

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-192
HOUSE BILL 1051

AN ACT PERTAINING TO THE DUTY OF HOSPITALS AND OTHER AGENCIES
WITH RESPECT TO ORGAN PROCUREMENT AND DONATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-403 reads as rewritten:

"§ 130A-403. Definitions.

The following definitions shall apply throughout this Part:

- (1) 'Bank or storage facility' means a facility licensed, accredited or approved under the laws of any state for storage or distribution of a human body or its parts.
- (2) 'Decedent' means a deceased individual and includes a stillborn infant or fetus.
- (3) 'Donor' means an individual who makes a gift of all or part of the individual's body.
- (4) 'Hospital' means a hospital licensed, accredited or approved under the laws of any state and a hospital operated by the United States government, a state or its subdivision, although not required to be licensed under state laws.
- (5) 'Part' means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.
- (6) 'Physician' or 'surgeon' means a physician or surgeon licensed to practice medicine under the laws of any state.
- (7) 'State' includes any state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.
- (7a) 'Tissue bank' means any facility or program operating in North Carolina that is certified by the American Association of Tissue Banks or the Eye Bank Association of America and is involved in procuring, furnishing, donating, or distributing corneas, bones, or other human tissue for the purpose of injecting, transfusing, or transplanting any of them into the human body. 'Tissue bank' does not include a licensed blood bank.
- (8) 'Qualified individual' means any of the following individuals who has completed a course in eye enucleation and has been certified as

competent to enucleate eyes by an accredited school of medicine in this State:

- a. An embalmer licensed to practice in this State;
- b. A physician's assistant approved by the North Carolina Medical Board pursuant to G.S. 90-18(13);
- c. A registered or a licensed practical nurse licensed by the Board of Nursing pursuant to Article 9A of Chapter 90 of the General Statutes;
- d. A student who is enrolled in an accredited school of medicine operating within this State and who has completed two or more years of a course of study leading to the awarding of a degree of doctor of medicine;
- e. A technician who has successfully completed a written examination by the North Carolina Eye and Human Tissue Bank, Inc., certified by the Eye Bank Association of America."

Section 2. G.S. 130A-412.1 reads as rewritten:

"§ 130A-412.1. Duty of hospitals to establish organ procurement protocols.

~~(a) In order to facilitate the goals of this Part, each hospital shall be required to establish written protocols for the identification of potential organ and tissue donors that:~~

- ~~(1) Assure that the families of potential organ and tissue donors are made aware of the option of organ or tissue donation and their option to decline;~~
- ~~(2) Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of such families;~~
- ~~(3) Require that only the organ procurement agency designated by the Secretary of Health and Human Services be notified of potential organ and tissue donors; and~~
- ~~(4) Assure that procedures are established for identifying and consulting with holders of properly executed donor cards.~~

~~(b) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation or any costs of retrieval of the organ or tissue.~~

~~(c) The requirements of this section, or of any hospital organ procurement protocols established pursuant to this section shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term "organ and tissue donors" shall include cornea and tissue donors for transplantation.~~

(a) In order to facilitate the goals of this Part, each hospital shall establish written protocols that:

- (1) Require that only the organ procurement organization designated by the Secretary of Health and Human Services be notified of all deaths

or impending brain deaths meeting criteria for notification as established by the designated organ procurement organization; and

- (2) Ensure that notification required under subdivision (1) of this subsection be made as soon as it is determined that brain death is imminent or cardiac death has occurred.

(b) Hospitals shall provide their federally designated organ procurement organizations and tissue banks reasonable access to patients' medical records for the purpose of determining organ or tissue donation potential.

(c) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation, or for any costs of retrieval of the organ or tissue.

(d) Each hospital shall provide its federally designated organ procurement organization with reasonable access during regular business hours to the medical records of deceased patients for the following purposes:

- (1) Determining the hospital's organ and tissue donation potential;
(2) Assessing the educational needs of the hospital in regard to the organ and tissue donation process; and
(3) Providing documentation to the hospital to evaluate the effectiveness of the hospital's efforts.

(e) Each hospital shall have a signed agreement with its federally designated organ procurement organization that addresses the requirements of this section and the requirements of G.S. 130A-412.2.

(f) The requirements of this section, or of any hospital procurement protocols established pursuant to this section, shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term 'organ and tissue donors' shall include cornea and tissue donors for transplantation.

(g) Hospitals and hospital personnel shall not be subject to civil or criminal liability nor to discipline for unprofessional conduct for actions taken in good faith to comply with this section. This subsection shall not provide immunity from a civil liability arising from gross negligence."

Section 3. Chapter 130A is amended by adding the following new section to read:

"§ 130A-412.2. Duty of designated organ procurement organizations and tissue banks.

(a) After notification regarding an impending brain death, brain death, or cardiac death has been made to the federally designated organ procurement organization, the federally designated organ procurement organization shall evaluate donation potential.

(b) The federally designated organ procurement organization or tissue bank shall assure that families of potential organ and tissue donors are made aware of the option of organ and tissue donation and their option to decline.

(c) The federally designated organ procurement organization or tissue bank shall, working collaboratively with the hospital, request consent for organ or tissue donation

in the order of priority established under G.S. 130A-404(b) and shall have designated, trained staff available to perform the consent process 24 hours a day, 365 days a year.

(d) The federally designated organ procurement organization or tissue bank shall encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential organ and tissue donors.

(e) All hospital and patient information, interviews, reports, statements, memoranda, and other data obtained or created by a tissue bank or federally designated organ procurement organization from the medical records review described in G.S. 130A-412.1 shall be privileged and confidential and may be used by the tissue bank or federally designated organ procurement organization only for the purposes set forth in G.S. 130A-412.1 and shall not be subject to discovery or introduction as evidence in any civil action, suit, or proceeding. However, hospital and patient information, interviews, reports, statements, memoranda, and other data otherwise available are not immune from discovery or use in a civil action, suit, or proceeding merely because they were obtained or created by a tissue bank or federally designated organ procurement organization from the medical records review described in G.S. 130A-412.1.

(f) If the hospital is made a party of any action, suit, or proceeding arising out of the failure of a federally designated organ procurement organization or tissue bank to comply with the requirements of this section, the hospital shall be held harmless from any and all liability and costs, including the amounts of judgments, settlements, fines, or penalties, and expenses and reasonable attorneys' fees incurred in connection with the action, suit, or proceeding."

Section 4. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 10th day of June, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 5:00 p.m. this 19th day of June, 1997