

A-Engrossed
House Bill 3197

Ordered by the House May 2
Including House Amendments dated May 2

Sponsored by Representative BERGER (at the request of Oregon Donor Program)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires Department of Transportation to transfer **specified** driver license information of anatomical gift donor to procurement organization when requested. Modifies method of revoking donor designation and list of persons authorized to make anatomical gift for deceased person. Modifies duties of hospital personnel related to anatomical gifts upon death of patient. Requires certain persons who find deceased person to make inquiry of donor status and notify procurement organization.

Prohibits procurement organization from reselling or redisclosing personal information provided by Department of Transportation for purposes of facilitating making of anatomical gifts.

A BILL FOR AN ACT

Relating to anatomical gifts; amending ORS 97.950, 97.952, 97.954, 97.958, 97.964, 802.179 and 802.181.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 97.950 is amended to read:

97.950. As used in ORS 97.950 to 97.964:

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Capable" has the meaning given in ORS 127.505 (13).

(3) "Decedent" means an individual who is dead as defined under ORS 432.300. "Decedent" includes a stillborn infant or fetus.

(4) "Document of anatomical gift" means a driver license or identification card endorsed with an appropriate code, a will, an advance directive or other signed document used to make an anatomical gift.

(5) "Donor" means an individual who makes an anatomical gift of all or part of that individual's body.

(6) "Enucleator" means a licensed embalmer, apprentice embalmer or eye bank technician that has completed a course in [*eye enucleation*] **ocular procurement** and has a certificate of competence from an [*agency or*] **Oregon procurement** organization [*designated by the Board of Medical Examiners for the purpose of providing the training*].

(7) "Hospital" means a facility licensed, accredited or approved as a hospital under the laws of any state or a facility operated as a hospital by the United States Government, a state or a subdivision of a state.

(8) "Identification card" means the card described in ORS 807.400 or a comparable provision of the motor vehicle laws of another state.

(9) "Part" means an organ or part thereof, tissue, eye or part thereof, bone, artery, blood, fluid

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 or other portion of a human body.

2 (10) "Physician" means an individual licensed or otherwise authorized to practice medicine un-
3 der the laws of any state.

4 (11) "Procurement organization" means an agency licensed, accredited or approved under the
5 laws of any state for the acceptance, procurement, distribution or storage of human bodies or parts.

6 (12) **"Public health officer" means the State Medical Examiner or a county public health**
7 **officer.**

8 (13) **"Registry" means a centralized, confidential record of individuals who have indicated**
9 **their intention to donate organs, eyes or tissue as an anatomical gift upon their death.**

10 [(12)] (14) "Technician" means an individual who is employed and authorized by a procurement
11 organization to remove or process a part.

12 **SECTION 2.** ORS 97.952 is amended to read:

13 97.952. (1) A capable individual who is at least 18 years of age may be the donor of an ana-
14 tomical gift.

15 (2) An anatomical gift may be made by:

16 (a) A document of anatomical gift signed by the donor. If the donor cannot sign, the document
17 of anatomical gift must be signed by another individual and two witnesses, all of whom have signed
18 at the direction and in presence of the donor and of each other and state that it has been so
19 signed[.]; or

20 (b) **Listing on a registry with the permission of the donor.**

21 (3)(a) An anatomical gift may be made by a designation to be provided on the driver license and
22 identification card of an individual who is at least 18 years of age. The holder of a driver license
23 or identification card desiring to be designated as a donor on the license or card must furnish a
24 statement at the time of application for granting or renewing the license or card in the manner
25 provided by the Department of Transportation. Signature of the license or card shall validate it as
26 a document of anatomical gift. Revocation, cancellation or suspension of a driver license shall not
27 invalidate the anatomical gift. Cancellation of a card or lapse of a license revokes the anatomical
28 gift indorsement, which must be reinstated upon the reinstatement of the license or card. The form
29 prepared by the Department of Transportation and incorporated in its application shall be in all
30 respects a valid document of anatomical gift. **Designation of intent to be a donor of an ana-**
31 **tomical gift on the driver license or identification card of an individual satisfies all require-**
32 **ments for consent to make an anatomical gift and constitutes permission to be placed on a**
33 **registry.**

34 (b) **When requested by a procurement organization that has established a statewide do-**
35 **nor registry of donors in this state, the department shall electronically transfer the name,**
36 **address, birth date and donor designation as listed on the driver license or identification card**
37 **of any person designated as a donor under this subsection. The information transferred to**
38 **a procurement organization shall be treated as confidential by the procurement organization**
39 **and may be used only to expedite the making of anatomical gifts authorized by the donor.**

40 (4) An anatomical gift by will takes effect upon death of the testator, whether the will is pro-
41 bated or not probated. If, after death, the will is declared invalid for testamentary purposes, the
42 validity of the anatomical gift is unaffected.

