

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 2315



Introduced by Honorable Wes Gatchalian

AN ACT
AMENDING R.A. 7170, OR OTHERWISE KNOWN AS THE “ORGAN
DONATION ACT OF 1991, AND IMPLEMENTING A SYSTEM OF
DEEMED CONSENT”

EXPLANATORY NOTE

This bill creates a statutory presumption that when a person dies, absent express notice to the contrary, he/she is deemed to have consented to having his/her organs donated. This bill shifts from the system where unless a person performs a positive act prior to his death, his organs may not be utilized for transplant. This bill admittedly revolutionizes organ donation in the Philippines because precisely, the realities of our context require nothing short of a revolution.

According to the numbers collated by the Department of Health (DOH) and by the Philippine Network for Organ Sharing (PHILNOS), each year there are at least twelve thousand (12,000) new patients requiring kidney transplant. At present only ten percent (10%) of those requiring transplant are able to avail of it primarily due to the scarcity of available organs. In comparison to other countries in the west, who themselves are plagued with continuing problems of organ scarcity,

and whose average donor per million runs between 10-35, our country's average is currently at a measly 0.5 donor per million.

It is submitted that the effect of this act, as was seen in other countries like Austria, France, Spain, Belgium, etc., that have adopted the same measure, would be to create an increase in the supply of organs available, proportionately decreasing the barrier of cost and increasing the chance of survival of those who require it.

It is also submitted that a residual effect is to also weaken the black market in organ selling as the necessity for it is dissipated by the availability of legitimate avenues to receive organs.

As a final word, I concede that proposing this bill opens floodgates of discussions that would thrust us into the very core of our understanding of what this elusive term "human dignity" entails. This bill will force people into diametrically opposing positions. And each of us will be forced to decide whether or not we believe that giving a part of ourselves, when we no longer require them, is a duty we have to our fellows.

This bill is in the spirit of "*bayanihan*." It is therefore not a stretch to presume that a person who dies would beyond the grave want to be able to give to his community if he can.



WES GATCHALIAN

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*Be it enacted by the Senate and the House of Representatives of the
Philippines in Congress assembled:*

1 **SECTION 1. Short Title.** - This Act shall be known as the "OPT-OUT
2 ORGAN TRANSPLANTATION ACT OF 2019"
3

4 **SEC. 2. Declaration of Policy.** - It is hereby declared that the State
5 shall protect the right to health of the people. To achieve such objective, the
6 State among others, shall ensure that it can provide adequate supply of
7 human organs for transplantation to its people who are in need to prolonged
8 their life and become a better citizen in the future.
9

10 **SEC. 3. Definition of Terms.** - As used in this Act the following terms
11 shall mean:

12 (a) "Organ Bank Storage Facility" - a facility licensed, accredited or
13 approved under the law for storage of human bodies or parts
14 thereof.
15

16 (b) "Decedent" - a deceased individual, and includes a still-born
17 infant or fetus.

1 (c) "*Testator*" - an individual who makes a legacy of all or part of
2 his body.

3
4 (d) "*Donor*" - an individual authorized under this Act to donate all
5 or part of the body of a decedent.

6
7 (e) "*Opt-Out*" - As provided in this act, "Opt-Out" shall mean to be
8 as the positive act of a person categorically registering themselves
9 to the appropriate office as indicated herein that he or she does not
10 consent to subject his human organs, remains and / or any parts
11 of his body to be subject for transplantation to another persons.

12
13 (f) "*Deemed Consent*" - Is the presumption of consent by the
14 failure of a person to register in the appropriate office of his desire
15 not to subject his human organs, remains and / or any parts of
16 his body for transplantation to another persons.

17
18 (g) "*Hospital*" - a hospital licensed, accredited or approved under
19 the law, and includes, a hospital operated by the Government.

20
21 (h) "*Part*" - includes transplantable organs, tissues, eyes, bones,
22 arteries, blood, other fluids and other portions of the human
23 body.

