

1973 Bill 64

Second Session, 17th Legislature, 22 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 64

The Human Tissue Gift Act

THE MINISTER OF HEALTH AND SOCIAL DEVELOPMENT

First Reading

Second Reading

Third Reading

Printed by QUEEN'S PRINTER for the Province of Alberta, EDMONTON

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THE HUMAN TISSUE GIFT ACT

(Assented to _____, 1973)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. In this Act,
 - (a) "consent" means a consent given under this Act;
 - (b) "physician" means a person registered under *The Medical Profession Act* as a medical practitioner;
 - (c) "tissue" includes an organ, but does not include any skin, bone, blood, blood constituent or other tissue that is replaceable by natural processes of repair;
 - (d) "transplant" as a noun means the removal of tissue from a human body, whether living or dead, and its implantation in a living human body, and in its other forms it has corresponding meanings;
 - (e) "writing" for the purposes of Part 2 includes a will and any other testamentary instrument whether or not probate has been applied for or granted and whether or not the will or other testamentary instrument is valid.

PART 1

INTER VIVOS GIFTS FOR TRANSPLANTS

2. A transplant from one living human body to another living human body may be done in accordance with this Act, but not otherwise.

3. (1) Any person who has attained the age of majority, is mentally competent to consent, and is able to make a free and informed decision may in a writing signed by him consent to the removal forthwith from his body of the tissue specified in the consent and its implantation in the body of another living person.

(2) Notwithstanding subsection (1), a consent given thereunder by a person who had not attained the age of

Explanatory Notes

General: This Bill will replace the present Act, which is a model Act of the Conference of Commissioners on Uniformity of Legislation in Canada with a new model Act adopted by the Conference in 1971. It is broadened in scope to include live transplants and is up-dated to come into line with recent medical and scientific developments and the consequent increased public interest in this area.

1. Interpretation.

2. Live transplants under Act are lawful.

3. Consent for transplant,

majority, was not mentally competent to consent, or was not able to make a free and informed decision is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of majority, was not mentally competent to consent, and was not able to make a free and informed decision, as the case may be.

(3) A consent given under this section is full authority for any physician,

(a) to make any examination necessary to assure medical acceptability of the tissue specified therein, and

(b) to remove forthwith such tissue from the body of the person who gave the consent.

(4) If for any reason the tissue specified in the consent is not removed in the circumstances to which the consent relates, the consent is void.

PART 2

POST MORTEM GIFTS FOR TRANSPLANTS AND OTHER USES

4. (1) Any person who has attained the age of majority may consent,

(a) in a writing signed by him at any time, or

(b) orally in the presence of at least two witnesses during his last illness,

that his body or the part or parts thereof specified in the consent be used after his death for therapeutic purposes, medical education or scientific research.

(2) Notwithstanding subsection (1), a consent given by a person who had not attained the age of majority is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of majority.

(3) Upon the death of a person who has given a consent under this section, the consent is binding and is full authority for the use of the body or the removal and use of the specified part or parts for the purpose specified, except that no person shall act upon a consent given under this section if he has reason to believe that it was subsequently withdrawn.

5. (1) Where a person of any age who has not given a consent under section 4 dies, or in the opinion of a physician is incapable of giving a consent by reason of injury or disease and his death is imminent,

(a) his spouse of any age, or

4. Consent by person for use of his body after death.

5. Consent by spouse, etc., for use of body after death.

- (b) if none, or if his spouse is not readily available, any one of his children who has attained the age of majority, or
- (c) if none, or if none is readily available, either of his parents, or
- (d) if none, or if neither is readily available, any one of his brothers or sisters who has attained the age of majority, or
- (e) if none, or if none is readily available, any other of his next of kin who has attained the age of majority, or
- (f) if none, or if none is readily available, the person lawfully in possession of the body other than, where he died in hospital, the administrative head of the hospital,

may consent

- (g) in a writing signed by the spouse, relative or other person, or
- (h) orally by the spouse, relative or other person in the presence of at least two witnesses, or
- (i) by the telegraphic, recorded telephonic, or other recorded message of the spouse, relative or other person,

to the body or the part or parts thereof specified in the consent being used after death for therapeutic purposes, medical education or scientific research.

