

SENATE FLOOR VERSION

February 25, 2020

SENATE BILL NO. 1359

By: Howard

An Act relating to judicial authorization for anatomical gift; amending 10A O.S. 2011, Section 1-3-102, which relates to medical care and treatment of child in protective custody; authorizing court to order procurement of anatomical gifts under certain circumstances; amending 63 O.S. 2011, Sections 2200.8A, 2200.9A and 2200.10A, which relate to the Oklahoma Uniform Anatomical Gift Act; providing exceptions; conforming language; updating statutory references; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-3-102, is amended to read as follows:

Section 1-3-102. A. For purposes of this section:

1. "Routine and ordinary medical care and treatment" includes any necessary medical and dental examinations and treatment, medical screenings, clinical laboratory tests, blood testing, preventative care, health assessments, physical examinations, immunizations, contagious or infectious disease screenings or tests and care required for treatment of illness and injury, including x-rays,

1 stitches and casts, or the provision of psychotropic medications but
2 does not include any type of extraordinary care; and

3 2. "Extraordinary medical care and treatment" includes, but is
4 not limited to, surgery, general anesthesia, blood transfusions, or
5 invasive or experimental procedures.

6 B. If a child taken into protective custody without a court
7 order requires emergency medical care prior to the emergency custody
8 hearing, and either the treatment is related to the suspected abuse
9 or neglect or the parent or legal guardian is unavailable or
10 unwilling to consent to treatment recommended by a physician, a
11 peace officer, court employee or the court may authorize such
12 treatment as is necessary to safeguard the health or life of the
13 child. Before a peace officer, court employee or the court
14 authorizes treatment based on unavailability of the parent or legal
15 guardian, law enforcement shall exercise diligence in locating the
16 parent or guardian, if known.

17 C. 1. If a child has been placed in the custody of the
18 Department of Human Services, the Department shall have the
19 authority to consent to routine and ordinary medical care and
20 treatment. The Department shall make reasonable attempts to notify
21 the child's parent or legal guardian of the provision of routine and
22 ordinary medical care and treatment and to keep the parent or legal
23 guardian involved in such care.

1 2. In no case shall the Department consent to a child's
2 abortion, sterilization, termination of life support or a "Do Not
3 Resuscitate" order. The court may authorize the withdrawal of life-
4 sustaining medical treatment or the denial of the administration of
5 cardiopulmonary resuscitation on behalf of a child in the
6 Department's custody, and may additionally authorize anatomical
7 gifts to be procured from such child if the withdrawal of life-
8 sustaining medical treatment or denial of the administration of
9 cardiopulmonary resuscitation is authorized, upon the written
10 recommendation of a licensed physician of such withdrawal or denial
11 and of such procurement, as applicable, after notice to the parties
12 and a hearing.

13 3. Nothing herein shall prevent the Department from
14 authorizing, in writing, any person, foster parent or administrator
15 of a facility into whose care a child in its custody has been
16 entrusted, to consent to routine and ordinary medical care and
17 treatment to be rendered to a child upon the advice of a licensed
18 physician, including the continuation of psychotropic medication.

19 D. Consent for a child's extraordinary medical care and
20 treatment shall be obtained from the parent or legal guardian unless
21 the treatment is either related to the abuse or neglect or the
22 parent or legal guardian is unavailable or refuses to consent to
23 such care, in which case in an emergency, based upon recommendation
24 of a physician, the court may enter an ex parte order authorizing

1 such treatment or procedure in order to safeguard the child's health
2 or life. If the recommended extraordinary medical care and
3 treatment is not an emergency, the court shall hold a hearing, upon
4 application by the district attorney and notice to all parties, and
5 may authorize such recommended extraordinary care.

6 E. If a child has been placed in the custody of a person, other
7 than a parent or legal guardian, or an institution or agency other
8 than the Department, the court shall determine the authority of the
9 person, institution, or agency to consent to medical care including
10 routine and ordinary medical care and treatment and extraordinary
11 care. The parent, legal guardian, or person having legal custody
12 shall be responsible for the costs of medical care as determined by
13 the court.

14 SECTION 2. AMENDATORY 63 O.S. 2011, Section 2200.8A, is
15 amended to read as follows:

16 Section 2200.8A. A. Except as otherwise provided in paragraph
17 2 of subsection C of Section 1-3-102 of Title 10A of the Oklahoma
18 Statutes and subsection G of this section, and subject to subsection
19 F of this section, in the absence of an express, contrary indication
20 by the donor, a person other than the donor is barred from making,
21 amending, or revoking an anatomical gift of a donor's body or part
22 if the donor made an anatomical gift of the donor's body or part
23 under ~~Section 5 of this act~~ Section 2200.5A of this title or an
24

1 amendment to an anatomical gift of the donor's body or part under
2 ~~Section 6 of this act~~ Section 2200.6A of this title.

3 B. A donor's revocation of an anatomical gift of the donor's
4 body or part under ~~Section 6 of this act~~ Section 2200.6A of this
5 title is not a refusal and does not bar another person specified in
6 ~~Section 4 or 9 of this act~~ Section 2200.4A or 2200.9A of this title
7 from making an anatomical gift of the donor's body or part under
8 ~~Section 5 or 10 of this act~~ Section 2200.5A or 2200.10A of this
9 title.

