

Enrolled House Bill 3197

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

CHAPTER

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 or other portion of a human body.

(10) "Physician" means an individual licensed or otherwise authorized to practice medicine under the laws of any state.

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

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

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

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

SECTION 2. ORS 97.952 is amended to read:

97.952. (1) A capable individual who is at least 18 years of age may be the donor of an anatomical gift.

(2) An anatomical gift may be made by:

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

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

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

(b) **When requested by a procurement organization that has established a statewide donor registry of donors in this state, the department shall electronically transfer the name, address, birth date and donor designation as listed on the driver license or identification card of any person designated as a donor under this subsection. The information transferred to a procurement organization shall be treated as confidential by the procurement organization and may be used only to expedite the making of anatomical gifts authorized by the donor.**

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

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

(a) A signed statement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. ORS 97.954 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The individual proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

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

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

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

SECTION 4. ORS 97.958 is amended to read:

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

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

(b) In collaboration with the procurement organization, ensure that readily available persons listed in ORS 97.954 are informed of the donor status of the patient and of the option to make or refuse to make an anatomical gift under ORS 97.952 or 97.954. Contact must be made with reasonable discretion and sensitivity to the circumstances of the persons contacted. The person designated by the administrator to make a request for an anatomical gift under this section must be a representative of a procurement organization or a person who has had training offered or approved by a procurement organization in the methodology for approaching the family of potential donors.

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

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

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

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

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

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

(b) As soon as is reasonably possible and if the information is known, notify an appropriate procurement organization of the identity of the deceased person and of persons listed in accordance with ORS 97.954.

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

SECTION 5. ORS 97.964 is amended to read:

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

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

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

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

SECTION 6. ORS 802.179 is amended to read:

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

(2) The department shall disclose personal information from a motor vehicle record for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of nonowner records from the original owner records of motor vehicle manufacturers to carry out the purposes of any of the following federal Acts:

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

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

- (A) Verifying the accuracy of personal information submitted to the business; or
- (B) Correcting personal information submitted to the business, but only in order to:

- (i) Prevent fraud;
- (ii) Pursue legal remedies against the individual who submitted the personal information; or
- (iii) Recover a debt from, or satisfy a security interest against, the individual.

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

(4) The department shall disclose personal information to:

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

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

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

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

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

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

(8) The department shall disclose personal information to any private security officer certified under ORS 181.878, to be used for the purpose of determining ownership of vehicles parked in a place over which the private security officer, acting within the scope of the officer's employment, exercises control.

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

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

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

- (a) That individuals are offered an opportunity to request that personal information about themselves be disclosed to bulk distributors; and
- (b) That the personal information provided by the department will be used, rented or sold solely for bulk distribution of surveys, marketing materials and solicitations.

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

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

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

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

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

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

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

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

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

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

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

(18) The department shall disclose personal information to a private investigator licensed by any licensing authority within the State of Oregon, to be used for any purpose permitted any person under this section. A licensed private investigator requesting information must prove to the department that the person has a corporate surety bond, an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or such other security as the Oregon Board of Investigators may prescribe by rule in the minimum amount of \$5,000 or errors and omissions insurance in the minimum amount of \$5,000.

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

SECTION 7. ORS 802.181 is amended to read:

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

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

(3) A person who receives personal information under ORS 802.179 (11) may not resell or redisclose the information except as provided in ORS 802.179 (11).

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

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

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

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

Passed by House May 12, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 27, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

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Secretary of State