

SECOND REGULAR SESSION

# SENATE BILL NO. 929

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOLL.

Read 1st time January 14, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3927S.011

## AN ACT

To repeal sections 194.210, 194.230, 194.233, 194.240, 194.297, 194.300, 194.302, 302.171 and 302.181, RSMo, relating to organ donation and procurement, and to enact in lieu thereof nine new sections relating to the same subject.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 194.210, 194.230, 194.233, 194.240, 194.297, 194.300, 194.302, 302.171 and 302.181, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 194.210, 194.230, 194.233, 194.240, 194.297, 194.300, 194.302, 302.171 and 302.181, to read as follows:

194.210. As used in sections 194.210 to [194.290] **194.307**, the following words and terms mean:

(1) "Bank or storage facility", a facility licensed, accredited, or approved [under] **pursuant to** the laws of any state for storage of human bodies or parts thereof **and subject to registration with the United States Food and Drug Administration;**

(2) "Decedent", a deceased individual and includes a stillborn infant or fetus;

(3) "**Donee**":

**(a) Any hospital, surgeon or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or**

**(b) Any accredited medical or dental school, college or university or the state anatomical board for education, research, advancement of medical or dental science or therapy; or**

**(c) Any bank, storage facility or OPO, for medical or dental education,**

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

**research, advancement of medical or dental science, therapy, or transplantation; or**

**(d) Any specified individual for therapy or transplantation needed by such individual;**

**(4) "Donor", an individual who makes a gift of all or part of his or her body;**

**(5) "Fund", the organ donor program fund established pursuant to section 194.297;**

**[(4)] (6) "Hospital", [a hospital licensed, accredited, or approved under the laws of any state and includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws] as defined in section 197.020, RSMo;**

**(7) "Hospital designee", an individual designated by the hospital to initiate a request for organ donation in accordance with the requirements of 42 CFR 482.45;**

**(8) "OPO", a federally certified organ procurement organization designated pursuant to 42 CFR 486.301 to 486.325, as amended, to serve all or part of the state of Missouri;**

**[(5)] (9) "Part", organs, tissues, eyes, bones, [arteries,] blood vessels, other fluids and any other portions of a human body;**

**[(6)] (10) "Person", an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;**

**[(7)] (11) "Physician" or "surgeon", a physician or surgeon licensed or authorized to practice [under the laws of any state] pursuant to chapter 334, RSMo;**

**[(8)] (12) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.**

194.230. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) Any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(2) Any accredited medical or dental school, college or university or the state anatomical board for education, research, advancement of medical or dental science, or therapy; or

(3) Any bank [or], storage facility **or OPO**, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(4) Any specified individual for therapy or transplantation needed by [him] **such individual.**

194.233. 1. [The chief executive officer of each hospital in this state shall designate one or more trained persons to request anatomical gifts which persons shall not be connected with determination of death. The hospital official may designate a representative of an organ or tissue procurement organization to request consent.

2. When there is a patient who is a suitable candidate for organ or tissue donation based on hospital accepted criteria the designee shall request consent to a donation from the persons authorized to give consent as specified in subdivision (1), (2), (3), (4), (5) or (6) of subsection 2 of section 194.220. The request shall be made in the order of priority stated in subsection 2 of section 194.220. When the hospital cannot, from available information, ascertain that the patient has next-of-kin authorized to give consent as specified in subdivision (2), (3), (4), (5) or (6) of subsection 2 of section 194.220, then the hospital shall notify and request consent to a donation from a member of the class described in subdivision (7) of subsection 2 of section 194.220. Such notification to a member of the class described in subdivision (7) of subsection 2 of section 194.220 shall occur before death where practicable.

**3.] Each hospital shall comply with the requirements of 42 CFR 482.45, as amended, which establishes standards for hospital participation in the organ procurement and donation process.**

2. No request shall be required if the hospital designee has actual notice of a gift by the decedent under subsection 1 of section 194.220 or actual notice of contrary indications by the decedent.

[4.] 3. Consent shall be obtained by the methods specified in section 194.240.

[5.] 4. Where a donation is requested, the designee shall verify such request in the patient's medical record. Such verification of request for organ donation shall include a statement to the effect that a request for consent to an anatomical gift has been made, and shall further indicate thereupon whether or not consent was granted, the name of the person granting or refusing the consent, and his or her relationship to the decedent.

[6. Upon the approval of the designated next of kin or other individual, as set forth in subsection 2 of section 194.220, the hospital shall then notify an organ or tissue procurement organization and cooperate in the procurement of the anatomical gift or gifts pursuant to applicable provisions of sections 194.210 to 194.290.

