

REFERENCE TITLE: anatomical gifts; procurement organizations; licensure

State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

## **HB 2307**

Introduced by  
Representatives Cobb, Borrelli: Shope

### **AN ACT**

AMENDING SECTIONS 36-414, 36-841, 36-848 AND 36-850, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 7, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-851.01 AND 36-851.02; AMENDING SECTIONS 36-852, 36-853 AND 36-860, ARIZONA REVISED STATUTES; RELATING TO THE REVISED UNIFORM ANATOMICAL GIFT ACT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-414, Arizona Revised Statutes, is amended to  
3 read:

4 36-414. Health services licensing fund; exemption

5 A. The health services licensing fund is established consisting of  
6 monies deposited pursuant to sections 36-405, 36-851.01, 36-882, 36-897.01  
7 and 36-1903. The department of health services shall administer the fund.

8 B. Monies in the fund are subject to legislative appropriation.

9 C. Monies in the fund are exempt from the provisions of section 35-190  
10 relating to lapsing of appropriations.

11 Sec. 2. Section 36-841, Arizona Revised Statutes, is amended to read:

12 36-841. Definitions

13 In this article, unless the context otherwise requires:

14 1. "Adult" means an individual who is at least eighteen years of age.

15 2. "Agent" means an individual who is either:

16 (a) Authorized to make health care decisions on the principal's behalf  
17 pursuant to a health care power of attorney.

18 (b) Expressly authorized to make an anatomical gift on the principal's  
19 behalf pursuant to any other record signed by the principal.

20 3. "Anatomical gift" means a donation of all or part of a human body  
21 to take effect after the donor's death for the purpose of transplantation,  
22 therapy, research or education.

23 4. "Decedent" means a deceased individual whose body or part is or may  
24 be the source of an anatomical gift. Decedent includes a stillborn infant  
25 and, subject to restrictions imposed by any other law, a fetus.

26 5. "Disinterested witness" means a witness other than the spouse,  
27 child, parent, sibling, grandchild, grandparent or guardian of the individual  
28 who makes, amends, revokes or refuses to make an anatomical gift, or another  
29 adult who exhibited special care and concern for the individual.  
30 Disinterested witness does not include a person to which an anatomical gift  
31 could pass pursuant to section 36-850.

32 6. "Document of gift" means a donor card or other record THAT IS used  
33 to make an anatomical gift. Document of gift includes a statement or symbol  
34 on a driver license, identification card or donor registry.

35 7. "Donor" means an individual whose body or part is the subject of an  
36 anatomical gift.

37 8. "Donor registry" means a database that contains records of  
38 anatomical gifts.

39 9. "Driver license" means a license or permit THAT IS issued pursuant  
40 to title 28 to operate a vehicle, whether or not conditions are attached to  
41 the license or permit.

42 10. "Eye bank" means a person that is licensed ~~or regulated~~ under  
43 ~~federal or~~ state law ~~or~~ AND THAT is accredited by a nationally recognized  
44 accrediting agency to engage in the recovery, screening, testing, processing,  
45 storage or distribution of human eyes or portions of human eyes.

