

Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005

SENATE BILL NO. 2112
(Senators Brown, Syverson, J. Lee, Flakoll)
(Representatives Ekstrom, Boehning)

AN ACT to amend and reenact sections 23-06.2-01, 23-06.2-02, and 39-06-03.1 of the North Dakota Century Code, relating to identification as an organ donor on nondriver photo identification cards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06.2-01 of the North Dakota Century Code is amended and reenacted as follows:

23-06.2-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.
2. "Decedent" means a deceased individual and includes a stillborn infant or fetus.
3. "Document of gift" means a card; a statement attached to or imprinted upon a motor vehicle operator's license, or permit or nondriver photo identification card issued by the department of transportation; a will; or any other writing used to make an anatomical gift.
4. "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.
5. "Enucleator" means an individual who has successfully completed a course in eye enucleation conducted by the department of ophthalmology of an accredited college of medicine that has been approved by the state board of medical examiners.
6. "Hospital" means a facility licensed, accredited, or approved as a hospital 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 law.
7. "Part" means an organ, tissue, eye, bone, artery, blood, fluid, and any other portion of a human body.
8. "Physician" or "surgeon" means an individual licensed or authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.
9. "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts thereof.
10. "State" means any state, district, commonwealth, territory, insular possession, or other area subject to the legislative authority of the United States of America.
11. "Technician" means an individual who is licensed or certified by the state board of medical examiners to remove or process a part.

SECTION 2. AMENDMENT. Section 23-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

23-06.2-02. Making, amending, revoking, and refusing to make anatomical gifts by individual.

1. An individual who has attained eighteen years of age may make an anatomical gift for any of the purposes specified in subsection 1 of section 23-06.2-06 or may refuse to make an anatomical gift. An individual may limit an anatomical gift to one or more of the purposes specified in subsection 1 of section 23-06.2-06.
2. An anatomical gift may be made by a document of gift.
 - a. A document of gift must be signed by the donor. If the donor cannot sign, the document of gift must state that it has been signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and in the presence of each other.
 - b. A document of gift may be a statement attached to or imprinted upon a donor's motor vehicle operator's license; or permit or nondriver photo identification card issued by the department of transportation subject to subdivision a. Revocation, suspension, expiration, or cancellation of the license, permit, or identification card does not invalidate the anatomical gift.
 - c. Notwithstanding subsection 2 of section 23-06.2-08, a document of gift may designate a particular physician or surgeon 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 anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator for the purpose.
3. An anatomical gift by will becomes effective upon death of the testator without waiting for probate. If the will is not probated, or if, after death, it is declared invalid for testamentary purposes, the gift is nevertheless valid.
4. The 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; or
 - d. The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.
5. An anatomical gift made by a will may be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection 4.
6. An anatomical gift that is not revoked by the donor is irrevocable and does not require the consent or concurrence of any other person after the death of the donor but is subject to subsection 2 of section 23-06.2-11.
7. A potential donor may refuse to make an anatomical gift by a writing executed in the same manner as an anatomical gift is made or any other instrument used to identify the individual as refusing to make an anatomical gift. It may be an oral statement or other form of communication during a terminal illness or injury.
8. An anatomical gift of a part by a donor pursuant to subsection 1 is not a refusal to give other parts in the absence of contrary indications by the donor and is not a limitation on a gift or release of other parts pursuant to sections 23-06.2-03 and 23-06.2-04.

9. A revocation or amendment of an anatomical gift by a donor is not a refusal to make another anatomical gift in the absence of contrary indications by the donor. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor must make a refusal pursuant to subsection 7.

SECTION 3. AMENDMENT. Section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-06-03.1. Nondriver photo identification card issued by director - Release of information - Penalty - Public awareness.

1. The director shall issue upon request a nondriver color photo identification card to any North Dakota resident who fulfills the requirements of this section. An application for an identification card must be made on a form furnished by the director. The application must provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06.2. If requested on the identification card application, the identification card issued by the director must include a statement making an anatomical gift under chapter 23-06.2. If the person is under the age of eighteen or at least the age of eighteen and under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license for an operator of that age.
2. The name and date of birth on all original applications must be verified by a birth certificate or other satisfactory evidence. Applicants must produce documents which will be acceptable as listed below:
 - a. Birth certificate.
 - b. Any other documentary evidence which confirms to the satisfaction of the examining officer the true identity and date of birth of the applicant.
3. The fee is eight dollars. Fees collected pursuant to this section must be paid monthly into the highway fund in the state treasury.
4. Any information obtained by the director from an applicant for the issuance, renewal, or replacement of an identification card issuable pursuant to this chapter may only be released in accordance with the provisions of section 39-16-03.
5. It is a class B misdemeanor for any person, except the director or the director's authorized agent, to print or otherwise produce or reproduce cards or their components, which may be utilized as identification cards issued pursuant to this section.
6. ~~The director is hereby authorized to utilize whatever advertising deemed necessary to make the public aware~~ may advertise the availability and the use of the card and its use.
7. Identification cards issued pursuant to this section ~~shall be~~ are sufficient identification ~~whenever for all identification is required purposes.~~
8. The director shall cancel any card upon determining that the holder is not entitled to the issuance of the card under the laws of this state, or the holder has failed to give the required or correct information to the director, or has committed fraud in making ~~such the~~ application, or the fee was in the form of an insufficient or no-account check. Upon cancellation, the holder shall surrender ~~such the~~ card to the director. When a cancellation is in effect, any law enforcement officer may take custody of ~~such the~~ card.
9. A duplicate card may be obtained by making an application and paying an eight dollar fee. For a cardholder who has reached the age of eighteen or twenty-one, a replacement card may be obtained by making an application and paying an eight dollar fee.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2112.

Senate Vote: Yeas 44 Nays 0 Absent 3

House Vote: Yeas 87 Nays 0 Absent 7

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,
at _____ o'clock _____ M.

Secretary of State