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H.106

Introduced by Representative Till of Jericho

Referred to Committee on

Date:

Subject: Health; anatomical gift; organ donation; presumed consent

Statement of purpose of bill as introduced: This bill proposes to presume that all adult Vermont residents consent to organ donation upon death unless an individual specifically refuses to make an anatomical gift.

An act relating to presumed consent for organ donation

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. chapter 111 is added to read:

CHAPTER 111. ANATOMICAL GIFTS

§ 5251. DEFINITIONS

As used in this chapter:

(1) “Agent” means an individual authorized to make health care decisions on the principal’s behalf by an advance directive executed pursuant to chapter 231 of this title or by a health care power of attorney executed pursuant to the laws of this or another state.

1           (2) “Anatomical gift” means a donation of one or more parts of a human  
2           body to take effect after the donor’s death for the purpose of transplantation,  
3           therapy, research, or education.

4           (3) “Disinterested witness” means a witness other than the spouse, child,  
5           parent, sibling, grandchild, grandparent, or guardian of a prospective donor or  
6           of an individual who refuses to make an anatomical gift, or another adult who  
7           exhibited special care and concern for the prospective donor or individual. The  
8           term does not include a potential recipient of the anatomical gift.

9           (4) “Donor” means an individual whose body part or parts are the  
10          subject of an anatomical gift.

11          (5) “Eye bank” means a person that is licensed, accredited, or regulated  
12          under federal law or the laws of Vermont or any other state to engage in the  
13          recovery, screening, testing, processing, storage, or distribution of human eyes  
14          or portions of human eyes.

15          (6) “Organ procurement organization” means a person designated by the  
16          Secretary of the U.S. Department of Health and Human Services as an organ  
17          procurement organization.

18          (7) “Procurement organization” means an eye bank, an organ  
19          procurement organization, or a tissue bank.

1           (8) “Refusal” means a record created under section 5254 of this title that  
2           expressly states an intent to bar other persons from making an anatomical gift  
3           of an individual’s body parts.

4           (9) “Tissue” means a portion of the human body other than an organ or  
5           an eye. The term does not include blood unless the blood is donated for the  
6           purpose of research or education.

7           (10) “Tissue bank” means a person that is licensed, accredited, or  
8           regulated under federal law or under the laws of Vermont or any other state to  
9           engage in the recovery, screening, testing, processing, storage, or distribution  
10           of tissue.

11           (11) “Vermont resident” means an individual domiciled in Vermont as  
12           evidenced by an intent to maintain a principal dwelling place in Vermont  
13           indefinitely and to return to Vermont if temporarily absent, coupled with an act  
14           or acts consistent with that intent.

15           § 5252. PRESUMED CONSENT

16           All Vermont residents 18 years of age or older shall be presumed to consent  
17           to making an anatomical gift of some or all of their organs, eyes, tissues, or a  
18           combination thereof upon their death for the purpose of transplantation,  
19           therapy, research, or education. Consent shall not be presumed for the  
20           donation of a resident’s entire body for research purposes unless the donor  
21           makes an affirmative gift of his or her entire body for research purposes in an

1 advance directive executed pursuant to chapter 231 of this title; in a will; or in  
2 another written record signed by the donor, or by another individual acting at  
3 the direction of the donor if the donor is physically unable to sign, and  
4 witnessed by at least two adults.

5 § 5253. CONSENT FOR MINORS

6 A parent or guardian of an unemancipated minor may make an anatomical  
7 gift of some or all of the minor's organs, eyes, tissues, or a combination thereof  
8 upon the minor's death.

9 § 5254. REFUSAL TO MAKE AN ANATOMICAL GIFT

10 (a) A Vermont resident may refuse to make an anatomical gift of the  
11 individual's body part or parts by:

12 (1) including a specific refusal in an advance directive executed  
13 pursuant to chapter 231 of this title, which may be enforced by the agent  
14 named in the advance directive;

15 (2) creating a written record indicating that the individual is unwilling to  
16 make an anatomical gift, signed by:

17 (A) the individual; or

18 (B) subject to subsection (b) of this section, another individual acting  
19 at the direction of the individual if the individual is physically unable to sign;

1           (3) including a specific provision in the individual's will, regardless of  
2           whether the will is admitted to probate or invalidated after the individual's  
3           death;

4           (4) completing an anatomical gift refusal form provided by the  
5           Department of Motor Vehicles pursuant to 23 V.S.A. § 618a; or

6           (5) any form of communication made by the individual during the  
7           individual's terminal illness or injury addressed to at least two adults, at least  
8           one of whom is a disinterested witness.

9           (b) A record signed pursuant to subdivision (a)(2)(B) of this section must:

10           (1) be witnessed by at least two adults, at least one of whom is a  
11           disinterested witness, who have signed at the request of the individual; and

12           (2) state that it has been signed and witnessed as provided in subdivision  
13           (1) of this subsection.

