

## CHAPTER 52

## ( SB 71 )

AN ACT relating to organ donation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 311.1925 is amended to read as follows:

- (1) Subject to subsections (2) and (3) of this section and unless barred by KRS 311.1921 or 311.1923, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:
  - (a) An agent of the decedent at the time of death who could have made an anatomical gift under KRS 311.1915(2) immediately before the decedent's death;
  - (b) The spouse of the decedent;
  - (c) Adult children of the decedent;
  - (d) Parents of the decedent;
  - (e) Adult siblings of the decedent;
  - (f) Adult grandchildren of the decedent;
  - (g) Grandparents of the decedent;~~and~~
  - (h) The persons who were acting as the guardians of the person of the decedent at the time of death; **and**
  - (i) ***Another adult who is related to the decedent by blood, marriage, or adoption, or who exhibited special care and concern for the decedent.***
- (2) If there is more than one (1) member of a class listed in subsection (1)(a), (c), (d), (e), (f), (g), ~~or~~ (h), **or (i)** of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under KRS 311.1929 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.
- (3) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (1) of this section is reasonably available to make or to object to the making of an anatomical gift.

➔Section 2. KRS 311.1929 is amended to read as follows:

- (1) An anatomical gift may be made to the following persons named in the document of gift:
  - (a) A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education ***for the advancement of donation and transplantation science;***
  - (b) Subject to subsection (2) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or
  - (c) An eye bank or tissue bank.
- (2) If an anatomical gift to an individual under subsection (1)(b) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (7) of this section in the absence of an express, contrary indication by the person making the anatomical gift.
- (3) If an anatomical gift of one (1) or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:
  - (a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank;

- (b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank;
  - (c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ; or
  - (d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.
- (4) For the purpose of subsection (3) of this section, if there is more than one (1) purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education *for the advancement of donation and transplantation science*.
- (5) If an anatomical gift of one (1) or more specific parts is made in a document of gift that does not name a person described in subsection (1) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation, ~~or~~ therapy, *or research and education for the advancement of donation and transplantation*, and the gift passes in accordance with subsection (7) of this section.
- (6) 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 may be used only for transplantation, ~~or~~ therapy, *or research and education for the advancement of donation and transplantation science*, and the gift passes in accordance with subsection (7) of this section.
- (7) For purposes of subsections (2), (5), and (6) of this section the following rules apply:
- (a) If the part is an eye, the gift passes to the appropriate eye bank;
  - (b) If the part is tissue, the gift passes to the appropriate tissue bank, except that a tissue bank shall not receive an ovum or sperm for the purpose of creating an embryo to be used in therapy, research, or education; or
  - (c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.
- (8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b) of this section, passes to the organ procurement organization as custodian of the organ.
- (9) If an anatomical gift does not pass pursuant to subsections (1) to (8) of this section or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.
- (10) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under KRS 311.1917 or 311.1927 or if the person knows that the decedent made a refusal under KRS 311.1921 that was not revoked. For purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.
- (11) Except as otherwise provided in subsection (1)(b) of this section, nothing in KRS 311.1911 to 311.1959 affects the allocation of organs for transplantation or therapy.
- ➔Section 3. KRS 311.1935 is amended to read as follows:
- (1) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Transportation Cabinet, the registry created under KRS 311.1947, and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.
  - (2) A procurement organization shall be allowed reasonable access to information in the records of the registries listed in subsection (1) of this section to ascertain whether an individual at or near death is a donor.
  - (3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable *standard medical evaluation or examination* ~~of records~~ necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, *from the evaluation through the recovery of a medically suitable donor's gift*, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows

that the individual expressed a contrary intent. Measures necessary to ensure the medical suitability of the part from a prospective donor may be administered unless it is determined that the administration of those measures would not provide the prospective donor with appropriate end-of-life care, or it can be anticipated by reasonable medical judgment that such measures would result in or hasten the prospective donor's death.

- (4) Unless prohibited by law other than KRS 311.1911 to 311.1959, at any time after a donor's death, the person to which a part passes under KRS 311.1929 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.
- (5) Unless prohibited by law other than KRS 311.1911 to 311.1959, an examination under subsection (3) or (4) of this section may include an examination of all medical and dental records of the donor or prospective donor.
- (6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.
- (7) Upon referral by a hospital under subsection (1) of this section, a procurement organization shall make a reasonable search for any person listed in KRS 311.1925 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.
- (8) Subject to KRS 311.1929(9) and 311.1953, the rights of the person to which a part passes under KRS 311.1929 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and KRS 311.1911 to 311.1959, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under KRS 311.1929, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.
- (9) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.
- (10) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

➔Section 4. KRS 311.1943 is amended to read as follows:

- (1) A person that acts in accordance with KRS 311.1911 to 311.1959 or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.
- (2) Neither the 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.
- (3) In determining whether an anatomical gift has been made, amended, or revoked under KRS 311.1911 to 311.1959, a person may rely upon representations of an individual listed in KRS 311.1925(1)(b), (c), (d), (e), (f), ~~(g)~~ (g), (h), or (i) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

➔Section 5. KRS 311.1947 is amended to read as follows:

- (1) Contingent upon the availability of funding, the Cabinet for Health and Family Services shall facilitate the establishment of a statewide electronic registry for organ and tissue donation for transplantation, **therapy, education, and research for the advancement of donation and transplantation science** ~~purposes~~. The cabinet may contract with a public or private nonprofit entity to perform gatekeeper functions of the registry that include but are not limited to the operation, maintenance, privacy, and security of the registry.
- (2) An ongoing collaboration shall be established among the Transportation Cabinet, the Cabinet for Health and Family Services, the Kentucky Circuit Court Clerks Trust for Life, the Kentucky Hospital Association, the Kentucky Medical Association, and the federally certified organ and tissue procurement organizations that operate in Kentucky to develop strategies for the operation of the registry. Strategies shall include but not be limited to:
  - (a) Donor designation at the time of application or renewal of a driver's license;

- (b) Donor designation at the time of application or renewal of a state identification card;
  - (c) Donor designation on the Commonwealth's single sign-on system;
  - (d) Other online registration as a donor;
  - (e) Removal or exit from the registry;
  - (f) Timely access to the registry by relevant parties in accordance with federal laws and regulations relating to organ and tissue donation and procurement for transplantation purposes; and
  - (g) Evaluation of the effectiveness of the registry.
- (3) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the provisions of this section.

**Signed by Governor March 22, 2023.**