

2019 Bill 205

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First Session, 30th Legislature, 68 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 205**

**HUMAN TISSUE AND ORGAN DONATION  
(PRESUMED CONSENT) AMENDMENT ACT, 2019**

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MR. JONES

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 205

2019

### HUMAN TISSUE AND ORGAN DONATION (PRESUMED CONSENT) AMENDMENT ACT, 2019

(Assented to \_\_\_\_\_, 2019)

WHEREAS the donation of a person's organs, tissue or body for the purpose of transplantation can save lives;

WHEREAS action must be taken to increase the rates of tissue and organ donation in Alberta; and

WHEREAS the process for deciding to make a donation of a person's tissue, organs or body should be made easier;

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

#### **Amends SA 2006 cH-14.5**

**1 The *Human Tissue and Organ Donation Act* is amended by this Act.**

#### **2 Section 1 is amended**

**(a) by adding the following after clause (b):**

(b.1) "Chief Medical Officer" means the Chief Medical Officer appointed under the *Public Health Act*;

**(b) by repealing clause (c) and substituting the following:**

(c) "consent" means a consent to donate that meets the requirements of section 9;

**(c) in clause (e) by striking out "section 4 or 5" and substituting "section 4, 4.01 or 5", and**

## Explanatory Notes

**1** Amends chapter H-14.5 of the Revised Statues of Alberta 2006.

**2** Section 1 presently reads in part:

*1 In this Act,*

- (b) “by product” means tissue or an organ that is a waste product of a medical procedure;*
- (c) “consent” means a consent given for a donation that meets the requirements of section 9;*
- (e) “donation” means a donation of tissue, an organ or a body under section 4 or 5;*
- (l) “organ” means a human organ whether whole or in sections, lobes or parts;*

**(d) by adding the following after clause (l):**

- (1.01) “refuse” means a refusal to donate that meets the requirements of section 9;

**3 Section 4 is repealed and the following is substituted:**

**Deceased donor**

**4(1)** For the purpose of transplantation, medical education or scientific research, an adult person may decide to

- (a) consent to donate their tissues, organs or body for use upon their death by indicating their consent in accordance with section 9, or
- (b) refuse to donate their tissue, organs or body for use upon their death by indicating their refusal in accordance with section 9.

**(2)** A person’s tissue, organs and body must only be used upon their death in accordance with the decision given under subsection (1).

**(3)** Subject to subsections (4) and (5), a person in one of the classes described in subsection (4) may make a decision under subsection (1) on behalf of another person

- (a) who had not made a decision under subsection (1) at the time of their death,
- (b) whose death is imminent and
  - (i) who, in the opinion of a medical practitioner, is incapable of making a decision due to injury or disease, and
  - (ii) has not made a decision under subsection (1),

or

- (c) who is a minor at the time of their death.

**(4)** A person who is in one of the following classes of persons may, in the order of priority set out in clauses (a) to (e), make a decision on behalf of another person:

**3** Section 4(1) presently reads:

*4(1) A person's tissue, organs or body may be donated for transplantation, medical education or scientific research from his or her deceased body if a consent is given*

*(a) where that person is an adult, by the adult, or*

*(b) by a person in accordance with subsection (2).*

*(2) When a person dies or his or her death is imminent, if the person is an adult who has not given a consent and, in the opinion of a medical practitioner, the person is incapable of doing so by reason of injury or disease, or if the person is a minor, a person in one of the following classes and in the following order of priority may give a consent:*

*(a) the spouse or adult interdependent partner of the person if they are not estranged;*

*(b) an adult child of the person;*

*(c) a parent or guardian of the person;*

*(d) an adult sibling of the person;*

*(e) any other adult next of kin of the person.*

*(3) A person shall not seek or give a consent under subsection (2) if he or she has personal knowledge of the following:*

*(a) a person in a higher priority class is readily available to provide a consent;*

*(b) a person in the same class would refuse to give a consent;*

*(c) the donor would have refused to give a consent.*

- (a) firstly, if they are not estranged at the time of making the decision, the spouse or adult interdependent partner of the person;
- (b) secondly, an adult child of the person;
- (c) thirdly, a parent or guardian of the person;
- (d) fourthly, an adult sibling of the person;
- (e) any other adult that is the next of kin of that person.

**(5)** A person may not make a decision under subsection (1) on behalf of another person if they have personal knowledge of any of the following:

- (a) a person in a higher priority class described in subsection (4) is reasonably available to make the decision;
- (b) in the case of a decision to consent to donate, another person who is in the same class or a higher class described in subsection (4) would decide to refuse to donate;
- (c) the person on whose behalf they are making a decision would have made a different decision.