- 1           11. "Guardian" means a person who is appointed by a court to make  
2 decisions regarding the support, care, education, health or welfare of an  
3 individual. Guardian does not include a guardian ad litem.
- 4           12. "Hospital" means a facility that is licensed as a hospital under  
5 the laws of any state or that is operated as a hospital by the United States,  
6 a state or a subdivision of a state.
- 7           13. "Identification card" means ~~an~~ A NONOPERATING identification ~~card~~  
8 LICENSE THAT IS issued by the motor vehicle division of the department of  
9 transportation.
- 10          14. "Know" means to have actual knowledge.
- 11          15. "Minor" means an individual who is under eighteen years of age.
- 12          16. "Organ procurement organization" means a person THAT IS LICENSED  
13 UNDER STATE LAW, THAT IS ACCREDITED BY A NATIONALLY RECOGNIZED ACCREDITING  
14 AGENCY AND THAT IS designated by the secretary of the United States  
15 department of health and human services as an organ procurement organization.
- 16          17. "Parent" means a parent whose parental rights have not been  
17 terminated.
- 18          18. "Part" means an organ, eye or tissue of a human being. Part does  
19 not include the whole body.
- 20          19. "Person" means an individual, corporation, business trust, estate,  
21 trust, partnership, limited liability company, association, joint venture,  
22 public corporation, government or governmental subdivision, agency or  
23 instrumentality, or any other legal or commercial entity.
- 24          20. "Physician" means an individual WHO IS licensed as a physician  
25 pursuant to title 32, chapter 13 or 17.
- 26          21. "Principal" means a person who is the subject of a health care  
27 power of attorney.
- 28          22. "Procurement organization" means ANY OF THE FOLLOWING THAT IS  
29 LICENSED PURSUANT TO SECTION 36-851.01:
- 30           (a) An organ procurement organization.
- 31           (b) A tissue bank FOR THE RECOVERY OF TISSUES FOR TRANSPLANTATION,  
32 THERAPY, RESEARCH OR EDUCATION.
- 33           (c) An eye bank.
- 34           (d) A storage facility that is ~~licensed,~~ accredited ~~or approved under~~  
35 ~~federal law or the laws of any state~~ BY A NATIONALLY RECOGNIZED ACCREDITING  
36 AGENCY to engage in the recovery, screening, testing, processing, storage or  
37 distribution of human bodies or parts.
- 38          23. "Prospective donor" means an individual who is dead or near death  
39 and who has been determined by a procurement organization to have a part that  
40 could be medically suitable for transplantation, therapy, research or  
41 education. Prospective donor does not include an individual who has made a  
42 refusal.
- 43          24. "Reasonably available" means able to be contacted by a procurement  
44 organization without undue effort and willing and able to act in a timely

1 manner consistent with existing medical criteria necessary for the making of  
2 an anatomical gift.

3 25. "Recipient" means an individual into whose body a decedent's part  
4 has been or is intended to be transplanted.

5 26. "Record" means information that is inscribed on a tangible medium  
6 or that is stored in an electronic or other medium and is retrievable in  
7 perceivable form.

8 27. "Refusal" means a record created pursuant to section 36-846 that  
9 expressly states an intent to bar other persons from making an anatomical  
10 gift of an individual's body or part.

11 28. "Sign", with respect to the present intent to authenticate or adopt  
12 a record, means either:

13 (a) To execute or adopt a tangible symbol.

14 (b) To attach to or logically associate with the record an electronic  
15 symbol, sound or process.

16 29. "State" means a state of the United States, the District of  
17 Columbia, Puerto Rico, the United States Virgin Islands or any territory or  
18 insular possession subject to the jurisdiction of the United States.

19 30. "Technician" means an individual who is determined to be qualified  
20 to remove or process parts by an appropriate organization that is licensed or  
21 regulated under federal or state law or is accredited by a nationally  
22 recognized accrediting agency. Technician includes an enucleator.

23 31. "Tissue" means all or a portion of the human body other than blood,  
24 an organ or an eye unless the blood, organ or eye is donated for the purpose  
25 of **TRANSPLANTATION**, research or education.

26 32. "Tissue bank" means a person that is licensed ~~or regulated~~ under  
27 ~~federal or~~ state law ~~or~~ **AND THAT** is accredited as a tissue bank by a  
28 nationally recognized accrediting ~~agency~~ **ORGANIZATION** to engage in the  
29 recovery, screening, testing, processing, storage or distribution of tissue  
30 **FOR TRANSPLANTATION, THERAPY, RESEARCH OR EDUCATION**.

31 33. "Transplant hospital" means a hospital that furnishes organ  
32 transplants and other medical and surgical specialty services required for  
33 the care of transplant patients.

