

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 265

(Senator Waldstreicher)

Judicial Proceedings

Health and Government Operations

Estates and Trusts - Maryland Revised Uniform Anatomical Gift Act - Revisions

This bill removes specified limitations on the use of certain anatomical gifts, allowing for anatomical gifts made with only a general intent to make an anatomical gift to be used for research or education as well as transplantation or therapy (with the exception of gifts for which a document of gift was registered before July 1, 2022). The bill also (1) establishes that, beginning July 1, 2022, a donor may designate specified purposes for the anatomical gift and (2) by July 1, 2022, related educational materials must be produced and displayed and made available at MVA locations. The bill also repeals specified requirements of first responders and hospitals and modifies a requirement applicable to procurement organizations. **The bill takes effect January 1, 2022.**

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase by \$23,200 in FY 2022 only. Revenues are not affected.

Local Effect: The bill is not expected to directly affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill expands the purposes for which an anatomical gift may be used if the document of gift specifies only a general intent to make an anatomical gift by words such as “donor,” “organ donor,” or “body donor,” or by a symbol or statement of similar import. It expands the purposes for which the anatomical gift may be used to include

research or education in addition to the existing authorized purposes of transplantation or therapy. However, if a donor registered such a document of gift before July 1, 2022, the anatomical gift may only be used for transplantation or therapy. The bill similarly repeals a limitation on the use of an anatomical gift, to only transplantation or therapy, that applies to an anatomical gift made in a document of gift that does not name one of a number of persons to whom statute authorizes an anatomical gift to be made and does not identify the purpose of the gift.

Additionally, the bill establishes that, beginning July 1, 2022, a person who elects to be a donor may designate any of the following purposes for the anatomical gift: (1) research and education; and (2) transplantation and therapy.

By July 1, 2022, the organ procurement organization or its designated affiliate must produce and provide to each Motor Vehicle Administration (MVA) location educational materials that include definitions of (1) anatomical gift; (2) research and education; and (3) transplantation and therapy. Each MVA location must prominently display the educational materials and make them available to prospective donors on request. (Pursuant to current law, “organ procurement organization” means a person designated by the Secretary of the U.S. Department of Health and Human Services as an organ procurement organization.)

By July 1, 2022, MVA must adopt regulations to carry out the bill’s provisions that allow for a donor to designate the purposes for the anatomical gift and that require educational materials to be produced and displayed and made available at MVA locations.

The bill also repeals requirements that specified first responders or hospitals conduct a reasonable search of an individual believed to be dead or whose death is imminent for documents related to an individual’s status as an anatomical gift donor. In addition, the bill requires procurement organizations – to which an individual who is dead or whose death is imminent has been referred by a hospital to ascertain whether the individual has made an anatomical gift – to make a reasonable search of any *national and local* donor registry (in place of any donor registry that the hospital knows exists) for the geographical area in which the individual resides.

Current Law:

Maryland Revised Uniform Anatomical Gift Act

The Maryland Revised Uniform Anatomical Gift Act (Title 4, Subtitle 5 of the Estates and Trusts Article) governs donations of all or part of a human body (that take effect after the

donor's death) for the purpose of transplantation, therapy, research, training, or education. Among other things, the Act specifies:

- the classes of individuals, in order of priority, who may make an anatomical gift of a donor's body or part after the donor's death under certain circumstances;
- how an anatomical gift may be revoked or amended and how an individual may indicate a refusal to make an anatomical gift of the individual's body or part;
- the relation between, and priorities of, actions taken by the donor and other authorized persons, with respect to making, amending, revoking, or refusing an anatomical gift; and
- the resolution of conflicts between an advance directive and an anatomical gift.

Ways for a Donor to Make an Anatomical Gift

A donor may make an anatomical gift (1) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card; (2) by will; (3) during a terminal illness or an injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or (4) a donor card (or other record) or donor registry.

Recipients of Anatomical Gifts

An anatomical gift may be made to the following persons named in a document of gift:

- a hospital, an accredited medical school, a dental school, a college or university, an organ procurement organization, the State Anatomy Board, or a nontransplant tissue bank for research, training, or education;
- an individual designated by the person making the anatomical gift if the individual is the recipient of the part and the transplant can be made; or
- an eye bank or a transplant tissue bank.

"Document of gift" means a donor card or any other record use to make an anatomical gift, and includes a statement or symbol on a driver's license, an identification card, or a donor registry.

If an anatomical gift of one or more specific parts is made in a document of gift that does not name one of the persons above and does not identify the purpose of the gift, the gift passes to the appropriate eye bank, tissue bank, or organ procurement organization, as applicable, and may be used only for transplantation or therapy.

In addition, if a document of gift specifies only a general intent to make an anatomical gift by words such as “donor,” “organ donor,” or “body donor,” or by a symbol or statement of similar import, the gift passes to the appropriate eye bank, tissue bank, or organ procurement organization, as applicable, and may be used only for transplantation or therapy.

Reasonable Search for Document of Gift or Refusal

The following persons must make a reasonable search of an individual who the person reasonably believes is dead or whose death is imminent for a document of gift or any other information identifying the individual as a donor or as an individual who made a refusal:

- a law enforcement officer, firefighter, paramedic, or any other emergency rescuer finding the individual; and
- if no other source of the information is immediately available, a hospital, as soon as practical after the individual’s arrival at the hospital.

If the document of gift or a refusal to make an anatomical gift is located before an individual or deceased individual is taken to a hospital, the person responsible for conducting the search must send the document to the hospital. A person is not subject to criminal or civil liability for failing to discharge these duties but may be subject to administrative sanctions.

Reasonable Search of Donor Registry

Whenever a hospital refers an individual who is dead or whose death is imminent to a procurement organization to ascertain whether the individual has made an anatomical gift, the organization must make a reasonable search of any donor registry that the hospital knows exists for the geographical area in which the individual resides.

State Expenditures: TTF expenditures increase by \$23,200 in fiscal 2022 only for MVA programming costs to allow for donors’ designations of the purposes for their anatomical gift to be recorded during driver’s license and identification card transactions. The bill’s provisions authorizing a person to designate the purposes for their anatomical gift and requiring educational materials to be produced and displayed and made available at MVA locations are otherwise expected to be implemented with existing resources, with the educational materials produced and provided by “the organ procurement organization or its designated affiliate.”

Additional Information

Prior Introductions: SB 869 of 2020, a similar bill, passed the House with amendments and was referred to the House Health and Government Operations Committee, but no further action was taken. Its cross file, HB 1133, received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Designated Cross File: HB 301 (Delegates Shetty and R. Lewis) - Health and Government Operations.

Information Source(s): Maryland Department of Transportation; Maryland Department of Health; Baltimore, Garrett, and Montgomery counties; City of Laurel; Register of Wills; Department of State Police; Donate Life Maryland; The Living Legacy Foundation of Maryland; Department of Legislative Services

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