14           (c) An individual who has made a refusal may amend or revoke the refusal:

15           (1) in the manner provided in subsection (a) of this section for making a  
16           refusal;

17           (2) by subsequently taking affirmative steps to make an anatomical gift  
18           that are inconsistent with the refusal; or

19           (3) by destroying or canceling, with the intent to revoke the refusal, the  
20           record evidencing the refusal or the portion of the record used to make the  
21           refusal.

1        (d) In the absence of an express, contrary indication by the individual set  
2        forth in the refusal, an individual's unrevoked refusal to make an anatomical  
3        gift of the individual's body part or parts bars all other persons from making an  
4        anatomical gift of the individual's body part or parts.

5        § 5255. COORDINATION OF PROCUREMENT AND USE

6        Each hospital in this State shall enter into agreements or affiliations with  
7        procurement organizations for coordination of procurement and use of  
8        anatomical gifts.

9        § 5256. SALE OR PURCHASE OF PARTS PROHIBITED

10       (a) Except as otherwise provided in subsection (b) of this section, no  
11       person shall, for valuable consideration, knowingly purchase or sell a part for  
12       transplantation or therapy if removal of a part from an individual is intended to  
13       occur after the individual's death.

14       (b) A person may charge a reasonable amount for the removal, processing,  
15       preservation, quality control, storage, transportation, implantation, or disposal  
16       of a part.

17       (c) A person who violates subsection (a) of this section shall be imprisoned  
18       not more than five years or fined not more than \$50,000.00, or both.

1     § 5257. SPECIFIC REFUSAL REGISTRY

2           (a) The Department of Health shall ensure that a registry is developed and  
3     maintained to identify individuals who have specifically refused to make an  
4     anatomical gift.

5           (b) The Department of Motor Vehicles is authorized to enter into a data use  
6     agreement with an organ procurement organization for the purpose of  
7     transmitting information identifying Vermont residents who, at the time of  
8     issuance of a driver's license or driver's license renewal, have specifically  
9     refused to make an anatomical gift and incorporating that information into a  
10    specific refusal registry maintained by the organ procurement organization.  
11    Such information shall constitute the Vermont Specific Refusal Registry.

12          (c) The Specific Refusal Registry shall:

13           (1) contain a database naming all individuals who have specifically  
14    refused to make an anatomical gift and provide a mechanism for a refusal to be  
15    removed from the database;

16           (2) be accessible to other organ procurement organizations to allow  
17    them to obtain relevant information from the Registry to determine, at or near  
18    the time of a prospective donor's death, whether the prospective donor has  
19    specifically refused to make an anatomical gift; and

20           (3) be accessible 24 hours per day, seven days per week for the purposes  
21    specified in subdivisions (1) and (2) of this subsection.

1        (d) Personally identifiable information contained in the Specific Refusal  
2        Registry about a prospective donor shall not, except with the express consent  
3        of the prospective donor, be used or disclosed by any organ procurement  
4        organization for any purpose other than to determine, at or near the time of the  
5        death of the prospective donor, whether such prospective donor has  
6        specifically refused to make an anatomical gift.

7        (e) Nothing in this section shall be construed to prohibit any person from  
8        creating or maintaining a refusal registry that is not established under this  
9        section, provided that any such registry shall comply with the provisions of  
10       subsections (c) and (d) of this section.

11       § 5258. HONORING DONOR INTENT

12       An individual's decision to refuse to make an anatomical gift shall be  
13       honored. In the absence of such a refusal, health care providers and  
14       procurement organizations may presume that a prospective donor consents to  
15       the donation of his or her own organs, tissues, eyes, or a combination thereof,  
16       and may take appropriate actions to effect the anatomical gift.

17       § 5259. RULEMAKING

18       The Commissioner of Health may adopt rules pursuant to 3 V.S.A.  
19       chapter 25 as needed to carry out the provisions of this chapter.



1 Sec. 2. 23 V.S.A. § 618a is amended to read:

2 § 618a. ANATOMICAL GIFT ACT; ~~DONOR REFUSAL~~; FORM

3 ~~The~~ At the time of application for a new or renewal operator's license, the  
4 Commissioner shall provide a form which, upon the licensee's execution of the  
5 form, shall serve as a ~~document of~~ refusal to make an anatomical gift under  
6 18 V.S.A. ~~chapter 110~~ § 5254. An indicator shall be placed on the license of  
7 any person who has executed an anatomical gift refusal form in accordance  
8 with this section.

9 Sec. 3. REPEAL

10 18 V.S.A. chapter 110 (Revised Uniform Anatomical Gift Act) is repealed.

11 Sec. 4. EFFECTIVE DATE

12 This act shall take effect on January 1, 2018.