

2022 Bill 205

Third Session, 30th Legislature, 71 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 205

**HUMAN TISSUE AND ORGAN DONATION
(MANDATORY REFERRAL) AMENDMENT ACT, 2022**

MR. SIGURDSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 205

2022

HUMAN TISSUE AND ORGAN DONATION (MANDATORY REFERRAL) AMENDMENT ACT, 2022

(Assented to _____, 2022)

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 repealing clause (a) and substituting the following:

(a) “Agency” means the Alberta Organ and Tissue
Donation Agency continued under section 12.1;

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

(a.01) “board” means the board appointed under
section 12.6(1);

(c) by adding the following immediately after clause (b):

(b.1) “capacity” means the ability to understand information
that is relevant to a decision to be made and the ability
to understand and appreciate the reasonably foreseeable
consequences of a decision or lack of a decision;

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

(l.01) “refuse” means a refusal to consent to donate that meets
the requirements of section 9;

Explanatory Notes

Human Tissue and Organ Donation Act

1 Amends chapter H-14.5 of the Statutes of Alberta 2006.

2 Section 1 presently reads in part:

1 In this Act,

(a) “Agency” means the Alberta Organ and Tissue Donation Agency established under section 12.1;

(a.1) “body” means a human body;

(b) “by product” means tissue or an organ that is a waste product of a medical procedure;

(l) “organ” means a human organ whether whole or in sections, lobes or parts;

3 Sections 4 and 4.1 are repealed and the following is substituted:

Deceased donor

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

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

(2) A person's tissue, organs and body must only be used on that person's death in accordance with a consent or refusal to consent given under subsection (1).

(3) Subject to subsection (5), a person who is in one of the classes described in subsection (4) may consent or refuse to consent to donate under subsection (1) on behalf of another person if any of the following applies:

- (a) the other person had not consented or refused to consent under subsection (1) at the time of their death;
- (b) the other person's death is imminent and
 - (i) in the opinion of a medical practitioner, they are incapable of consenting or refusing to consent due to injury or disease, and
 - (ii) they have not consented or refused to consent under subsection (1);
- (c) the other person is a minor at the time of their death.

(4) For the purpose of subsection (3), the classes of persons, in order of priority, are as follows:

- (a) if they are not estranged at the time of consenting or refusing to consent to donate, the spouse or adult interdependent partner of that person;
- (b) an adult child of that person;
- (c) a parent or guardian of that person;

3 Sections 4 and 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.

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

- (d) an adult sibling of that person;
- (e) any other adult that is the next of kin of that person.

(5) A person may not consent or refuse to consent to donate 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 as described in subsection (4) is reasonably available to consent or refuse to consent;
- (b) in the case of a consent to donate, another person who is in the same priority class or a higher priority class described in subsection (4) would refuse to consent to donate;
- (c) the person on whose behalf they are consenting or refusing to consent would have made a different decision.

Online registry

4.1(1) The Minister must establish an online registry to facilitate the submission and registration of each consent or refusal to consent that is made in accordance with section 4(1) with respect to the donation of a person's tissues and organs.

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

4 Section 4.2 is amended as follows:

- (a) **subsection (1) is repealed and the following is substituted:**

Consent or refusal to consent to donate

4.2(1) An authority referred to in subsection (1.1) must do the following in respect of an adult making an application to that authority:

- (a) provide the adult with information from the Minister regarding the importance of tissue and organ donation and the process by which consent or refusal to consent may be given in Alberta;

4 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 consents to the donation of his or her tissue or organs 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

- (b) ask the adult whether they wish to consent or refuse to consent with respect to the donation of their tissue or organs in accordance with section 4(1).

(1.1) For the purpose of subsection (1), an authority is

- (a) in the case of the issuance or renewal of an operator's licence under the *Traffic Safety Act*, the Registrar of Motor Vehicle Services, or
- (b) in the case of an identification card, the Minister responsible for section 17 of Schedule 12 of the *Government Organization Act*.

(b) subsection (2) is amended

- (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 consents or refuses to consent to donate in accordance with section 4(1)",
- (ii) **in clause (a) by striking out** "information" **and substituting** "consent or refusal to consent", **and**
- (iii) **in clause (b) by striking out** "the consent of the adult has been given" **and substituting** "whether the adult has consented or refused to consent to donate".

5 Section 4.3 is amended by striking out "an adult's consent under section 4(1)(a)" **and substituting** "an adult's consent or refusal to consent under section 4(1)".

6 Section 7 is repealed and the following is substituted:

Mandatory referral

7(1) Subject to subsection (2), when a person dies or their death is imminent, a medical practitioner making the determination of the person's death must, in the circumstances prescribed by the regulations, provide a donation organization with the following information:

- (a) the age of the person;
- (b) the cause, or expected cause, of the person's death;

5 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.

6 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.

