarding
19 necessary performance standards and quality control measures
20 concerning the operation of the statewide Internet-based donor
21 registry, as well as related donor educational programs.

22 Sec. 113.102. REPORT. Before December 1 of each
23 even-numbered year, the council shall submit a report of the
24 council's activities and recommendations to the governor,
25 lieutenant governor, speaker of the house of representatives, and
26 members of the legislature.

27 Sec. 113.103. AUDIT. The financial transactions pertaining

1 to the council are subject to audit by the state auditor in
2 accordance with Chapter 321, Government Code.

3 Sec. 113.104. COSTS IN ADMINISTERING PROGRAM. Ten percent
4 of all money collected under Sections 521.421(g), 521.422(c), and
5 502.1745, Transportation Code, may be appropriated only to the
6 department to administer this chapter.

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

9 (g) The department shall collect an additional fee of \$1 for
10 the issuance or renewal of a license, including a duplicate
11 license, a license issued to reflect an additional authorization or
12 a change in classification, or a license issued or renewed over the
13 Internet or by other electronic means, to pay the costs of the Donor
14 Education, Awareness, and Registry Program of Texas, established
15 under Chapter 49, Health and Safety Code, and, subject to Section
16 113.104, Health and Safety Code, of the Texas Organ, Tissue, and Eye
17 Donor Council, established under Chapter 113 [~~fund the anatomical~~
18 ~~gift educational program established under Chapter 49~~], Health and
19 Safety Code, if the person applying for, [ex] renewing, or changing
20 a license opts to pay the additional fee. The department shall
21 remit fees collected under this subsection to the comptroller, who
22 shall maintain the identity of the source of the fees. Subject to
23 appropriation, the department may retain three percent of the money
24 collected under this subsection to cover the costs in administering
25 this subsection.

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

1 (c) The department shall collect an additional fee of \$1 for
2 the issuance or renewal of a personal identification card,
3 including a duplicate personal identification card or a personal
4 identification card issued or renewed over the Internet or by other
5 electronic means, to pay the costs of the Donor Education,
6 Awareness, and Registry Program of Texas, established under Chapter
7 49, Health and Safety Code, and, subject to Section 113.104, Health
8 and Safety Code, of the Texas Organ, Tissue, and Eye Donor Council,
9 established under Chapter 113 [~~fund the anatomical gift educational~~
10 ~~program established under Chapter 49~~], Health and Safety Code, if
11 the person applying for or renewing a personal identification card
12 opts to pay the additional fee. The department shall remit fees
13 collected under this subsection to the comptroller, who shall
14 maintain the identity of the source of the fees. Subject to
15 appropriation, the department may retain three percent of the money
16 collected under this subsection to cover the costs in administering
17 this subsection.

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

20 Sec. 502.1745. VOLUNTARY FEE. (a) The department shall
21 provide to each county assessor-collector the educational
22 materials for prospective donors provided as required by the Donor
23 Education, Awareness, and Registry Program of Texas under Chapter
24 49, Health and Safety Code. A county assessor-collector shall make
25 the educational materials available in each office authorized to
26 accept applications for registration of motor vehicles.

27 (b) A county assessor-collector shall collect an additional

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

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

14 SECTION 9. Notwithstanding any other provision of law, not
15 more than 25 percent of the money collected under Section 502.1745,
16 Transportation Code, as added by this Act, may be deposited in the
17 state highway fund for the initial costs estimated to be incurred by
18 the Texas Department of Transportation in the state fiscal biennium
19 beginning September 1, 2005, to implement the changes in law made by
20 this Act.

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

24 (1) the commissioner of state health services for the
25 Department of State Health Services;

26 (2) the public safety director of the Department of
27 Public Safety of the State of Texas; and

1 (3) the executive director of the Texas Department of
2 Transportation.

3 (b) Promptly after this Act takes effect, the governor shall
4 appoint five professional and two public members to the Texas
5 Organ, Tissue, and Eye Donor Council. In appointing the
6 professional members, the governor shall appoint one person to a
7 term expiring February 1, 2007, two persons to a term expiring
8 February 1, 2009, and two persons to a term expiring February 1,
9 2011. In appointing the public members, the governor shall appoint
10 one person to a term expiring February 1, 2007, and one person to a
11 term expiring February 1, 2009.

12 SECTION 11. (a) The Department of State Health Services
13 shall contract with an organization for the establishment and
14 maintenance of a registry for organ, tissue, and eye donors in
15 accordance with Chapter 49, Health and Safety Code, as amended by
16 this Act, and ensure the organization establishes the registry not
17 later than September 1, 2006.

18 (b) The Department of Public Safety of the State of Texas
19 must be in compliance with the changes in law made by this Act to
20 Subsection (g), Section 521.421, and Subsection (c), Section
21 521.422, Transportation Code, related to duplicate or changed
22 licenses or personal identification cards and related to
23 transactions conducted over the Internet or by other electronic
24 means not later than June 1, 2006.

25 SECTION 12. (a) Except as provided by Subsection (b) of
26 this section, this Act takes effect immediately if it receives a
27 vote of two-thirds of all the members elected to each house, as

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2005.

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