### **Presumed consent**

**4.01(1)** If at the time of a person's death no decision has been made with respect to that person under section 4, the person is considered to have, before their death, made the decision to donate their organs and tissues for the purpose of transplantation only.

**(2)** A person is not considered to have made the decision referred to in subsection (1) if

- (a) at the time of their death,
  - (i) they were a minor, or
  - (ii) they did not reside in Alberta for the 12-month period immediately preceding the day on which they died,



(b) for a significant period before the day on which they died, they were, in the opinion of a medical practitioner, incapable of making a decision described in section 4(1),

or

(c) a person in one of the classes described in section 4(4) provides information that would lead a reasonable person to conclude that, if the deceased person had made a decision, they would have decided to refuse to donate in accordance with section 4(1)(b).

(3) For greater certainty, subsection (1) applies only if a person whose consent to donate is presumed has died.

#### **4 Section 4.1 is repealed and the following is substituted:**

##### **Online registry**

**4.1(1)** The Minister must establish an online registry to facilitate the registration and submission of every decision to donate made under section 4(1).

(2) A decision to donate submitted to the online registry must meet the requirements set out in section 9 and in the regulations, if any.

(3) Despite section 12, a consent to donate a person's whole body for the purpose of medical education or scientific research that is registered under subsection (1) may, in accordance with the regulations, if any, be electronically transmitted to a university.

#### **5 Section 4.2 is amended**

(a) **in subsection (1) by striking out** “that adult shall be asked whether he or she consents to the donation of his or her tissue, organs or body in accordance with section 4(1)(a)” **and substituting** “that adult must be provided an opportunity to make a decision in accordance with section 4(1) and must be informed that if they do not make a decision before their death, they may be presumed to have



**4** Section 4.1 presently reads:

*4.1 The Minister shall establish an online registry to facilitate registration of the consent of adults to the donation of their tissue, organs or body in accordance with section 4(1)(a).*

**5** Section 4.2 presently reads:

*4.2(1) When an adult applies*

- (a) to the Registrar of Motor Vehicle Services for the issuance or renewal of an operator's licence under the Traffic Safety Act, or*
- (b) to the Minister responsible for section 17 of Schedule 12 to the Government Organization Act for an identification card, that adult shall be asked whether he or she*

consented to donate their tissues and organs for the purpose of transplantation in accordance with section 4.01”;

**(b) in subsection (2)**

- (i) by striking out** “If an adult gives his or her consent under subsection (1)” **and substituting** “If, on being informed in accordance with subsection (1), an adult decides to consent to donate or to refuse to donate in accordance with section 4(1)”,
- (ii) in clause (a) by striking out** “information” **and substituting** “decision”, **and**
- (iii) in clause (b) by striking out** “the consent of the adult has been given” **and substituting** “whether the adult has consented to donate or refused to donate”.

**6 Section 4.3 is amended by striking out** “information respecting an adult’s consent under section 4(1)(a)” **and substituting** “decisions respecting an adult’s consent to donate or refusal to donate in accordance with section 4(1)”.

**7 Section 7 is repealed and the following is substituted:**

**Mandatory referral**

**7(1)** When a person dies or their death is imminent, the medical practitioner making the determination of death must provide a donation organization, in the circumstances prescribed in the regulations, with the following information:

- (a) the age of the person;
- (b) the cause, or expected cause, of the person’s death;
- (c) the time of death of the person, if death has occurred;
- (d) any available past and current personal information of the person, including medical and social history, that is relevant to their medical suitability for tissue or organ transplantation.

*consents to the donation of his or her tissue, organs or body in accordance with section 4(1)(a).*

*(2) If an adult gives his or her consent under subsection (1), the Registrar of Motor Vehicle Services or the Minister responsible for section 17 of Schedule 12 to the Government Organization Act, as the case may be, shall*

- (a) transmit that information to the online registry, and*
- (b) print a code or symbol on the operator's licence or identification card indicating the consent of the adult has been given.*

**6** Section 4.3 presently reads:

*4.3 The Lieutenant Governor in Council may, in accordance with the regulations, require a registry operated or maintained by the Government to collect and transmit information respecting an adult's consent under section 4(1)(a) to the online registry.*

**7** Section 7 presently reads:

*7(1) When a person dies, the medical practitioner who makes the determination of death must consider and document in the patient record the medical suitability of the deceased person's tissue or organs for transplantation.*

*(2) If a medical practitioner determines under subsection (1) that a person's tissue or organs may be suitable for transplantation, the medical practitioner must notify a donation organization, if any, in a manner satisfactory to the donation organization.*

*(3) A donation organization notified under subsection (2) must, unless it determines that the donor is medically unsuitable, seek a consent for a donation for transplantation under section 4(2) and document its efforts.*

*(4) Notwithstanding subsection (3), a donation organization shall not seek a consent for donation under section 4(2)*

- (a) if the medical practitioner referred to in subsection (1) advises that he or she*

(2) A donation organization must consider the medical suitability of the person's tissue or organs for transplantation by assessing the information provided under subsection (1).