- (c) if death has occurred, the time of death of the person;
 - (d) any available past and current personal information of the person that is relevant to their medical suitability for tissue or organ transplantation.
- (2)** A medical practitioner is not required to provide the information referred to in subsection (1) to a donation organization if
- (a) in the opinion of the medical practitioner, the person's tissue or organs are not medically suitable for transplantation, and
 - (b) the medical practitioner has made a written note of the reasons for that determination in the person's medical record.
- (3)** A donation organization must consider the suitability of a person's tissue or organs for transplantation by assessing the information provided to it in accordance with subsection (1).
- (4)** If a donation organization determines that a person's tissue or organs may be suitable for transplantation, it must
- (a) confirm whether a consent or a refusal to consent has been made in accordance with section 4 to donate that person's tissue or organs for transplantation, and
 - (b) if no consent or refusal to consent has been made, request consent to donate that person's tissue or organs for transplantation in accordance with section 4 and document its efforts.
- (5)** Despite subsection (4), a donation organization is not required to confirm whether a consent or refusal to consent has been made in accordance with section 4 if
- (a) the medical practitioner referred to in subsection (1) advises the donation organization that they have personal knowledge that the deceased person would have refused to consent to donate, or
 - (b) the donation organization is already aware that the deceased person refused to consent to donate when they were alive and that refusal has not been revoked.

(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

(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.

7 Section 8 is amended

(a) 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)(a) that has not been revoked pursuant to section 9(8)”, **and**

(b) by repealing subsection (3) and substituting the following:

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

- (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 priority class or a higher priority class, as described in section 4(4), other than the person who consented to donate, would object to that consent.

8 Section 9 is repealed and the following is substituted:

Consent and refusal requirements

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

- (a) in writing or electronic form,
- (b) dated, and
- (c) signed
 - (i) by the person consenting or refusing to consent to donate and a witness, or
 - (ii) subject to subsections (6) and (7), if the person consenting or refusing to consent to donate is unable to sign for any reason, by 2 adults who witnessed that person’s oral instructions that they consented or refused to consent to donate, as applicable, and that they asked to have those instructions documented.

7 Section 8 presently reads in part:

(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

(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.

8 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

(2) For greater certainty, subsection (1)(c)(i) includes a person referred to in section 4(1) or (3).

(3) A consent or refusal to consent to donate signed in accordance with subsection (1)(c)(ii) must

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

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

- (a) whether the consent applies to the donor's whole body or to specific tissues, or groups of tissues and organs and, if so, the specific tissues, organs, or groups of tissues and organs to be donated;
- (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.

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

(6) Despite subsection (1)(c)(ii) and (8),

- (a) a consent, refusal to consent or revocation of a consent or refusal to consent to donate provided through the online registry is valid if it is in writing and dated, 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) Despite subsections (1) and (5),

(a) a consent or a revocation of a consent provided through the online registry is valid if it is

(i) in writing, and

(ii) dated,

and

(b) a consenter who revokes a consent through the online registry is not required to provide the revocation to any person the consenter knows has a copy of that consent.

(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.

- (b) a person who revokes consent through the online registry is not required to provide that revocation to any other person who has a copy of the consent to donate.

(7) The following persons are not eligible to witness a consent or refusal to consent to donate:

- (a) the physician who will remove the tissue or organ, or perform a transplantation of the tissue or organ, 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 consent to donate in respect of the same donation.

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

- (a) the same requirements set out in subsections (1) and (2), and
- (b) any additional prescribed requirements.

9 Sections 12, 12.1 and 12.2 are repealed and the following is substituted:

Confidentiality of information

12(1) Subject to subsections (2) and (3), and sections 4.2 and 7, no person may disclose information that identifies any of the following:

- (a) a person who has consented or refused to consent to donate;
- (b) person to whom a consent or a refusal to consent to donate has been made;
- (c) a person into whose body donated organs or tissue have been or may be transplanted.

(2) Subsection (1) does not apply if the disclosure

- (a) is permitted or required by an enactment or order of the court, or

9 Sections 12, 12.1 and 12.2 presently read:

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

- (a) to assess a donor's suitability to donate under section 4,*
- (b) to use or obtain a donation under section 4 or 5, or*
- (c) to assess medical suitability under section 7.*

(2) Subject to subsection (3), no person shall disclose any information from which the identity of a person

- (a) who has given or refused to give a consent,*
- (b) with respect to whom a consent has been given, or*
- (c) into whose body any tissue or an organ has been, is being or may be transplanted,*

could become known publicly.

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

- (b) has been agreed to in writing
 - (i) by the person whose identity would be disclosed or their guardian, or
 - (ii) by a person who gave a consent to donate under section 4(3).

(3) A person may collect, use or disclose a person's personal information if necessary to do any of the following:

- (a) assess a person's suitability to donate under section 4;
- (b) use or obtain a donation under section 4 or 5;
- (c) assess medical suitability under section 7.

