

BILL ANALYSIS

H.B. 2027
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Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

As of January 2009, more than 98,000 Americans, including 8,000 Texans, awaited life-saving organ transplants. The vast majority of organs available for transplant in the United States come from deceased donors, also called anatomical donors. Each deceased donor may give as many as seven solid organs for transplantation, in addition to eyes and numerous tissues. Anatomical gifts may be made for the purposes of transplantation, therapy, research, or education.

In 2006, the National Conference of Commissioners on Uniform State Law constructed the Revised Uniform Anatomical Gift Act (2006 UAGA) to facilitate organ donation, the result of three years of active participation among numerous entities in an effort to create uniformity among state laws regarding organ donation. The 2006 UAGA, which relates only to the recovery of certain parts from deceased donors, strengthens the language expressly barring a person from "making, amending, or revoking" an anatomical gift of the donor's parts if the donor made a gift of those parts. The 2006 UAGA advocates expansion of the list of individuals who are authorized to make an anatomical gift on a donor's behalf both during and after the donor's life, and provisions for the making of an anatomical gift on a donor registry, in addition to donor cards and driver's licenses.

H.B. 2027 revises current organ donation provisions to conform with changes suggested by the 2006 UAGA.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2027 may be cited as the Revised Uniform Anatomical Gift Act. The bill revises current anatomical gift provisions to conform with changes suggested by the Revised Uniform Anatomical Gift Act (2006 UAGA). The bill amends the Health and Safety Code to adopt the Revised Uniform Anatomical Gift Act, applicable to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

H.B. 2027 establishes the persons authorized to make an anatomical gift of a donor's body or part for the purpose of transplantation, therapy, research, or education before a donor's death, including the donor, if an adult, an emancipated minor, or a minor at least 16 years old and authorized to apply for a driver's license; an agent of the donor, unless prohibited by a medical power of attorney or other record; a parent of the donor, if the donor is an unemancipated minor; or the donor's guardian.

H.B. 2027 establishes the manner in which a donor may make an anatomical gift, including by making an affirmative statement on the donor's driver's license or identification card; in a will; during a terminal illness or injury by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; by a donor card or other record; or through a donor registry. The bill provides for signing and witnessing of a donor record, if the donor or other person is physically unable to sign the record. The bill specifies that revocation,

suspension, expiration, or cancellation of a driver's license or identification card or invalidation of a will does not invalidate an anatomical gift.

H.B. 2027 establishes procedures by which a donor or other person authorized to make an anatomical gift may amend or revoke the gift before the donor's death.

H.B. 2027 establishes procedures for an individual to refuse to make an anatomical gift of the individual's body or part, and procedures for an individual who has made a refusal to amend or revoke the refusal. The bill specifies that, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift bars all other persons from making an anatomical gift of the individual's body or part, except that a reasonably available parent of an unemancipated minor who dies may revoke the minor's refusal.

H.B. 2027 sets out provisions relating to the preclusive effect of an anatomical gift, amendment, or revocation. The bill bars a person, in the absence of an express, contrary indication by the donor, from making, amending, or revoking an anatomical gift or amendment made before a donor's death. The bill specifies that a revocation of an anatomical gift is not a refusal and does not bar another person from making an anatomical gift. The bill provides that if a donor who is an unemancipated minor dies, a parent of the minor who is reasonably available, is authorized to revoke or amend an anatomical gift. The bill specifies that, in absence of an express, contrary indication by the donor, an anatomical gift of a part or an indication of the purpose for a gift is not a refusal or limitation in regard to other parts or purposes.

H.B. 2027 establishes the classes of persons, who, if readily available, are authorized to make an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education and establishes the order of priority in which they are authorized to exercise that authority. The bill specifies that if more than one member of a class is entitled to make an anatomical gift, a member of the class is authorized to make a gift unless that member knows of an objection by another member of the class, and that the gift may be made only by a majority of the members of the class who are reasonably available if an objection is known. The bill prohibits a person from making an anatomical gift if, at the time of the decedent's death, a person in a prior class is reasonably available to make or to object to an anatomical gift.

H.B. 2027 establishes the manner of making, amending, or revoking an anatomical gift of a decedent's body or part. The bill specifies that a revocation is effective only if, before an incision has been made to remove a part from the donor's body or before the initiation of invasive procedures to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

H.B. 2027 establishes the persons who may receive an anatomical gift and establishes the means of determining the recipient or purpose of the gift if no recipient is specified, if there is more than one purpose set forth but the purposes are not set forth in any priority, or if the gift cannot be used for a purpose that was specified. The bill specifies that if an anatomical gift does not pass pursuant to the applicable criteria, or the decedent's body or part is not used for the reasons set forth in the bill, custody of the body or part passes to the person under obligation for disposal. The bill prohibits a person from accepting an anatomical gift if the person knows that the gift is not effectively made or if the person knows that the decedent made a refusal that is not revoked. The bill specifies that if a person knows that an anatomical gift is made on a document of gift, the person is deemed to know any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document.

H.B. 2027 requires the donor card, or the driver's license indicating an affirmative statement of gift, of a person who is involved in an accident or other trauma to accompany the person to the hospital or other health care facility.

H.B. 2027 specifies that a document of gift is not required to be delivered during the donor's lifetime to be effective. The bill requires a person in possession of an individual's document of gift or refusal to make an anatomical gift, on or after the individual's death, to allow examination and copying of the document or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass.