7.] 5. No hospital shall have an obligation to retrieve [the] **an** organ or tissue donated pursuant to [this section] **sections 194.210 to 194.307.**

194.240. 1. A gift of all or part of the body [under] **pursuant to** subsection 1 of section 194.220 may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

2. A gift of all or part of the body [under] **pursuant to** subsection 1 of section 194.220 may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in [his] **the**

**donor's** presence or before a notary or other official authorized to administer oaths generally. If the donor cannot sign, the document may be signed for **[him] the donor** at **[his] the donor's** direction and in **[his] the donor's** presence in the presence of two witnesses who must sign the document in **[his] the donor's** presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

3. The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by a physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death or if the gift cannot be implemented, a physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee **[under] pursuant to** this subsection shall not participate in the procedures for removing or transplanting a part.

4. Notwithstanding the provisions of subsection 2 of section 194.270, the donor may designate in his **or her** will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician to carry out the appropriate procedures. For the purpose of removing an eye or part thereof, any medical technician employed by a hospital, physician or eye bank and acting under supervision may perform the appropriate procedures. Any medical technician authorized to perform such procedure shall successfully complete the course prescribed in section 194.295 for embalmers.

5. Any gift by a person designated in subsection 2 of section 194.220 shall be made by a document signed by him **or her** or made by his **or her** telegraphic, recorded telephonic, or other recorded message.

6. A gift of part of the body **[under] pursuant to** subsection 1 of section 194.220 may also be made by a statement on a form which shall be provided on the reverse side of all Missouri motor vehicle licenses issued pursuant to chapter 302, RSMo. The statement to be effective shall be signed by the owner of the license in the presence of two witnesses, who shall sign the statement in the presence of the donor. Use of the form is prima facie evidence that the owner of the license intended to make the anatomical gift, and there shall be no civil or criminal liability for removal of any part of the body indicated on the form by a licensed physician **[or]**, surgeon **or donee**. The gift becomes effective upon the death of the donor. Delivery of the license during the donor's lifetime is not necessary to make the gift valid. The gift shall become invalidated upon expiration, cancellation, revocation, or suspension of the license, and the gift must be renewed upon renewal of each license. Pertinent medical information which may affect the quality of the gift may be included in the statement of gift.

7. Any person eighteen years of age or older, or any person under the age of eighteen

with parental consent who indicates the desire to make an organ donation through any method prescribed in this section may also contact the department of health and senior services when completing such form, so that the information may be included in the registry maintained by the department pursuant to subsection 1 of section 194.304. Failure to contact the department of health and senior services shall not be construed to challenge the validity of the organ donation.

8. Organ procurement organizations and tissue banks may **[employ] engage** coordinators to assist in the procurement of cadaveric organs and tissue for transplant or research. A coordinator who assists in the procurement of cadaveric organs or tissue for transplantation or research must do so under the direction and supervision of a physician or surgeon. With the exception of organ procurement surgery, this supervision may be indirect supervision. For purposes of this subsection, the term "indirect supervision" means that a physician or surgeon is responsible for the medical actions of the coordinator, that the coordinator is acting under protocols expressly approved by a physician or surgeon, and that a physician or surgeon is available, in person or by telephone, to provide medical direction, consultation and advice in cases of organ and tissue donation and procurement.

9. The department of health and senior services shall collect information and publish an annual report which shall include the number of organ and tissue donations made in the state, the number of organ or tissue donations received by citizens of the state of Missouri, the number of organ or tissue donations transported outside the state boundaries and the cost of such organ or tissue donations.

194.297. There is established in the state treasury the "Organ Donor Program Fund", which shall consist of all moneys deposited by the director of revenue pursuant to subsection 2 of section 302.171, RSMo, and any other moneys donated or appropriated to the fund. **Such fund may also receive gifts, grants, contributions, appropriations and funds or benefits from any other source or sources.** The state treasurer shall administer the fund, and the moneys in the fund shall be used solely, upon appropriation, by the department of health and senior services, in consultation with the organ donation advisory committee, for implementation of organ donation awareness programs in the manner prescribed in [subsection 2 of section 194.300] **section 194.299**. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the organ donor program fund at the end of any biennium shall not be transferred to the credit of the general revenue fund. There shall be no money appropriated from general revenue to administer the fund in the event the fund cannot sustain itself.