43 (5) A donor may amend or revoke an anatomical gift not made by will only by:

44 (a) A signed statement;

45 (b) An oral statement made in the presence of two individuals;

1 (c) Any form of communication during a terminal illness or injury addressed to a physician or
2 surgeon;

3 (d) In the case of an anatomical gift made by driver license or identification card application,
4 [lapse of the license or lapse or cancellation of the card or by a statement made and delivered in the
5 manner specified by] **written notification to** the department [of Transportation]; or

6 (e) **Purposeful** destruction, cancellation or mutilation of the document of anatomical gift in the
7 case of an anatomical gift not made by driver license or identification card. **A donor who inten-**
8 **tionally destroys, cancels, or mutilates a document of anatomical gift shall notify a pro-**
9 **urement organization to instruct the organization to remove the name of the donor from**
10 **its registry. If the organization notified does not maintain a registry of Oregon residents, the**
11 **organization shall notify any entity that maintains a registry of donors residing in this state.**

12 (6) The donor of an anatomical gift made by will may amend or revoke the gift in the manner
13 provided for amendment or revocation of wills, or as provided in subsection (5) of this section.

14 (7) An anatomical gift that is not revoked by the donor before death is irrevocable and:

15 (a) Does not require the consent or concurrence of any person after the death of the donor.

16 (b) Shall not be subject to cancellation or substantial revision by persons described in ORS
17 97.954 (1).

18 (8) In the absence of contrary indications by the donor, an anatomical gift of a part is not a
19 refusal to give other parts or a limitation on an anatomical gift under ORS 97.954 or on a removal
20 or release of other parts under ORS 97.956.

21 (9) In the absence of contrary indications by the donor, a revocation or amendment of an ana-
22 tomical gift is not a refusal to make an anatomical gift of a different part.

23 (10) If an individual has amended or revoked an anatomical gift made by driver license or
24 identification card, the department [of Transportation] shall issue a replacement license upon pay-
25 ment by the individual of the department's fee for reissuance of the license or card.

26 (11) Notwithstanding any other requirement of this section, a license, card or document pur-
27 porting to evidence the creation of a valid anatomical gift under the laws of another state shall be
28 valid in this state absent evidence of revocation.

29 (12) Any anatomical gift validly made under ORS 97.275 (1993 Edition) prior to September 9,
30 1995, and not revoked shall continue in effect for its original period of validity.

31 (13) An individual described in subsection (1) of this section or any person authorized in ORS
32 97.954 (1) to make an anatomical gift of all or any part of a decedent's body may delegate such au-
33 thority to any person 18 years of age or older. Such delegation shall be in writing and signed by
34 the person delegating the authority. The person to whom the authority is delegated shall have the
35 same priority under ORS 97.954 (1) as the person delegating the authority.

36 (14) If the individual described in subsection (1) of this section issues more than one authori-
37 zation or donation of anatomical gift for all or any part of the individual's body, only the most re-
38 cent authorization or donation shall be binding.

39 **SECTION 3.** ORS 97.954 is amended to read:

40 97.954. (1) A person within the first applicable listed class among the following listed classes
41 that is available at the time of death or, in the absence of actual notice of a contrary direction by
42 the decedent or actual notice of opposition by a member of the same class or a member of a prior
43 class, may make an anatomical gift of all or a part of the body of a decedent for any authorized
44 purpose:

45 (a) **A person to whom the decedent has granted power of attorney;**

1 [(a)] (b) The spouse of the decedent;

2 [(b)] (c) A son or daughter of the decedent 18 years of age or older;

3 [(c)] (d) Either parent of the decedent;

4 [(d)] (e) A brother or sister of the decedent 18 years of age or older;

5 [(e)] (f) A guardian of the decedent at the time of death;

6 [(f)] (g) A person in the next degree of kindred to the decedent;

7 [(g)] (h) The personal representative of the estate of the decedent;

8 [(h)] (i) The person nominated as the personal representative of the decedent in the decedent's
9 last will; or

10 [(i)] (j) A public health officer.