34 Sec. 3. Section 36-848, Arizona Revised Statutes, is amended to read:  
35 **36-848. Who may make anatomical gift of decedent's body or part**

36 A. Subject to the requirements of subsections B and C of this section,  
37 and unless barred pursuant to section 36-846 or 36-847, an anatomical gift  
38 for transplantation, therapy, research or education may be made by any member  
39 of the following classes of persons who is reasonably available, in the order  
40 of priority listed:

41 1. An agent of the decedent at the time of death who could have made  
42 an anatomical gift pursuant to section 36-843 immediately before the  
43 decedent's death.

44 2. The decedent's spouse.

45 3. The decedent's adult children.

- 1           4. The decedent's parents.
- 2           5. If the decedent is unmarried, the decedent's domestic partner, if  
3 another person had not assumed financial responsibility for the decedent.
- 4           6. The decedent's adult siblings.
- 5           7. The decedent's adult grandchildren.
- 6           8. The decedent's grandparents.
- 7           9. An adult who exhibited special care and concern for the decedent.
- 8           10. The persons who were acting as the guardians of the person of the  
9 decedent at the time of death.
- 10          11. Any other person who has the authority to dispose of the decedent's  
11 body.
- 12           B. If there is more than one member of a class that is listed in  
13 subsection A, paragraph 1, 3, 4, 5, 6, 7, 8 or 10 of this section who is  
14 entitled to make an anatomical gift, an anatomical gift may be made by a  
15 member of the class unless that member or a person to which the gift may pass  
16 pursuant to section 36-850 knows of an objection by another member of the  
17 class. If an objection is known, the gift may be made only by a majority of  
18 the members of the class who are reasonably available.
- 19           C. A person may not make an anatomical gift if, at the time of the  
20 decedent's death, a person in a prior class pursuant to subsection A of this  
21 section is reasonably available to make or to object to the making of an  
22 anatomical gift.
- 23           D. If the decedent's body is not within the custody of the county  
24 medical examiner, the county health officer may release and permit the  
25 removal of any part from the body in the county health officer's custody for  
26 transplantation, therapy, education or research if the requirements of  
27 section 36-860, subsection ~~A~~, B are met.
- 28          Sec. 4. Section 36-850, Arizona Revised Statutes, is amended to read:  
29          36-850. Persons who may receive anatomical gifts; purpose of  
30                 anatomical gift
- 31           A. An anatomical gift may be made to the following named in the  
32 document of gift:
- 33           1. An organ procurement organization.
- 34           2. A hospital, accredited medical school, dental school, college,  
35 university, ~~OR~~ OR procurement organization or any other appropriate person, for  
36 research or education.
- 37           3. Subject to the requirements of subsection B of this section, an  
38 individual designated by the person making the anatomical gift if the  
39 individual is the recipient of the part.
- 40           4. An eye bank or a tissue bank.
- 41           B. If an anatomical gift to an individual pursuant to subsection A,  
42 paragraph 3 of this section cannot be transplanted into the individual, the  
43 part passes pursuant to subsection ~~G~~ H of this section in the absence of an  
44 express contrary indication by the person making the anatomical gift.

1 C. If an anatomical gift of one or more specific parts or of all parts  
2 is made in a document of gift that does not name a person described in  
3 subsection A of this section but that identifies the purpose for which an  
4 anatomical gift may be used, the gift passes:

5 1. To the appropriate eye bank if the part is an eye and the gift is  
6 for the purpose of transplantation or therapy.

7 2. To the appropriate tissue bank if the part is tissue and the gift  
8 is for the purpose of transplantation or therapy.

9 3. To the organ procurement organization as custodian of the organ if  
10 the part is an organ and the gift is for the purpose of transplantation or  
11 therapy.

12 4. To the appropriate procurement organization if the part is an  
13 organ, an eye or tissue and the gift is for the purpose of research or  
14 education.

15 D. IF AN ANATOMICAL GIFT IS SUITABLE FOR TRANSPLANTATION AND THE  
16 PROCUREMENT ORGANIZATION IS UNABLE OR UNWILLING TO RECOVER THE TISSUE, THE  
17 PROCUREMENT ORGANIZATION SHALL REFER THE GIFT AND ALL RELEVANT DONATION  
18 INFORMATION TO ANOTHER PROCUREMENT ORGANIZATION IN A MANNER THAT ENSURES THE  
19 GIFT IS RECOVERED FOR TRANSPLANTATION.