(3) A donation organization must confirm whether a decision to donate has been made by the deceased person under section 4, unless it determines the person's tissue or organs are medically unsuitable for transplantation.

(4) Despite subsection (3), a donation organization is not required to confirm whether a decision to donate has been made under section 4 if

- (a) the medical practitioner referred to in subsection (1) advises the donation organization that the medical practitioner has personal knowledge that the deceased person would have made the decision to refuse to donate, or
- (b) the donation organization is already aware the deceased person made a decision to consent to donate or refuse to donate when they were alive that has not been revoked.

## **8 Section 8 is amended**

**(a) in subsection (1) by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding the following after clause (b):**

(c) notification to a university of the donation of a body for the purpose of medical education or scientific research in accordance with the regulations, if any.

**(b) in subsection (2) by striking out “section 4(1)(a) that has not been revoked pursuant to section 9(5)” and substituting “section 4(1) that has not been revoked pursuant to section 9(7)”;**

**(c) by repealing subsection (3) and substituting the following:**

(3) Despite subsection (1), a person shall not act on a consent to donate if

(i) *has personal knowledge that the deceased donor would have refused to give a consent, or*

(ii) *has already sought a consent under section 4,*

*or*

(b) *if a consent under section 4 has already been given.*

**8** Section 8 presently reads in part:

*8(1) Subject to section 10, a consent given in accordance with this Act is binding and authorizes*

*(a) any medical practitioner to make any examination necessary to assure medical acceptability of the donation, and*

*(b) the use of the body or the removal and use of the specified tissue or organ for the specified purpose.*

*(2) If a person has custody or control of a consent given under section 4(1)(a) that has not been revoked pursuant to section 9(5), that person must provide that consent for the purposes of subsection (1).*

*(3) Notwithstanding subsection (1), a person shall not act on a consent if the person*

*(a) has personal knowledge that the donor objected to the donation proceeding, or*

- (a) the person has personal knowledge that the person to whom the donation relates revoked their consent to donate or otherwise objected to the donation proceeding, or
- (b) in the case of a consent to donate made in accordance with section 4(3), the person has personal knowledge that a person in the same class or a higher class, as described in section 4(4), other than the person who made the decision to consent to donate, would object to the making of that decision.

**9 Section 9 is repealed and the following is substituted:**

**Consent and refusal requirements**

**9(1)** A consent to donate or a refusal to donate under this Act must be

- (a) in writing or electronic form,
- (b) dated, and
- (c) signed
  - (i) by the person consenting to donate or refusing to donate and a witness, or
  - (ii) subject to subsection (6), if the person consenting to donate or refusing to donate is unable to sign for any reason, by 2 adult persons who witnessed that person's oral instructions that they decided to, as applicable, consent to donate or refuse to donate and that they asked to have those instructions documented.

**(2)** A consent to donate or a refusal to donate signed under subsection (1)(c)(ii) must

- (a) indicate that each adult person directly witnessed the person's oral instructions giving consent or refusing consent referred to in that subsection,
- (b) identify the manner in which the instructions of the person were received by each witness, and

- (b) *has personal knowledge, where a consent was given under section 4(1)(b), that a person in the same class or a higher priority class as the consenter objected to the donation proceeding.*

**9** Section 9 presently reads:

*9(1) A consent required by this Act must be*

- (a) *in writing,*
- (b) *dated, and*
- (c) *signed*
  - (i) *by the consenter and a witness, or*
  - (ii) *if a consenter cannot sign for any reason, by 2 persons who witnessed the agreement to the donation by the consenter.*

*(2) A consent signed under subsection (1)(c)(ii) must*

- (a) *indicate that each witness received instructions from the consenter to document the consent,*
- (b) *identify the manner in which the consenter's agreement to the donation was obtained, and*
- (c) *if consent was given under section 4(1)(b), indicate that one witness was knowledgeable in the donation process and that the witness advised the consenter of the nature and consequences of the donation.*

*(3) A consent on the form provided on a certificate of registration issued under the Health Insurance Premiums Act is valid notwithstanding that it is not dated.*

*(3.1) A consent provided through the online registry is valid notwithstanding that it is not signed by a witness.*

- (c) if a consent to donate is given, in accordance with section 4(3), indicate that 1 witness was knowledgeable about the donation process and advised the person consenting to donate of the nature and consequences of providing their consent.