11 (2) No person, hospital or procurement organization shall accept a gift made by an individual
12 under subsection (1) of this section if:

13 (a) An individual in a prior class is available at the time of death to make an anatomical gift;

14 (b) The individual proposing to make an anatomical gift knows of a refusal or contrary indi-
15 cations by the decedent; or

16 (c) The individual proposing to make an anatomical gift knows of an objection to making an
17 anatomical gift by another member of the individual's class or a member of a prior class.

18 (3) An anatomical gift by an individual authorized under subsection (1) of this section must be
19 made by a document of anatomical gift signed by the individual or the individual's telegraphic, re-
20 corded telephonic or other recorded message, or other form of communication from the individual
21 that is contemporaneously put in written form and signed by the recipient of the communication.

22 (4) An anatomical gift by an individual authorized under subsection (1) of this section may be
23 revoked by any member of the same or a prior class if, before procedures have begun for the re-
24 moval of a part from the body of the decedent, the physician, technician or enucleator removing the
25 part knows of the revocation.

26 **SECTION 4.** ORS 97.958 is amended to read:

27 97.958. (1) *[If, at or near the time of death of a hospitalized patient, there is no medical record that*
28 *the patient has authorized an anatomical gift, the hospital administrator or a representative designated*
29 *by the administrator shall discuss with the patient and family members the option to make or refuse*
30 *to make an anatomical gift. The administrator or representative may request the making of an ana-*
31 *tomical gift under ORS 97.952 or 97.954. The request must be made with reasonable discretion and*
32 *sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based*
33 *upon accepted medical standards. An entry must be made in the medical record of the patient, stating*
34 *the name and affiliation of the person making the request and the name, response and relationship to*
35 *the patient of the individual to whom the request was made. The Department of Human Services shall*
36 *adopt rules to implement this subsection.]* **At or near the time of death of a hospitalized patient,**
37 **the hospital administrator or a representative designated by the administrator shall:**

38 (a) **Notify the appropriate procurement organization of the imminent or actual death of**
39 **the patient; and**

40 (b) **In collaboration with the procurement organization, ensure that readily available**
41 **persons listed in ORS 97.954 are informed of the donor status of the patient and of the option**
42 **to make or refuse to make an anatomical gift under ORS 97.952 or 97.954. Contact must be**
43 **made with reasonable discretion and sensitivity to the circumstances of the persons con-**
44 **tacted. The person designated by the administrator to make a request for an anatomical gift**
45 **under this section must be a representative of a procurement organization or a person who**

1 **has had training offered or approved by a procurement organization in the methodology for**
2 **approaching the family of potential donors.**

3 (2) *[The following persons shall,]* Circumstances permitting, **a law enforcement officer, fire-**
4 **fighter, paramedic or other emergency rescuer or a funeral home representative who finds**
5 **an individual who is deceased shall:**

6 (a) Make a reasonable search for a document of anatomical gift or other information identifying
7 *[the bearer as a donor or as an]* **the individual as a person who has made or** who has refused to
8 make an anatomical gift[:]; **and**

9 *[(a) A law enforcement officer, firefighter, paramedic or other emergency rescuer who finds an in-*
10 *dividual whom the rescuer believes to be dead or near death; and]*

11 *[(b) A hospital, upon the admission of an individual at or near the time of death, if there is not*
12 *immediately available any other source of that information.]*

13 *[(3) If a document of anatomical gift is located by the search required by subsection (2)(a) of this*
14 *section, and the individual is taken to a hospital, the hospital must be notified of the contents of the*
15 *document, if any, and the document must be sent to the hospital.]*

16 *[(4) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been*
17 *authorized under ORS 97.952 or 97.954, or a release and removal of a part has been permitted under*
18 *ORS 97.956, or that a patient or an individual in transit to the hospital is identified as a donor, the*
19 *hospital shall notify an appropriate procurement organization. The hospital shall cooperate in the im-*
20 *plementation of the anatomical gift or release and removal of a part.]*

21 **(b) As soon as is reasonably possible and if the information is known, notify an appro-**
22 **priate procurement organization of the identity of the deceased person and of persons listed**
23 **in accordance with ORS 97.954.**

24 *[(5)]* (3) A person who fails to discharge the duties imposed by this section is not subject to
25 criminal or civil liability.

26 **SECTION 5.** ORS 97.964 is amended to read:

27 97.964. (1) An anatomical gift authorizes any examination necessary to assure medical accepta-
28 bility of the gift for the purposes intended, including but not limited to access to the decedent's
29 medical chart and permission to test a sample of the decedent's blood for communicable diseases.