(2) No person shall give a consent under this section if he has reason to believe that the person who died or whose death is imminent would have objected thereto.

(3) Upon the death of a person in respect of whom a consent was given under this section, the consent is binding and is, subject to section 6, full authority for the use of the body or for the removal and use of the specified part or parts for the purpose specified except that no person shall act on a consent given under this section if he has actual knowledge of an objection thereto by the person in respect of whom the consent was given or by a person of the same or closer relationship to the person in respect of whom the consent was given than the person who gave the consent.

(4) In subsection (1), "person lawfully in possession of the body" does not include

- (a) the Provincial Chief Coroner or a coroner in possession of the body for the purposes of *The Coroners Act*, or
- (b) the Public Trustee in possession of the body for the purpose of its burial, or

- (c) an embalmer or funeral director in possession of the body for the purpose of its burial, cremation or other disposition, or
- (d) the superintendent of a crematorium in possession of the body for the purpose of its cremation.

6. Where, in the opinion of a physician, the death of a person is imminent by reason of injury or disease and the physician has reason to believe that section 8 or 13 of *The Coroners Act* may apply when death does occur and a consent under this Part has been obtained for a post-mortem transplant of tissue from the body, a coroner having jurisdiction, notwithstanding that death has not yet occurred, may give such directions as he thinks proper respecting the removal of such tissue after the death of the person, and every such direction has the same force and effect as if it had been made after death.

7. (1) For the purposes of a post-mortem transplant, the fact of death shall be determined by at least two physicians in accordance with accepted medical practice.

(2) No physician who has had any association with the proposed recipient that might influence his judgment shall take any part in the determination of the fact of death of the donor.

(3) No physician who took any part in the determination of the fact of death of the donor shall participate in any way in the transplant procedures.

(4) Nothing in this section in any way affects a physician in the removal of eyes for cornea transplants.

8. Where a gift under this Part cannot for any reason be used for any of the purposes specified in the consent, the subject matter of the gift and the body to which it belongs shall be dealt with and disposed of as if no consent had been given.

PART 3

GENERAL

9. No action or other proceeding for damages lies against any person for any act done in good faith and without negligence in the exercise or intended exercise of any authority conferred by this Act.

10. No person shall buy, sell or otherwise deal in, directly or indirectly, for a valuable consideration, any tissue for a transplant, or any body or part or parts thereof other

6. Coroner's direction.

7. Determination of death.

8. Where specified use fails.

9. Civil liability.

10. Sale, etc., of tissue prohibited.

than blood or a blood constituent, for therapeutic purposes, medical education or scientific research, and any such dealing is invalid as being contrary to public policy.

11. (1) Except where legally required, no person shall disclose or give to any other person any information or document whereby the identity of any person,

(a) who has given or refused to give a consent, or

(b) with respect to whom a consent has been given, or

(c) into whose body tissue has been, is being or may be transplanted,

may become known publicly.

(2) Where the information or document disclosed or given pertains only to the person who disclosed or gave the information or document, subsection (1) does not apply.

12. Any dealing with a body or part or parts thereof that was lawful before this Act came into force shall, except as provided in this Act, continue to be lawful.

13. Every person who knowingly contravenes any provision of this Act is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both.

14. Except as provided in section 6, nothing in this Act affects the operation of *The Coroners Act*.

15. *The Human Tissue Act* is repealed.

16. This Act comes into force on the day upon which it is assented to.

11. Disclosure of information.

12. Lawful dealings not affected.

13. Offence.

14. Application of The Coroners Act.

15. Chapter 179 of the Revised Statutes of Alberta 1970 is repealed.