24
25 (i) "*Person*" - an individual, corporation, estate, trust,
26 partnership, association, the Government or any of its
27 subdivisions, agencies or instrumentalities, including
28 government-owned or controlled corporations; or any other
29 legal entity.

30
31 (j) "*Physician*" or "*Surgeon*" - a physician or surgeon licensed or
32 authorized to practice medicine under the laws of the Republic of
33 the Philippines.

1
2 (k) "*Immediate Family*" of the decedent - the persons enumerated
3 in Section 4(a) of this Act.
4

5 (l) "*Death*" - the irreversible cessation of circulatory and
6 respiratory functions or the irreversible cessation of all functions
7 of the entire brain, including the brain stem. A person shall be
8 medically and legally dead if either:
9

10 (1) In the opinion of the attending physician, based on the
11 acceptable standards of medical practice, there is an
12 absence of natural respiratory and cardiac functions
13 and, attempts at resuscitation would not be successful
14 in restoring those functions. In this case, death shall be
15 deemed to have occurred at the time these functions
16 ceased; or
17

18 (2) In the opinion of the consulting physician, concurred in
19 by the attending physician, that on the basis of
20 acceptable standards of medical practice, there is an
21 irreversible cessation of all brain functions; and
22 considering the absence of such functions, further
23 attempts at resuscitation or continued supportive
24 maintenance would not be successful in resorting such
25 natural functions. In this case, death shall be deemed
26 to have occurred at the time when these conditions first
27 appeared.
28

29 The death of the person shall be determined in
30 accordance with the acceptable standards of medical
31 practice and shall be diagnosed separately by the
32 attending physician and another consulting physician,
33 both of whom must be appropriately qualified and

1 suitably experienced in the care of such parties. The
2 death shall be recorded in the patient's medical record.
3

4 **SEC. 4. *Transplantation Activities, When Lawful*** – Transplantation
5 activities are lawful if done with express consent when one is required, or
6 otherwise with “deemed consent.”
7

8 **SEC. 5. *Transplantation Activities*** – The following shall be
9 considered as transplantation activities:

- 10 a) Storing the body of a deceased person for use for the purpose
11 of transplantation;
12
13 b) Removing from the body of a deceased person, for use for that
14 purpose, any relevant material of which the body consists or
15 which it contains;
16
17 c) Storing for use for that purpose any relevant material that has
18 come from the human body;
19
20 d) Using for that purpose any relevant material that has come
21 from the human body.
22

23 Provided, that a transplantation activity of the kind
24 mentioned in paragraphs (c) or (d) hereof is lawful (without the
25 need for consent) where done in Philippines if —
26

- 27 a. The relevant material has been imported into the
28 Philippines, and
29
30 b. Its removal from a person's body took place outside
31 the Philippines.

32 **SEC. 6. *Opt-Out; How Done*** – For purposes of this Act, any person

1 desiring not to have his body parts be subject of transplantation shall register
2 his desire to the same before the Barangay where he is a resident of. For this
3 purpose the barangay is mandated to forward this registration with the
4 Department of Health. Those who failed to register shall, at the time of their
5 death, have deemed to express their consent to subject their body parts for
6 organ transplantation.

7
8 **SEC. 7. Person Who May Execute A Legacy.** – Any individual, at least
9 eighteen (18) years of age and of sound mind, may give by way of legacy, to
10 take effect after his death, all or part of his body for any purpose specified in
11 Section 5 hereof.

12
13 **SEC. 8. Person Who May Execute a Donation.** – Pursuant to Sec. 11
14 hereof, the decedent who have deemed to give their consent by means of a
15 donation to subject their body parts for organ transplantation, the following
16 persons, in the order stated hereunder, and in the absence of actual notice of
17 contrary intentions by the decedent shall have the right of choice to whom a
18 particular organ shall be given:

- 19 a. Spouse;
20 b. Son or daughter of legal age;
21 c. Either parent;
22 d. Brother or sister of legal age; or
23 e. Guardian over the person of the decedent at the time of his death.
24 f. The persons authorized by sub-section (a) of this Section may make
25 the donation after death.