20 ~~D.~~ E. For the purposes of subsection C of this section, if there is  
21 more than one purpose of an anatomical gift stated in the document of gift  
22 but the purposes are not stated in any priority, the gift must be used for  
23 transplantation or therapy, if suitable. If the gift cannot be used for  
24 transplantation or therapy, the gift may be used for research or education.

25 ~~E.~~ F. If an anatomical gift of one or more specific parts is made in  
26 a document of gift that does not name a person described in subsection A of  
27 this section and does not identify the purpose of the gift, the gift may be  
28 used only for transplantation or therapy and the gift passes pursuant to  
29 subsection ~~G~~ H of this section.

30 ~~F.~~ G. If a document of gift specifies only a general intent to make  
31 an anatomical gift by words such as "donor", "organ donor" or "body donor",  
32 or by a symbol or statement of similar import, the gift may be used only for  
33 transplantation or therapy and the gift passes pursuant to subsection ~~G~~ H of  
34 this section.

35 ~~G.~~ H. For the purposes of subsections B, ~~E~~ F and ~~F~~ G of this  
36 section:

37 1. If the part is an eye, the gift passes to the appropriate eye bank.

38 2. If the part is tissue, the gift passes to the appropriate tissue  
39 bank.

40 3. If the part is an organ, the gift passes to the organ procurement  
41 organization as custodian of the organ.

42 ~~H.~~ I. An anatomical gift of an organ for transplantation or therapy,  
43 other than an anatomical gift pursuant to subsection A, paragraph 3 of this  
44 section, passes to the organ procurement organization as custodian of the  
45 organ.



1           36-851.02. Procurement organizations; requirements; records

2           EACH PROCUREMENT ORGANIZATION SHALL DO ALL OF THE FOLLOWING:

3           1. DESIGNATE A MEDICAL DIRECTOR WHO IS A PHYSICIAN LICENSED PURSUANT  
4 TO TITLE 32, CHAPTER 13 OR 17 AND WHO PROVIDES MEDICAL GUIDANCE TO DETERMINE  
5 DONOR ELIGIBILITY.

6           2. EMPLOY A DIRECTOR WHO HOLDS AT LEAST A BACHELOR'S DEGREE IN A  
7 RELATED SCIENCE FROM AN ACCREDITED UNIVERSITY AND WHO IS RESPONSIBLE FOR ALL  
8 LICENSED ACTIVITIES OF THE ORGANIZATION.

9           3. IMPLEMENT AND MAINTAIN ALL OF THE FOLLOWING:

10          (a) STANDARD OPERATING PROCEDURES FOR ALL LICENSED FUNCTIONS OF THE  
11 ORGANIZATION.

12          (b) A SAFETY AWARENESS AND BLOOD-BORNE PATHOGEN TRAINING PROGRAM THAT  
13 COMPLIES WITH STATE AND FEDERAL LAW.

14          (c) A CLEANING PROGRAM THAT MITIGATES POTENTIAL CROSS-CONTAMINATION  
15 BETWEEN DONORS.

16          4. PROVIDE A DESIGNATED AREA FOR TISSUE RECOVERY THAT:

17          (a) IS OPEN TO INSPECTION BY THE DEPARTMENT OF HEALTH SERVICES WITH OR  
18 WITHOUT NOTICE.

19          (b) DOES NOT OPERATE IN A FUNERAL ESTABLISHMENT FOR THE RECOVERY OF  
20 WHOLE BODIES FOR MEDICAL RESEARCH AND EDUCATION.

21          5. PROPERLY TRACK DONORS AND LABEL TISSUE BY DOING BOTH OF THE  
22 FOLLOWING:

23          (a) ASSIGNING A UNIQUE IDENTIFYING NUMBER TO EACH DONOR AND USING THIS  
24 NUMBER FOR ALL TISSUE FROM THAT DONOR THAT IS RECOVERED AND DISTRIBUTED.