30 (2) ORS 97.950 to 97.964 are subject to the laws of this state governing autopsies.

31 (3) *[A hospital, physician, medical examiner, enucleator, technician or other person who]* **A person,**
32 **organization, hospital or institution that** acts or makes a good faith effort to act in accordance
33 with ORS 97.950 to 97.964 **or to determine the acceptability of an anatomical gift in accordance**
34 **with a protocol developed by a procurement organization** *[shall not be liable thereby]* **is not li-**
35 **able for those actions** in a civil action or criminal proceeding.

36 (4) An individual who makes an anatomical gift under ORS 97.952 or 97.954 and the individual's
37 estate are not liable for any injury or damage that may result from the making or the use of the
38 anatomical gift.

39 **SECTION 6.** ORS 802.179 is amended to read:

40 802.179. (1) The Department of Transportation, upon request or as required by law, shall disclose
41 personal information from a motor vehicle record to a government agency for use in carrying out
42 its governmental functions.

43 (2) The department shall disclose personal information from a motor vehicle record for use in
44 connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor
45 vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles and

1 dealers by motor vehicle manufacturers, and removal of nonowner records from the original owner
2 records of motor vehicle manufacturers to carry out the purposes of any of the following federal
3 Acts:

- 4 (a) The Automobile Information Disclosure Act.
- 5 (b) The Motor Vehicle Information and Cost Saving Act.
- 6 (c) The National Traffic and Motor Vehicle Safety Act of 1966.
- 7 (d) The Anti-Car Theft Act of 1992.
- 8 (e) The Clean Air Act.

9 (3)(a) If the department determines that a business is a legitimate business, the department shall
10 disclose personal information to the business for use in the normal course of business in:

- 11 (A) Verifying the accuracy of personal information submitted to the business; or
- 12 (B) Correcting personal information submitted to the business, but only in order to:
 - 13 (i) Prevent fraud;
 - 14 (ii) Pursue legal remedies against the individual who submitted the personal information; or
 - 15 (iii) Recover a debt from, or satisfy a security interest against, the individual.

16 (b) The department shall adopt rules specifying the kind of information that the department will
17 accept as evidence that a business is a legitimate business.

18 (4) The department shall disclose personal information to:

19 (a) An attorney, a financial institution as defined in ORS chapter 706 or a collection agency
20 registered under ORS 697.031 for use in connection with a civil, criminal, administrative or arbi-
21 tration proceeding in any court, government agency or self-regulatory body. Permissible uses of
22 personal information under this paragraph include but are not limited to service of process, inves-
23 tigation in anticipation of litigation and the execution and enforcement of judgments and orders.

24 (b) A process server acting as an agent for an individual for use in serving documents in con-
25 nection with an existing civil, criminal, administrative or arbitration proceeding, or a judgment, in
26 any court, government agency or self-regulatory body. Nothing in this paragraph limits the activities
27 of a process server when acting as an agent for an attorney, collection agency or like person or for
28 a government agency.

29 (5) The department shall disclose personal information other than names to a researcher for use
30 in researching health and educational questions and providing statistical reports, as long as the
31 personal information is not published, redisclosed or used to contact individuals. The department
32 may disclose information under this subsection only for research sponsored by an educational insti-
33 tution or a health research institution.

34 (6) The department shall disclose personal information to an insurer, an insurance support or-
35 ganization or a self-insured entity in connection with claims investigation activities, antifraud ac-
36 tivities, underwriting or rating.

37 (7) The department shall disclose personal information regarding ownership or other financial
38 interests in a vehicle to a person who is required by the state or federal Constitution, a statute or
39 an ordinance to give notice to another person concerning the vehicle. Personal information disclosed
40 under this subsection may be used only for giving the required notice. Persons authorized to receive
41 personal information under this subsection include, but are not limited to:

- 42 (a) Tow companies;
- 43 (b) Persons who have or are entitled to have liens on the vehicle; and
- 44 (c) Persons taking an action that could affect ownership rights to the vehicle.

45 (8) The department shall disclose personal information to any private security officer certified

1 under ORS 181.878, to be used for the purpose of determining ownership of vehicles parked in a
2 place over which the private security officer, acting within the scope of the officer's employment,
3 exercises control.

4 (9) The department shall disclose personal information to the employer of an individual who
5 holds a commercial driver license, or the insurer of the employer, to obtain or verify information
6 about the holder of the commercial driver license.