Alberta Organ and Tissue Donation Agency

12.1 The Alberta Organ and Tissue Donation Agency is continued.

Purpose of Agency

12.2 The purpose of the Agency is to co-ordinate and support the work of donation organizations in managing the organ and tissue donation system in Alberta.

Duties of Agency

12.3 To fulfill its purpose under section 12.2, the Agency must do each of the following:

- (a) monitor and measure information about organ and tissue donation and related services, infrastructure and training related to organ and tissue donation in Alberta;
- (b) consult with donation organizations, corporations, organizations, associations, institutions and professional and employee groups in respect of the subject matter of this Act;
- (c) educate the public and health care community and work with health professionals and their respective organizations to increase awareness about tissue and organ donation in Alberta;
- (d) support, encourage and oversee the use of the online registry;

- (a) is permitted or required by an enactment or by an order of the court, or*
- (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 consentor.*

12.1(1) The Alberta Organ and Tissue Donation Agency is established.

(2) The purposes of the Agency are to

- (a) co-ordinate and support the work of donation organizations in managing the system of donation in Alberta,*
- (b) educate the public and health care community and work with health professionals and their respective organizations to increase awareness about human tissue and organ donation in Alberta,*
- (c) support, encourage and oversee the use of the online registry,*
- (d) monitor and measure the system of donation in Alberta, and*
- (e) perform any other function prescribed in the regulations.*

(3) The Agency reports to the Minister through the chair of the Agency and is responsible for submitting to the Minister an annual report of its activities in a form acceptable to the Minister containing the information required by the Minister.

(4) On receipt of a report under subsection (3), the Minister shall lay a copy of it before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

(5) The Agency may make bylaws governing the calling of its meetings and the conduct of its business at meetings.

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

- (e) make recommendations to the Minister in accordance with section 12.5;
- (f) perform any other duty that is prescribed by the regulations.

Powers of Agency

12.4(1) In carrying out its duties under section 12.3, the Agency may do any of the following:

- (a) receive and hear submissions from individuals or groups related to the Agency's purpose;
 - (b) publish any submissions that are included in a report to the Minister after it has been laid before the Assembly under section 12.5(2).
- (2) The Agency may make bylaws governing the calling of its meetings and the conduct of its business.

Annual report

12.5(1) The Agency, through the chair of the board, must provide an annual report to the Minister containing the following information:

- (a) a summary of the Agency's activities during the preceding year;
 - (b) statistical information about the number of donor identifications, donor referrals and the donation consent rate for the preceding year;
 - (c) its recommendations, if any, for improving the efficiency and effectiveness of the tissue and organ donation system in Alberta.
- (2) On receipt of a report under subsection (1), the Minister must lay a copy of the report before the Assembly if it is sitting or, if the Assembly is not sitting, within 15 days after the commencement of the next sitting.

Board of directors

12.6(1) Subject to subsections (3) and (4), the Lieutenant Governor in Council must appoint a board of directors consisting of at least 7, but no more than 9, directors.

(2) The board is responsible for managing and supervising the business and affairs of the Agency.

- (3) Each director of the board may serve for a term not exceeding 4 years and must be a resident of Alberta.
- (4) The board must include an individual appointed as a director from each of the following:
- (a) an Alberta non-profit organization with expertise in the area of organ and tissue donation;
 - (b) an employee of a regional health authority established or recognized under the *Regional Health Authorities Act* with an expertise in the area of organ and tissue donation;
 - (c) a medical practitioner with an expertise in the area of organ and tissue donation;
 - (d) a person with an expertise in the area of clinical ethics.
- (5) The Lieutenant Governor in Council must designate 1 director to serve as chair of the board.
- (6) The Lieutenant Governor in Council must set out each of the following in a director's appointment:
- (a) the amount of remuneration that must be paid to the director;
 - (b) each type of expense for which the director may be reimbursed.

Staff

12.7 The Minister must ensure that individuals employed under the *Public Service Act* and necessary for the Agency to carry out its responsibilities under this Act are made available to the Agency.

10 Section 13(2) is amended by striking out "A person who contravenes section 12(2)" **and substituting** "A person who contravenes section 12(1)".

10 Section 13(2) presently reads in part:

(2) A person who contravenes section 12(2) is guilty of an offence and liable to a fine of not more than \$50 000.

11 Section 14.1 is amended

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

- (c.1) respecting the manner in which a person must submit a consent or a refusal to consent to donate to the online registry under section 4.1(2);

(b) by adding the following immediately after clause (f):

- (f.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 for the purpose of section 7(1);
- (f.2) describing additional duties of the Agency for the purpose of section 12.3(f).

12 This Act comes into force on January 1, 2023.

11 Section 14.1 presently reads in part:

- (c) respecting the collection, use and disclosure of information in the online registry;*
- (f) prescribing registries under section 4.3 and respecting the collection, use and disclosure of information by those registries;*

12 Coming into force.

Record of Debate

STAGE	DATE	MEMBER	FROM	TO	TOTAL	CUMULATIVE TOTAL