25          (b) AFFIXING LABELS WITH THE FOLLOWING INFORMATION ON ALL  
26 NONTRANSPLANT TISSUE SPECIMENS:

27                  (i) A STATEMENT THAT UNIVERSAL PRECAUTIONS WILL BE USED.

28                  (ii) A STATEMENT THAT THE SPECIMEN IS NOT FOR TRANSPLANT OR CLINICAL  
29 USE.

30                  (iii) ANY CONDITION OR LIMITATION REGARDING THE USE OF THE SPECIMEN.

31                  (iv) CONTACT INFORMATION FOR THE PROCUREMENT ORGANIZATION.

32          6. MAINTAIN THE FOLLOWING RECORDS FOR TEN YEARS AFTER THE LAST DATE OF  
33 TISSUE DISTRIBUTION:

34                  (a) A COPY OR RECORDED CONSENT OF THE DONATION AUTHORIZATION.

35                  (b) A COPY OF THE DONOR'S DEATH CERTIFICATE AND TRANSIT PERMIT ISSUED  
36 BY THE STATE WHERE THE DEATH OCCURRED.

37                  (c) A COPY OF THE DONOR'S PHYSICAL ASSESSMENT AND RISK ASSESSMENT  
38 QUESTIONNAIRE.

39                  (d) A COPY OF THE DONOR'S SEROLOGICAL RESULTS, WHEN APPLICABLE.

40                  (e) A COPY OF ALL DOCUMENTATION RELATING TO TISSUE RECOVERY, STORAGE  
41 AND DISTRIBUTION ACTIVITIES.

1           Sec. 6. Section 36-852, Arizona Revised Statutes, is amended to read:  
2           36-852. Rights and duties of procurement organizations and  
3                                   others

4           A. When a hospital refers an individual WHO IS at or near death to an  
5 organ procurement organization, the organization shall make a reasonable  
6 search of the records of any donor registry that it knows exists for the  
7 geographical area in which the individual resides to determine if the  
8 individual has made an anatomical gift.

9           B. A procurement organization must be allowed reasonable DIRECT access  
10 to ALL OF THE information in the records of the donor registry to determine  
11 if an individual WHO IS at or near death is a donor.

12           C. When a hospital refers an individual WHO IS at or near death to an  
13 organ procurement organization, the organ procurement organization or the  
14 appropriate eye bank or tissue bank may conduct any reasonable examination  
15 necessary to ensure the medical suitability of a part that is or could be the  
16 subject of an anatomical gift for transplantation, therapy, research or  
17 education from a donor or a prospective donor. During the examination  
18 period, measures necessary to ensure the medical suitability of the part may  
19 not be withdrawn unless the hospital or procurement organization knows that  
20 the individual expressed a contrary intent.

21           D. Unless otherwise prohibited by law, at any time after a donor's  
22 death, the person to which a part passes pursuant to section 36-850 may  
23 conduct any reasonable examination necessary to ensure the medical  
24 suitability of the body or part for its intended purpose.

25           E. Unless otherwise prohibited by law, an examination pursuant to  
26 subsection C or D of this section may include an examination of all medical  
27 and dental records of the donor or prospective donor.

28           F. On the death of a minor who was a donor or who had signed a  
29 refusal, unless a procurement organization knows the minor is emancipated,  
30 the appropriate procurement organization shall conduct a reasonable search  
31 for the parents of the minor and provide the parents with an opportunity to  
32 revoke or amend the anatomical gift or revoke the refusal.

33           G. On referral by a hospital pursuant to subsection A of this section,  
34 the appropriate procurement organization must make a reasonable search for  
35 any person listed in section 36-848 who has priority to make an anatomical  
36 gift on behalf of a prospective donor. If a procurement organization  
37 receives information that an anatomical gift to any other person was made,  
38 amended or revoked, ~~it~~ THE ORGANIZATION shall promptly advise the other  
39 person of all relevant information.

