

By: Goolsby

H.B. No. 1725

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 by an organ procurement organization through  
18 the Organ Procurement and Transplantation Network established  
19 under 42 U.S.C. Section 274 without regard to whether any offered  
20 organs are actually accepted for transplantation, the registered  
21 donor's named beneficiary is 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  
25 through the Organ Procurement and Transplantation Network to verify  
26 the organization made the offer.

27           (c) Death benefits are due and payable only to the extent

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

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

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

19 SECTION 3. (a) The executive commissioner of the Health and  
20 Human Services Commission shall adopt the rules and the Department  
21 of State Health Services shall establish the procedures necessary  
22 to implement Chapter 695, Health and Safety Code, as added by this  
23 Act, not later than June 1, 2008.

24 (b) Notwithstanding Chapter 695, Health and Safety Code, a  
25 person may not register as a registered donor with the Department of  
26 State Health Services under that chapter before September 1, 2008.

27 (c) Section 695.005, Health and Safety Code, as added by

1 this Act, applies only to organ transplant services provided on or  
2 after January 1, 2008.

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

11 SECTION 5. This Act takes effect September 1, 2007.