194.300. 1. There is established within the department of health and senior services the "Organ Donation Advisory Committee", which shall consist of the following members appointed by the governor with the advice and consent of the senate:

(1) [Four representatives of organ and tissue procurement organizations;

(2)] **Two members, representing each of the OPOs, who shall be employed by**

**or affiliated with an OPO. The members shall be appointed by the governor from a list of nominees submitted by each OPO;**

**(2) One member representing an eye bank, who shall be employed by or affiliated with the eye bank. The member shall be appointed by the governor from a list of nominees submitted by the eye bank;**

**(3) Four members representative of organ recipients, families of organ recipients, organ donors and families of organ donors;**

**[(3)] (4) One [health care representative from a hospital located in Missouri; and] member representing the hospital industry, who shall be employed by or affiliated with a hospital. The member shall be appointed by the governor from a list of nominees submitted by a trade association representing Missouri hospitals;**

**(5) One member who is a physician licensed pursuant to chapter 334, RSMo. The physician shall be appointed by the governor from a list of nominees submitted by the OPOs;**

**[(4)] (6) One representative of the department of health and senior services;**

**(7) One representative of the department of revenue; and**

**(8) One representative of the department of elementary and secondary education.**

2. Members of the advisory committee shall receive no compensation for their services, but may be reimbursed for the reasonable and necessary expenses incurred in the performance of their duties out of appropriations made for that purpose. Members shall serve for five year terms and shall serve at the pleasure of the governor.

**3. Of the members first appointed after August 28, 2002, four shall be appointed for an initial term of two years, four shall be appointed for an initial term of three years, three shall be appointed for an initial term of four years and the remaining members shall be appointed for an initial term of five years. After the initial term, members shall be appointed to serve for five-year terms. Members shall serve at the pleasure of the governor. Members who cease to meet the state qualifications during a term of office shall be replaced with a member appointed to complete the unexpired term.**

194.302. 1. The advisory committee shall assist the department of health and senior services and the department of elementary and secondary education in the development of organ donor awareness programs to educate the general public on the importance of organ donations and shall recommend priorities in the expenditures from the organ donor program fund. The advisory committee shall submit a report of its activities and recommendations to the director of the department of health and senior services, the general assembly and the governor by the fifteenth day of January of each year, beginning January 15, 1997.

**2. The department of health and senior services shall provide unlimited twenty-four hour Internet access to the organ donor registry for authorized personnel and explore additional methods for registering new participants. The advisory committee shall submit a report of its findings to the director of the department of health and senior services, the general assembly and the governor by January 15, 2003.**

302.171. 1. Application for a license shall be made upon an approved form furnished by the director. Every application shall state the full name, Social Security number, age, height, weight, color of eyes, sex, residence, mailing address of the applicant, and the classification for which the applicant has been licensed, and, if so, when and by what state, and whether or not such license has ever been suspended, revoked, or disqualified, and, if revoked, suspended or disqualified, the date and reason for such suspension, revocation or disqualification and whether the applicant is making a [one-dollar] **two-dollar** donation to promote an organ donation program as prescribed in subsection 2 of this section. The application shall also contain such information as the director may require to enable the director to determine the applicant's qualification for driving a motor vehicle; and shall state whether or not the applicant has been convicted in this or any other state for violating the laws of this or any other state or any ordinance of any municipality, relating to driving without a license, careless driving, or driving while intoxicated, or failing to stop after an accident and disclosing the applicant's identity, or driving a motor vehicle without the owner's consent. The application shall contain a certification by the applicant as to the truth of the facts stated therein. Every person who applies for a license to operate a motor vehicle who is less than twenty-one years of age shall be provided with educational materials relating to the hazards of driving while intoxicated, including information on penalties imposed by law for violation of the intoxication-related offenses of the state. Beginning January 1, 2001, if the applicant is less than eighteen years of age, the applicant must comply with all requirements for the issuance of an intermediate driver's license pursuant to section 302.178.

2. An applicant for a license may make a donation of [one dollar] **two dollars** to promote an organ donor program. The director of revenue shall collect the donations and deposit all such donations in the state treasury to the credit of the organ donor program fund established in sections 194.297 to 194.304, RSMo. Moneys in the organ donor program fund shall be used solely for the purposes established in sections 194.297 to 194.304, RSMo, except that the department of revenue shall retain no more than one percent for its administrative costs. The donation prescribed in this subsection is voluntary and may be refused by the applicant for the license at the time of issuance or renewal of the license. The director shall make available an informational booklet or other informational sources on the importance of organ donations to applicants for licensure as designed by the organ donation advisory committee established in sections 194.297 to 194.304, RSMo. The director shall inquire of each applicant at the time the

licensee presents the completed application to the director whether the applicant is interested in making the [one-dollar] **two-dollar** donation prescribed in this subsection and whether the applicant is interested in [making an organ donation] **inclusion in the organ donor registry** and shall also specifically inform the licensee of the ability to [make an] **consent to** organ donation by completing the form on the reverse of the license that the applicant will receive in the manner prescribed by subsection 6 of section 194.240, RSMo. The director shall notify the department of health and senior services of information obtained from applicants who indicate to the director that they are interested in [making organ donations] **registry participation**, and the department of health and senior services shall enter the complete name, address, date of birth, race, gender and a unique personal identifier in the registry established in subsection 1 of section 194.304, RSMo.