10 C. If a person other than the donor makes an unrevoked
11 anatomical gift of the donor's body or part under ~~Section 5 of this~~
12 ~~act~~ Section 2200.5A of this title or an amendment to an anatomical
13 gift of the donor's body or part under ~~Section 6 of this act~~ Section
14 2200.6A of this title, another person may not make, amend, or revoke
15 the gift of the donor's body or part under ~~Section 10 of this act~~
16 Section 2200.10A of this title.

17 D. A revocation of an anatomical gift of a donor's body or part
18 under ~~Section 6 of this act~~ Section 2200.6A of this title by a
19 person other than the donor does not bar another person from making
20 an anatomical gift of the body or part under ~~Section 5 or 10 of this~~
21 ~~act~~ Section 2200.5A or 2200.10A of this title.

22 E. In the absence of an express, contrary indication by the
23 donor or other person authorized to make an anatomical gift under
24 ~~Section 4 of this act~~ Section 2200.4A of this title, an anatomical

1 gift of a part is neither a refusal to give another part nor a
2 limitation on the making of an anatomical gift of another part at a
3 later time by the donor or another person.

4 F. In the absence of an express, contrary indication by the
5 donor or other person authorized to make an anatomical gift under
6 ~~Section 4 of this act~~ Section 2200.4A of this title, an anatomical
7 gift of a part for one or more of the purposes set forth in ~~Section~~
8 ~~4 of this act~~ Section 2200.4A of this title is not a limitation on
9 the making of an anatomical gift of the part for any of the other
10 purposes by the donor or any other person under ~~Section 5 or 10 of~~
11 ~~this act~~ Section 2200.5A or 2200.10A of this title.

12 G. If a donor who is an unemancipated minor dies, a parent of
13 the donor who is reasonably available may revoke or amend an
14 anatomical gift of the donor's body or part.

15 H. If an unemancipated minor who signed a refusal dies, a
16 parent of the minor who is reasonably available may revoke the
17 minor's refusal.

18 SECTION 3. AMENDATORY 63 O.S. 2011, Section 2200.9A, is
19 amended to read as follows:

20 Section 2200.9A. A. Subject to subsections B and C of this
21 section and unless barred by ~~Section 7 or 8 of this act~~ Section
22 2200.7A or 2200.8A of this title, an anatomical gift of a decedent's
23 body or part for purpose of transplantation, therapy, research, or
24 education may be made by any member of the following classes of

persons who is reasonably available, in the order of priority listed:

1. An agent of the decedent at the time of death who could have made an anatomical gift under paragraph 2 of ~~Section 4 of this act~~ Section 2200.4A of this title immediately before the decedent's death;

2. The spouse of the decedent;

3. Adult children of the decedent;

4. Parents of the decedent;

5. Adult siblings of the decedent;

6. Adult grandchildren of the decedent;

7. Grandparents of the decedent;

8. An adult who exhibited special care and concern for the decedent;

9. The persons who were acting as the guardians of the person of the decedent at the time of death; ~~and~~

10. A court pursuant to an order entered pursuant to paragraph 2 of subsection C of Section 1-3-102 of Title 10A of the Oklahoma Statutes; and

11. Any other person having the authority to dispose of the decedent's body.

B. If there is more than one member of a class listed in paragraph 1, 3, 4, 5, 6, 7 or 9 of subsection A of this section entitled to make an anatomical gift, an anatomical gift may be made

1 by a member of the class unless that member or a person to whom the
2 gift may pass under ~~Section 11 of this act~~ Section 2200.11A of this
3 title knows of an objection by another member of the class. If an
4 objection is known, the gift may be made only by a majority of the
5 members of the class who are reasonably available.

6 C. A person may not make an anatomical gift if, at the time of
7 the decedent's death, a person in a prior class under subsection A
8 of this section is reasonably available to make or to object to the
9 making of an anatomical gift.

10 SECTION 4. AMENDATORY 63 O.S. 2011, Section 2200.10A, is
11 amended to read as follows:

12 Section 2200.10A. A. A person authorized to make an anatomical
13 gift under ~~Section 9 of this act~~ Section 2200.9A of this title may
14 make an anatomical gift by a document of gift signed by the person
15 making the gift or by that person's oral communication that is
16 electronically recorded or is contemporaneously reduced to a record
17 and signed by the individual receiving the oral communication.

18 B. ~~Subject~~ Except as provided by paragraph 2 of subsection C of
19 Section 1-3-102 of Title 10A of the Oklahoma Statutes and subject to
20 subsection C of this section, an anatomical gift by a person
21 authorized under ~~Section 9 of this act~~ Section 2200.9A of this title
22 may be amended or revoked orally or in a record by any member of a
23 prior class who is reasonably available. If more than one member of
24 the prior class is reasonably available, the gift made by a person

1 authorized under ~~Section 9 of this act~~ Section 2200.9A of this title
2 may be:

3 1. Amended only if a majority of the reasonably available
4 members agree to amending the gift; or

5 2. Revoked only if a majority of the members agree to the
6 revoking of the gift or if they are equally divided as to whether to
7 revoke the gift.

8 C. A revocation under subsection B of this section is effective
9 only if, before an incision has been made to remove a part from the
10 donor's body or before invasive procedures have begun to prepare the
11 recipient, the procurement organization, transplant hospital, or
12 physician or technician knows of the revocation.

13 SECTION 5. This act shall become effective November 1, 2020.

14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
15 February 25, 2020 - DO PASS
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