

1 ENGROSSED SENATE
2 BILL NO. 170

By: Howard of the Senate

3 and

4 Kannady of the House

5
6 An Act relating to judicial authorization for
7 anatomical gift; amending 10A O.S. 2011, Section 1-3-
8 102, which relates to medical care and treatment of
9 child in protective custody; authorizing court to
10 order procurement of anatomical gifts under certain
11 circumstances; amending 63 O.S. 2011, Sections
12 2200.8A, 2200.9A and 2200.10A, which relate to the
13 Oklahoma Uniform Anatomical Gift Act; providing
14 exceptions; conforming language; updating statutory
15 references; and providing an effective date.

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

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

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

20 1. "Routine and ordinary medical care and treatment" includes
21 any necessary medical and dental examinations and treatment, medical
22 screenings, clinical laboratory tests, blood testing, preventative
23 care, health assessments, physical examinations, immunizations,
24 contagious or infectious disease screenings or tests and care
required for treatment of illness and injury, including x-rays,
stitches and casts, or the provision of psychotropic medications but
does not include any type of extraordinary care; and

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

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

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

22 2. In no case shall the Department consent to a child's
23 abortion, sterilization, termination of life support or a "Do Not
24 Resuscitate" order. The court may authorize the withdrawal of life-

1 sustaining medical treatment or the denial of the administration of
2 cardiopulmonary resuscitation on behalf of a child in the
3 Department's custody, and may additionally authorize anatomical
4 gifts to be procured from such child if the withdrawal of life-
5 sustaining medical treatment or denial of the administration of
6 cardiopulmonary resuscitation is authorized, upon the written
7 recommendation of a licensed physician of such withdrawal or denial
8 and of such procurement, as applicable, after notice to the parties
9 and a hearing.

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

16 D. Consent for a child's extraordinary medical care and
17 treatment shall be obtained from the parent or legal guardian unless
18 the treatment is either related to the abuse or neglect or the
19 parent or legal guardian is unavailable or refuses to consent to
20 such care, in which case in an emergency, based upon recommendation
21 of a physician, the court may enter an ex parte order authorizing
22 such treatment or procedure in order to safeguard the child's health
23 or life. If the recommended extraordinary medical care and
24 treatment is not an emergency, the court shall hold a hearing, upon

1 application by the district attorney and notice to all parties, and
2 may authorize such recommended extraordinary care.

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

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

13 Section 2200.8A. A. Except as otherwise provided in paragraph
14 2 of subsection C of Section 1-3-102 of Title 10A of the Oklahoma
15 Statutes and subsection G of this section, and subject to subsection
16 F of this section, in the absence of an express, contrary indication
17 by the donor, a person other than the donor is barred from making,
18 amending, or revoking an anatomical gift of a donor's body or part
19 if the donor made an anatomical gift of the donor's body or part
20 under ~~Section 5 of this act~~ Section 2200.5A of this title or an
21 amendment to an anatomical gift of the donor's body or part under
22 ~~Section 6 of this act~~ Section 2200.6A of this title.

23 B. A donor's revocation of an anatomical gift of the donor's
24 body or part under ~~Section 6 of this act~~ Section 2200.6A of this

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

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

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

18 E. In the absence of an express, contrary indication by the
19 donor or other person authorized to make an anatomical gift under
20 ~~Section 4 of this act~~ Section 2200.4A of this title, an anatomical
21 gift of a part is neither a refusal to give another part nor a
22 limitation on the making of an anatomical gift of another part at a
23 later time by the donor or another person.

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

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

12 H. If an unemancipated minor who signed a refusal dies, a
13 parent of the minor who is reasonably available may revoke the
14 minor's refusal.

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

17 Section 2200.9A. A. Subject to subsections B and C of this
18 section and unless barred by ~~Section 7 or 8 of this act~~ Section
19 2200.7A or 2200.8A of this title, an anatomical gift of a decedent's
20 body or part for purpose of transplantation, therapy, research, or
21 education may be made by any member of the following classes of
22 persons who is reasonably available, in the order of priority
23 listed:
24

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

5 2. The spouse of the decedent;

6 3. Adult children of the decedent;

7 4. Parents of the decedent;

8 5. Adult siblings of the decedent;

9 6. Adult grandchildren of the decedent;

10 7. Grandparents of the decedent;

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

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

15 10. A court pursuant to an order entered pursuant to paragraph
16 2 of subsection C of Section 1-3-102 of Title 10A of the Oklahoma
17 Statutes; and

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

20 B. If there is more than one member of a class listed in
21 paragraph 1, 3, 4, 5, 6, 7 or 9 of subsection A of this section
22 entitled to make an anatomical gift, an anatomical gift may be made
23 by a member of the class unless that member or a person to whom the
24 gift may pass under ~~Section 11 of this act~~ Section 2200.11A of this

1 title knows of an objection by another member of the class. If an
2 objection is known, the gift may be made only by a majority of the
3 members of the class who are reasonably available.

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

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

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

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

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

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

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

11 SECTION 5. This act shall become effective November 1, 2021.

12 Passed the Senate the 2nd day of March, 2021.

13

14

Presiding Officer of the Senate

15

16 Passed the House of Representatives the ____ day of _____,
17 2021.

18

19

Presiding Officer of the House
of Representatives

20

21

22

23

24