3. An applicant for a license may make a donation of one dollar to promote a blindness education, screening and treatment program. The director of revenue shall collect the donations and deposit all such donations in the state treasury to the credit of the blindness education, screening and treatment program fund established in section 192.935, RSMo. Moneys in the blindness education, screening and treatment program fund shall be used solely for the purposes established in section 192.935, RSMo, except that the department of revenue shall retain no more than one percent for its administrative costs. The donation prescribed in this subsection is voluntary and may be refused by the applicant for the license at the time of issuance or renewal of the license. The director shall inquire of each applicant at the time the licensee presents the completed application to the director whether the applicant is interested in making the one-dollar donation prescribed in this subsection.

302.181. 1. The license issued pursuant to the provisions of sections 302.010 to 302.340 shall be in such form as the director shall prescribe, but the license shall be a card made of plastic or other comparable material. All licenses shall be manufactured of materials and processes that will prohibit, as nearly as possible, the ability to reproduce, alter, counterfeit, forge or duplicate any license without ready detection. All licenses shall bear the licensee's Social Security number, if the licensee has one, and if not, a notarized affidavit must be signed by the licensee stating that the licensee does not possess a Social Security number, or, if applicable, a certified statement must be submitted as provided in subsection 4 of this section. The license shall also bear the expiration date of the license, the classification of the license, the name, date of birth, residence address including the county of residence or a code number corresponding to such county established by the department, and brief description and colored photograph of the licensee, and a facsimile of the signature of the licensee. The director shall provide by administrative rule the procedure and format for a licensee to indicate on the back of the license together with the designation for an anatomical gift as provided in section 194.240, RSMo, the name and address of the person designated pursuant to sections 404.800 to 404.865, RSMo, as



the licensee's attorney in fact for the purposes of a durable power of attorney for health care decisions. No license shall be valid until it has been so signed by the licensee. If any portion of the license is prepared by a private firm, any contract with such firm shall be made in accordance with the competitive purchasing procedures as established by the state director of the division of purchasing. For all licenses issued or renewed after March 1, 1992, the applicant's Social Security number shall serve as the applicant's license number. Where the licensee has no Social Security number, or where the licensee is issued a license without a Social Security number in accordance with subsection 4 of this section, the director shall issue a license number for the licensee and such number shall also include an indicator showing that the number is not a Social Security number.

2. All film involved in the production of photographs for licenses shall become the property of the department of revenue.

3. The license issued shall be carried at all times by the holder thereof while driving a motor vehicle, and shall be displayed upon demand of any officer of the highway patrol, or any police officer or peace officer, or any other duly authorized person, for inspection when demand is made therefor. Failure of any operator of a motor vehicle to exhibit his or her license to any duly authorized officer shall be presumptive evidence that such person is not a duly licensed operator.

4. The director of revenue shall issue a commercial or noncommercial driver's license without a Social Security number to an applicant therefor, who is otherwise qualified to be licensed, upon presentation to the director of a certified statement that the applicant objects to the display of the Social Security number on the license. The director shall assign an identification number, that is not based on a Social Security number, to the applicant which shall be displayed on the license in lieu of the Social Security number.

5. The director of revenue shall issue a license without the photograph to an applicant therefor, who is otherwise qualified to be licensed, upon presentation to the director of a statement on forms prescribed and made available by the department of revenue which states that the applicant is a member of a specified religious denomination which prohibits photographs of members as being contrary to its religious tenets. The license shall state thereon that no photograph is required because of the religious affiliation of the licensee. The director of revenue shall establish guidelines and furnish to each circuit court such forms as the director deems necessary to comply with this subsection. The circuit court shall not charge or receive any fee or court cost for the performance of any duty or act pursuant to this subsection.

6. The department of revenue may issue a temporary license without the photograph to out-of-state applicants and members of the armed forces, except that where such temporary license is issued it shall be valid only until the applicant shall have had time to appear and have his or her picture taken and a license with his or her photograph issued.

7. The department of revenue shall issue upon request a nondriver's license card containing essentially the same information as the driver's license upon payment of six dollars if the applicant is under the age of sixty-five. An applicant who is sixty-five years of age or older may purchase a nondriver's license card without a photograph for one dollar or a nondriver's license card with a photograph for six dollars. All nondriver's licenses shall expire on the applicant's birthday in the sixth year after issuance. A person who has passed his or her seventieth birthday shall upon application be issued a nonexpiring nondriver's license card. The nondriver's license card shall be used for identification purposes only and shall not be valid as a license. **The director shall provide by administrative rule the procedure and format for an applicant to indicate a designation for an anatomical gift as provided in section 194.240, RSMo, on the back of the nondriver's license card. Applicants requesting a nondriver's license shall be offered the option of registry participation and the opportunity to donate to the organ donor fund as provided in section 302.171.**

8. [No rule or portion of a rule promulgated pursuant to the authority of this chapter shall become effective unless it is promulgated pursuant to the provisions of chapter 536, RSMo.] **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.**

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