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4

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A Bill

HOUSE BILL 1679

5 By: Representatives M. Brown, Gazaway, Achor, Beaty Jr., Bentley, A. Brown, C. Cooper, Duffield,
6 Eubanks, Furman, Gramlich, Hawk, Long, Magie, McCollum, S. Meeks, Milligan, J. Moore, Painter,
7 Pilkington, Rose, Schulz, Steimel, Underwood, Walker
8 By: Senator Irvin
9

For An Act To Be Entitled

11 AN ACT TO AMEND THE REVISED ARKANSAS ANATOMICAL GIFT
12 ACT; TO ALLOW CERTAIN CLASSES OF PERSONS TO REVOKE OR
13 AMEND AN ANATOMICAL GIFT UPON THE DEATH OF THE DONOR;
14 TO REQUIRE CERTAIN REPORTING OF PROCUREMENT
15 ORGANIZATIONS; AND FOR OTHER PURPOSES.
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Subtitle

19 TO AMEND THE REVISED ARKANSAS ANATOMICAL
20 GIFT ACT; TO ALLOW CERTAIN CLASSES OF
21 PERSONS TO REVOKE OR AMEND AN ANATOMICAL
22 GIFT UPON THE DEATH OF THE DONOR; AND TO
23 REQUIRE CERTAIN REPORTING OF PROCUREMENT
24 ORGANIZATIONS.
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 *SECTION 1. Arkansas Code Title 20, Chapter 17, Subchapter 12, is*
29 *amended to add additional sections to read as follows:*

30 20-17-1228. Rights of next of kin to modify, amend, or revoke
31 anatomical gift.

32 (a) Notwithstanding any other provision of this subchapter to the
33 contrary, an incapacitated donor's prior anatomical gift may be modified,
34 amended, or revoked before the donor's death, or a deceased donor's prior
35 anatomical gift may be modified, amended, or revoked following the decedent's
36 death by the following in the order named if the person modifying, amending,



1 or revoking the donor's prior anatomical gift is eighteen (18) years of age
2 or older and is of sound mind:

3 (1) First, if the donor is alive but incapacitated, the donor's
4 agent pursuant to a durable power of attorney for health care, unless the
5 power of attorney for health care or other record prohibits the agent from
6 modifying, amending, or revoking the anatomical gift;

7 (2) Second, the spouse of the donor;

8 (3) Third, the sole child of the donor or, if there is more than
9 one (1) child of the donor, the majority of the surviving children;

10 (4)(A) Fourth, the parent or parents of the donor.

11 (B) If one (1) of the parents is absent, the remaining
12 parent shall be vested with the rights and duties of this section after
13 reasonable efforts have been unsuccessful in locating the absent parent;

14 (5) Fifth, the surviving brother or sister of the donor or, if
15 there is more than one (1) sibling of the donor, the majority of the
16 surviving siblings;

17 (6) Sixth, the surviving grandparent of the donor or, if there
18 is more than one (1) surviving grandparent, the majority of the grandparents;

19 (7) Seventh, the surviving grandchild of the donor or, if there
20 is more than one (1) surviving grandchild, the majority of the grandchildren;

21 (8) Eighth, the guardian of the donor at the time of the donor's
22 death, if one had been appointed; or

23 (9) Ninth, the person in the classes of the next degree of
24 kinship, in descending order, under the laws of descent and distribution to
25 inherit the estate of the donor.

26 (b)(1) Within each class, less than the majority of the class shall be
27 vested with the rights of this section if they have used reasonable efforts
28 to notify all other members of the class of their instructions and are not
29 aware of any opposition to those instructions on the part of more than one-
30 half ($\frac{1}{2}$) of all surviving children.

31 (2) As used in this section, "class" means surviving children,
32 siblings, grandparents, or grandchildren, where applicable.

33 (c)(1) A person entitled under this section to modify, amend, or
34 revoke a donor's anatomical gift shall forfeit that right, with the right
35 passing to the next qualifying person as listed in this section, in the
36 following circumstances:

1 (A)(i) Any person charged with capital murder, § 5-10-101,
2 murder in the first degree, § 5-10-102, murder in the second degree, § 5-10-
3 103, or manslaughter, § 5-10-104, in connection with the donor's death.