H.B. 2027 sets out the rights and duties of a procurement organization, relating to determining whether an individual has made an anatomical gift, conducting any reasonable examination necessary to ensure medical suitability of an anatomical gift, conducting a reasonable search for the parents of a deceased minor and providing them with an opportunity to revoke or amend the gift or the refusal, and making a reasonable search for any person having priority to make an anatomical gift on behalf of a prospective donor. The bill specifies that the rights of a person to which a part is passed under a written commitment are superior to the right of all others with respect to the part, authorizes the person to accept or reject an anatomical gift wholly or partly, and authorizes the person to allow an anatomical gift of a whole body to be embalmed, buried, or cremated. The bill requires the person to which a gift of a part passed, on the death of the donor and before embalming, burial, or cremation, to cause the part to be removed without unnecessary mutilation. The bill prohibits the physician who attends the decedent at death or the physician who determines the time of the decedent's death from participating in the procedures for removing or transplanting a part from the decedent. The bill authorizes a physician or technician to remove a donated part from the body of a donor that the physician or technician is qualified to remove.

H.B. 2027 requires each hospital in Texas to enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts. The bill requires each hospital to have a protocol that ensures its maintenance of an effective donation system in order to maximize organ, tissue and eye donation. The bill sets forth requirements for the protocol.

H.B. 2027 makes it a Class A misdemeanor offense for a person to, for valuable consideration, knowingly purchase or sell a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death. The bill authorizes the actor, if the conduct also constitutes an offense under other law, to be prosecuted under this provision, the other law, or both. The bill authorizes a person to charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

H.B. 2027 makes it a Class A misdemeanor offense for a person to, in order to obtain a financial gain, intentionally falsify, forge, conceal, deface, or obliterate a document of gift, an amendment or revocation of a gift, or a refusal. The bill authorizes a person, if such conduct also constitutes an offense under other law, to be prosecuted under this provision, the other law, or both.

H.B. 2027 sets out provisions relating to immunity from liability in a civil action, criminal prosecution, or administrative proceeding for a person who acts in good faith in accordance with the bill, except in the case of an act or omission of the person that is intentional, willfully or wantonly negligent, or done with conscious indifference, or reckless disregard. The bill defines "good faith" in determining the appropriate person authorized to make a donation to mean making a reasonable effort to locate and contact the member or members of the highest priority class who are reasonably available at or near the time of death. The bill specifies that neither a person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

H.B. 2027 sets out provisions relating to the law governing the validity of the choice of law as to its execution or interpretation, and the presumption of validity.

H.B. 2027 defines "registry program" to mean the donor education, awareness, and registry program established and known as the Glenda Dawson Donate Life-Texas Registry. The bill requires the Department of State Health Services (DSHS), in consultation with DPS and organ procurement organizations, to establish the registry program, and requires any program or component of a program that DSHS establishes under the bill to be known as the Glenda Dawson Donate Life-Texas Registry. The bill requires DSHS to affiliate with an entity, such as a national or state association concerned with organ donation, to promote the registry program. The bill requires DSHS to 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 and sets out provisions relating to the registry. The Internet-based registry is required to be maintained in a manner that allows procurement organizations immediately to access donation information 24 hours a day, seven days a week through electronic and telephonic methods. The bill sets out provisions for designing and distributing educational materials for prospective donors; conducting anatomical donation education activities in Texas; for educating residents about anatomical gifts; implementing a training program for appropriate DPS and Texas Department of Transportation employees on the benefits of anatomical donations and the procedures for individuals to be added to the registry; educating health care providers and attorneys in Texas about anatomical gifts and encouraging attorneys to provide organ donation information to clients seeking advice for end-of-life decisions; encouraging medical and nursing schools in Texas to include mandatory organ donation education in the school's curricula; and encouraging medical schools in Texas to require a physician in a neurology or neurosurgery residency program to complete an advanced course in organ donation education.

H.B. 2027 sets out provisions relating to the effect of an anatomical gift on an advance directive if a prospective donor has a declaration or advance directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure suitability of a part for transplantation or therapy. The bill defines "advance directive," "declaration," and "health-care decision."

H.B. 2027 requires consideration to be given, in applying and construing the provisions of the bill, to the need to promote uniformity of the law with respect to the subject matter among states that enact a substantially similar law.

H.B. 2027 modifies, limits, and supersedes the provisions of the federal Electronic Signatures in Global and National Commerce Act, but it does not modify, limit, or supersede the provision of the act regarding the prohibition against invalidating contracts and transactions with electronic signatures, nor does it authorize electronic delivery of certain notices described in that act.

H.B. 2027 defines "adult," "agent," "anatomical gift," "commissioner," "decedent," "department," "disinterested witness," "document of gift," "donor," "donor registry," "driver's license," "eye bank," "guardian," "hospital," "identification card," "imminent death," "know," "minor," "organ procurement organization," "parent," "part," "person," "physician," "procurement organization," "prospective donor," "reasonably available," "recipient," "record," "refusal," "sign," "state," "technician," "timely notification," "tissue," "tissue bank," "transplant hospital," and "visceral organ."

H.B. 2027 repeals provisions of the Health and Safety Code relating to the Donor Education, Awareness, and Registry Program of Texas and the Texas Anatomical Gift Act, and provisions relating to persons who may consent or object to removal of tissue or a body part. The bill repeals provisions of the Transportation Code relating to providing a person's donor card or driver's license indicating donor status to a hospital and relating to providing notification to a procurement organization. The bill makes conforming changes in the Health and Safety Code, the Transportation Code, and the Occupations Code and reflects a recodification change in the Insurance Code.

H.B. 2027 repeals the following provisions of the Health and Safety Code:

- Chapter 49
- Chapter 692
- Section 693.004

H.B. 2027 repeals the following sections of the Transportation Code:

- Section 521.403
- Section 521.404

H.B. 2027 specifies that, notwithstanding the repeal of Chapter 49, Health and Safety Code, the Glenda Dawson Donate Life-Texas Registry is continued in effect in accordance with provisions of the bill.

EFFECTIVE DATE

September 1, 2009.