**(3)** For the purpose of section 4(1)(a), a consent to donate must specify the following:

- (a) whether the consent applies to the donor's whole body or to specific tissues, organs or groups of tissues and organs and, if so, specify those tissues, organs, or groups of tissues and organs;
- (b) any of the following purposes for which the donor's whole body, or specified tissues, organs or groups of tissues and organs, as applicable, may be used:
  - (i) medical education;
  - (ii) scientific research;
  - (iii) transplantation.

**(4)** A consent to donate on the form provided on a certification of registration issued under the *Health Insurance Premiums Act* is valid despite it not being dated.

**(5)** Despite subsection (1)(c)(ii), a consent to donate or refusal to donate provided through the online registry is valid despite it not being signed by a witness.

**(6)** The following persons are not eligible to witness a consent to donate:

- (a) the physician who will remove the tissue or organ, or perform a transplantation of those tissues or organs, to which the consent applies;
- (b) the recipient of the transplant referred to in clause (a) or any of their immediate family;
- (c) a person who is required to give a consent to donate in respect of the same donation.



*(4) The following persons shall not witness a consent:*

- (a) the physician who will remove the tissue or organ or perform the transplantation;*
- (b) the recipient of the transplant and his or her immediate family;*
- (c) a person who is required to give a consent in respect of the same donation.*

*(5) If a consenter revokes a consent, that consenter must provide a revocation that meets the requirements of subsection (1) to any person the consenter knows has a copy of that consent as soon as practicable.*

(7) A person may, in accordance with the regulations, if any, revoke a consent to donate or a refusal to donate by providing a written revocation that

- (a) meets the requirements in subsection (1), and
- (b) any additional prescribed requirements.

**10 Section 12 is amended**

- (a) **in subsection (1)(b) by striking out “section 4 or 5” and substituting “section 4, 4.01 or 5”;**
- (b) **in subsection (3)(b)(ii) by striking out “section 4(1)(b)” and substituting “section 4(3)”.**

**11 The following is added after section 12.2:**

**Quarterly reports**

**12.3(1)** The Chief Medical Officer shall, as soon as practicable after the end of each quarter of every year, prepare and provide the Minister with a report that includes the following information:

- (a) the number of deceased persons with tissue or organs that were medically suitable for transplantation, but for which information was not provided to a donation organization under section 7(1) with sufficient time to co-ordinate a donation;
- (b) any actions undertaken or proposed to address issues related to the provision of information by a medical practitioner to a donation organization for the purpose of facilitating a donation;
- (c) any additional information prescribed by the regulations.

**10** Section 12 presently reads in part:

*12(1) Subject to subsection (2), a person may collect, use or disclose the information necessary*

*(b) to use or obtain a donation under section 4 or 5, or*

*(3) Subsection (2) does not apply if the disclosure*

*(b) has been agreed to in writing*

*(i) by the person whose identity could become publicly known or that person's guardian, or*

*(ii) where the identity of a person in respect of whom a consent was given under section 4(1)(b) could become publicly known, by the consenter.*

**11** Section 12.2 presently reads:

*12.2 In accordance with the Public Service Act, there may be appointed the employees required to conduct the business of the Agency.*

(2) The Chief Medical Officer has the same powers and duties as outlined in the *Public Health Act* for the purpose of carrying out this section.

**12 Section 14 is amended by repealing clause (c).**

**13 Section 14.1 is amended**

**(a) by adding the following after clause (c):**

- (c.1) respecting the manner in which a person may submit for registration a consent to donate or refusal to donate to the online registry under section 4.1(2);
- (c.2) respecting the electronic transmission of decisions to a university for the purpose of a donation for medical education or scientific research;
- (c.3) for the purpose of section 7(1), prescribing the circumstances in which a medical practitioner must provide a donation organization with information when a person dies or their death is imminent;
- (c.4) respecting the notification of a university for the purpose of section 8(1)(c);

**(b) in clause (d) by striking out “respecting a request regarding consent to donation” and substituting “respecting a request regarding consent to donate or refusal to donate”;**

**(c) by adding the following after clause (d):**

- (d.1) for the purpose of section 9(7), prescribing any additional requirements for the revocation of a consent to donate or a refusal to donate;

**(d) by adding the following after clause (h):**

- (i) for the purpose of section 12.3(1)(c), prescribing any additional information to be included in the Chief Medical Officer’s quarterly report.

**14 This Act comes into force on January 1, 2022.**

**12** Section 14 presently reads in part:

*14 The Minister may make regulations*

*(c) respecting registrations for the purposes of section 3(6);*

**13** Section 14.1 presently reads in part:

*(d) respecting a request regarding consent to donation under section 4.2 and the collection, use and disclosure of information obtained under that section;*

**14** Coming into force.





