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Introduced by Representatives Rachelson of Burlington, Burke of Brattleboro,
Clarkson of Woodstock, Gonzalez of Winooski, Lenex of
Shelburne, Lippert of Hinesburg, Pearson of Burlington, Ram
of Burlington, Till of Jericho, and Walz of Barre City

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 110A is added to read:

CHAPTER 110A. ANATOMICAL GIFTS

§ 5231. 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

1 to chapter 231 of this title or by a health care power of attorney executed
2 pursuant to the laws of this or another state.

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

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

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

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

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

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

1 (8) “Refusal” means a record created under section 5234 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 or state law to engage in the recovery, screening,
9 testing, processing, storage, or distribution of tissue.

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

14 § 5232. PRESUMED CONSENT

15 All Vermont residents 18 years of age or older shall be presumed to consent
16 to making an anatomical gift of some or all of their organs, eyes, tissues, or a
17 combination thereof upon their death for the purpose of transplantation,
18 therapy, research, or education. Consent shall not be presumed for the
19 donation of a resident’s entire body for research purposes unless the donor
20 makes an affirmative gift of his or her entire body for research purposes in an
21 advance directive executed pursuant to chapter 231 of this title; in a will; or in

1 another written record signed by the donor, or by another individual acting at
2 the direction of the donor if the donor is physically unable to sign, and
3 witnessed by at least two adults.

4 § 5233. CONSENT FOR MINORS

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

8 § 5234. REFUSAL TO MAKE AN ANATOMICAL GIFT

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

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

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

16 (A) the individual; or

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

19 (3) including a specific provision in the individual's will, whether or not
20 the will is admitted to probate or invalidated after the individual's death;

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

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

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

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

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

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

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

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

16 (3) by destroying or canceling the record evidencing the refusal or the
17 portion of the record used to make the refusal with the intent to revoke the
18 refusal.

19 (d) In the absence of an express, contrary indication by the individual set
20 forth in the refusal, an individual's unrevoked refusal to make an anatomical

1 gift of the individual's body part or parts bars all other persons from making an
2 anatomical gift of the individual's body part or parts.

3 § 5235. COORDINATION OF PROCUREMENT AND USE

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

7 § 5236. SALE OR PURCHASE OF PARTS PROHIBITED

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

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

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

17 § 5237. SPECIFIC REFUSAL REGISTRY

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

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

8 (c) The Specific Refusal Registry shall:

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

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

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

18 (d) Personally identifiable information contained in the Specific Refusal
19 Registry about a prospective donor shall not be used or disclosed by any organ
20 procurement organization except with the express consent of the prospective
21 donor for any purpose other than to determine, at or near the time of the death

1 of the prospective donor, whether such prospective donor has specifically
2 refused to make an anatomical gift.

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

7 § 5238. HONORING DONOR INTENT

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

13 § 5239. RULEMAKING

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

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

17 § 618a. ANATOMICAL GIFT ACT; ~~DONOR~~ REFUSAL; FORM

18 The Commissioner shall provide a form which, upon the licensee's
19 execution, shall serve as a ~~document of~~ refusal to make an anatomical gift
20 under 18 V.S.A. ~~chapter 110~~ § 5234. An indicator shall be placed on the

1 license of any person who has executed an anatomical gift refusal form in
2 accordance with this section.

3 Sec. 3. REPEAL

4 18 V.S.A. chapter 110 (Revised Uniform Anatomical Gift Act) is repealed.

5 Sec. 4. EFFECTIVE DATE

6 This act shall take effect on January 1, 2016.