4 (ii) If the charges against such person are
5 terminated by an acquittal, dismissal, or nolle prosequi, the right to
6 modify, amend, or revoke a donor's anatomical gift is returned to the person;

7 (B)(i) When the person entitled to modify, amend, or
8 revoke a donor's anatomical gift under this section and the donor were
9 estranged at the time of the donor's incapacity or death.

10 (ii) As used in this section, "estranged" means a
11 physical and emotional separation from the donor at the time of incapacity or
12 death that has existed for a period of time that clearly demonstrates an
13 absence of due affection, trust, and regard for the donor, including the
14 filing of a complaint for divorce by either party that remains pending at the
15 time of the donor's incapacity or death or the separation by living apart of
16 the donor and spouse for a period of more than ninety (90) days preceding the
17 donor's incapacity or death.

18 (2) If there is a dispute between those sharing the right to
19 modify, amend, or revoke an incapacitated donor's anatomical gift, the
20 donor's anatomical gift may not be modified, revoked, or amended.

21 (d) The decision to modify, amend, or revoke a donor's anatomical gift
22 under this section may be made orally or in a written record.

23 (e) A hospital, clinic, physician, healthcare provider, funeral
24 director, or funeral home acting in accordance with this section, or
25 attempting in good faith to do so, is not liable for the act in a civil
26 action, criminal prosecution, or administrative proceeding.

27 (f) If anything in this section conflicts with federal law or
28 regulation, the federal law or regulation shall prevail.

29
30 20-17-1229. Reporting of private procurement organization.

31 (a)(1) On July 31 of every year, a private procurement organization
32 that procures or harvests organs or tissues within this state shall report
33 for the preceding twelve-month period ending June 30 of the previous year to
34 the Legislative Council.

35 (2) The report described in subdivision (a)(1) of this section shall
36 contain:

1 (A)(i) The number and types of organs and tissues
2 harvested by the private procurement organization within this state during
3 the reporting period.

4 (ii) The private procurement organization shall
5 break down the number and types of organs and tissues reported under
6 subdivision (a)(2)(A)(i) of this section by the number and types of organs
7 and tissues which were used for:

8 (a) Transplantation;

9 (b) Research;

10 (c) Education; and

11 (d) Any other purpose;

12 (B) The success rate, if known, of transplantations using
13 organs or tissues harvested or procured by the private procurement
14 organization;

15 (C) The names of each organization to whom organs or
16 tissues were furnished by the private procurement organization, together with
17 the number and types of organs or tissues furnished to such organization;

18 (D)(i) The total moneys paid to the private procurement
19 organization in connection with all organs or tissues harvested or procured
20 by the private procurement organization during the reporting period.

21 (ii) The private procurement organization shall
22 break down the moneys paid to the private procurement organization reported
23 under subdivision (a)(2)(D)(i) of this section by the category of moneys
24 earned from organs or tissues harvested or procured for:

25 (a) Transplantation;

26 (b) Research;

27 (c) Education; and

28 (d) Any other purpose; and

29 (E) Any other information requested by the Legislative
30 Council.

31 (b) The report under this section shall be made at least one (1) time
32 a year and shall cover the immediately preceding six-month period.

33 (c) The report under this section shall be presented by an executive
34 of the private procurement organization who shall be available to answer
35 questions of the Legislative Council.

36 (d) A private procurement organization that fails to timely report

1 pursuant to this section shall have its charter revoked by the Secretary of
2 State and shall be barred from engaging in organ procurement within this
3 state.

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5 SECTION 2. Arkansas Code § 20-17-102(m), concerning the applicability
6 and construction of the Arkansas Final Disposition Rights Act of 2009, is
7 repealed.

8 ~~(m) Nothing in this section shall be construed to affect, repeal, or~~
9 ~~replace the provisions and procedures set forth in the Revised Arkansas~~
10 ~~Anatomical Gift Act, § 20-17-1201 et seq.~~

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12 /s/M. Brown
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