40           H. Subject to the requirements of section 36-850, subsection ~~I~~ J and  
41 section 36-861, the rights of the person to which a part passes pursuant to  
42 section 36-850 are superior to the rights of all others with respect to the  
43 part. The person may accept or reject an anatomical gift in whole or in  
44 part. Subject to the terms of the document of gift and this article, a  
45 person who accepts an anatomical gift of an entire body may allow embalming,

1 burial or cremation and use of remains in a funeral service. If the gift is  
2 of a part, the person to which the part passes pursuant to section 36-850, on  
3 the death of the donor and before embalming, burial or cremation, shall cause  
4 the part to be removed without unnecessary mutilation.

5 I. The physician who attends the decedent at death and the physician  
6 who determines the time of the decedent's death may not participate in the  
7 procedures for removing or transplanting a part from the decedent.

8 J. A physician or technician may remove a donated part from the body  
9 of a donor that the physician or technician is qualified to remove.

10 Sec. 7. Section 36-853, Arizona Revised Statutes, is amended to read:

11 36-853. Coordination of procurement and use

12 A. Each hospital in this state shall enter into ~~one or more agreements~~  
13 ~~or affiliations~~ A CONTRACT with ALL procurement organizations IN THIS STATE  
14 THAT REQUEST A CONTRACT for THE coordination of procurement and use of  
15 anatomical gifts TO ENSURE THAT ALL DONATION OPPORTUNITIES ARE RECOVERED.

16 B. If there has been an anatomical gift, the institution where the  
17 removal of any donated parts occurs shall notify the funeral director or the  
18 person acting in that capacity who first assumes custody of the body about  
19 the removal of the body parts.

20 Sec. 8. Section 36-860, Arizona Revised Statutes, is amended to read:

21 36-860. County medical examiners; authorization

22 A. EACH COUNTY MEDICAL EXAMINER IN THIS STATE SHALL ENTER INTO A  
23 CONTRACT WITH ALL PROCUREMENT ORGANIZATIONS IN THIS STATE THAT REQUEST A  
24 CONTRACT FOR THE COORDINATION OF PROCUREMENT AND USE OF ANATOMICAL GIFTS TO  
25 ENSURE THAT ALL DONATION OPPORTUNITIES ARE RECOVERED.

26 ~~A.~~ B. The medical examiner or individual legally delegated that  
27 authority may release and permit the removal of a part from or all of a body  
28 within the custody of that official for transplantation, therapy, research or  
29 education pursuant to title 11, chapter 3, article 12 if the part is the  
30 subject of an anatomical gift and:

31 1. A request has been received from a procurement organization.

32 2. The organ procurement organization has made a reasonable effort,  
33 taking into account the useful life of the part, to locate and examine the  
34 decedent's medical records and, if the decedent has not executed a document  
35 of gift or has not refused to make an anatomical gift, inform persons listed  
36 in section 36-848, subsection A, of the person's option to make or object to  
37 making an anatomical gift.

38 3. The official does not know of a refusal by the decedent or an  
39 objection by a person having priority to act as listed in section 36-848,  
40 subsection A.

41 4. The removal will be by a physician, surgeon or trained technician.

42 5. The removal will be in accordance with accepted medical standards.

43 6. The removal will not interfere with any death investigation.

44 7. Cosmetic restoration will be done, if appropriate.

1           ~~B.~~ C. An official who releases and permits the removal of a part  
2 shall maintain a permanent record of the name of the decedent, the person  
3 making the request, the date and purpose of the request, the part requested  
4 and the person to whom it was released.

5           Sec. 9. Department of health services; rulemaking exemption

6           For the purposes of implementing this act, the department of health  
7 services shall adopt rules relating to the licensure of procurement  
8 organizations and enforcement of those provisions. The department is exempt  
9 from the rulemaking requirements of title 41, chapter 6, Arizona Revised  
10 Statutes, for one year after the effective date of this act.