7 (10) The department shall disclose personal information to the operator of a private toll facility
8 for use in collecting tolls.

9 (11) The department may not disclose personal information for bulk distributors of surveys,
10 marketing materials or solicitations except as provided in this subsection. The department shall
11 implement methods and procedures to ensure:

12 (a) That individuals are offered an opportunity to request that personal information about
13 themselves be disclosed to bulk distributors; and

14 (b) That the personal information provided by the department will be used, rented or sold solely
15 for bulk distribution of surveys, marketing materials and solicitations.

16 (12) The department shall disclose personal information to a person who requests the informa-
17 tion if the requester provides the department with written permission from the individual whose
18 personal information is requested. The written permission from the individual must be notarized.

19 (13) The department shall disclose personal information to a person who is in the business of
20 disseminating such information under the following conditions:

21 (a) In addition to any other requirements under the contract executed pursuant to paragraph (b)
22 of this subsection, the person requesting the information must file a performance bond with the de-
23 partment in the amount of \$25,000. The bond must be executed in favor of the State of Oregon and
24 its form is subject to approval by the Attorney General.

25 (b) The disseminator shall enter into a contract with the department. A contract under this
26 paragraph shall contain at least the following provisions:

27 (A) That the disseminator will not reproduce or distribute the personal information in bulk but
28 only in response to an individual record inquiry.

29 (B) That the disseminator will provide the personal information only as provided in ORS 802.181.

30 (C) That the disseminator will have a method of ensuring that the disseminator can delay for a
31 period of up to two days the giving of personal information to a requester who is not a subscriber.

32 (14) The department shall disclose personal information to representatives of the news media for
33 the gathering or dissemination of information related to the operation of a motor vehicle or to public
34 safety.

35 (15) The department shall disclose personal information as provided in ORS 802.220 (5).

36 (16) The department shall adopt rules providing for the release of personal information from
37 motor vehicle records to a person who has a financial interest in the vehicle. Rules adopted under
38 this subsection may include, but need not be limited to, rules establishing procedures for the de-
39 partment to verify the financial interest of the person making the request for personal information.

40 (17) The department shall adopt rules providing for the release of personal information from
41 motor vehicle records to a person who is injured by the unsafe operation of a vehicle or who owns
42 property that is damaged because of the unsafe operation of a vehicle.

43 (18) The department shall disclose personal information to a private investigator licensed by any
44 licensing authority within the State of Oregon, to be used for any purpose permitted any person
45 under this section. A licensed private investigator requesting information must prove to the de-

1 partment that the person has a corporate surety bond, an irrevocable letter of credit issued by an
2 insured institution as defined in ORS 706.008 or such other security as the Oregon Board of Inves-
3 tigators may prescribe by rule in the minimum amount of \$5,000 or errors and omissions insurance
4 in the minimum amount of \$5,000.

5 **(19) The department shall disclose personal information to a procurement organization**
6 **as defined in ORS 97.950 for the purpose of facilitating the making of anatomical gifts under**
7 **the provisions of 97.952.**

8 **SECTION 7.** ORS 802.181 is amended to read:

9 802.181. (1) Except as otherwise provided in subsections (2) to (5) of this section, a person or
10 government agency that is authorized under ORS 802.179 to receive personal information from motor
11 vehicle records may resell or redisclose the information only to a person or government agency
12 authorized to receive it under ORS 802.179 and only for purposes authorized under ORS 802.179.

13 (2) A researcher who receives personal information under ORS 802.179 (5) may not resell or
14 redisclose the information except as provided in ORS 802.179 (5).

15 (3) A person who receives personal information under ORS 802.179 (11) may not resell or redis-
16 close the information except as provided in ORS 802.179 (11).

17 (4) A representative of the news media who receives personal information under ORS 802.179
18 (14) may not resell or redisclose the information except as provided in ORS 802.179 (14).

19 (5) No one who receives personal information from the department under ORS 802.179 may sell
20 or redisclose the information to a person who is in the business of disseminating the information.

21 (6) A person who resells or rediscloses personal information as authorized by this section, other
22 than a representative of the news media, must keep records for a period of five years that identify
23 each person who receives the information and the permitted purpose for which the person received
24 the information. Records kept in accordance with this subsection must be made available to the
25 Department of Transportation on request.

26 **(7) A procurement organization that receives personal information as authorized by ORS**
27 **802.179 (19) may not resell or redisclose the information.**

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