26
27 **SEC. 9. Examination of Human Body or Part Thereof.** – A legacy of
28 all or part of a human body authorizes any examination necessary to assure
29 medical acceptability of the legacy or donation for the purpose(s) intended.

30
31 For purposes of this Act, an autopsy shall be conducted on the cadaver of
32 accident, trauma, or other medico-legal cases immediately after the
33 pronouncement of death, to determine qualified and healthy human organs

1 for transplantation and/or in furtherance of medical science.

2
3 **SEC. 10. *Persons Who May Become Legatees or Donees.*** – The
4 following persons may become legatees or donees of human bodies or parts
5 thereof for any of the purposes stated hereunder:

6 a. Any hospital, physician or surgeon - For medical or dental
7 education, research, advancement of medical or dental science,
8 therapy or transplantation;

9 b. Any accredited medical or dental school, college or university - For
10 education, research, advancement of medical or dental science, or
11 therapy;

12 c. Any organ bank storage facility - For medical or dental education,
13 research, therapy, or transplantation; and

14 d. Any specified individual - For therapy or transplantation needed by
15 him.

16 e. The State in default of any of the preceding, and as defined by the
17 succeeding section.

18
19 **SEC. 11. *“Deemed Consent;” treatment thereof.*** - Upon death of a
20 person, the medical attendant attending to the body of the deceased shall
21 verify with the Department of Health whether or not the said deceased have
22 elected the “opt-out” provisions of this act. If the deceased did not register, it
23 shall be presumed that he had given his “deemed consent” to subject his
24 human organs, remains and / or any parts of his body to be subject for
25 transplantation to another persons.

26
27 **SEC. 12. *Incentives.*** – Any person whose human organs, remains and
28 / or any parts of his / her body will be subjected for transplantation to another
29 persons, shall upon effectivity of this Act, receive incentives from the
30 government, the nature and specifics of the incentives shall be further laid
31 down by the Department of Health by means of an implementing rule.

32 Provided the deceased, during his lifetime, shall be entitled to the maximum

1 benefits provided by the PhilHealth if he registers to bequeath his organs to
2 the State within the period defined by Section 22 of this Act.

3
4 Provided further than in all cases, a person who consents, whether express
5 or implied, to donate his organs to the State, his estate shall be entitled to a
6 ten percent (10%) reduction of its tax duties.

7
8 **SEC. 13. *Duty of Hospitals.*** – A hospital authorized to receive organ
9 donations or to conduct transplantation shall train qualified personnel and
10 their staff to handle the task of introducing the organ donation program in a
11 humane and delicate manner to the relatives of the donor-decedent
12 enumerated in Section 4 hereof. The hospital shall accomplish the necessary
13 form or document as proof of compliance with the above requirement.

14
15 **SEC. 14. *Manner of Executing a Legacy.*** –

16
17 a. Legacy of all or part of the human body under Section 7 hereof may be
18 made by will. The legacy becomes effective upon the death of the testator
19 without waiting for probate of the will. If the will is not probated, or if it is
20 declared invalid for testamentary purposes, the legacy, to the extent that
21 it was executed in good faith, is nevertheless valid and effective.

22
23 b. A legacy of all or part of the human body under Section 7 hereof may
24 also be made in any document other than a will. The legacy becomes
25 effective upon death of the testator and shall be respected by and binding
26 upon his executor or administrator, heirs, assigns, successors-in-interest
27 and all members of the family. The document, which may be a card or any
28 paper designed to be carried on a person, must be signed by the testator
29 in the presence of two witnesses who must sign the document in his
30 presence. If the testator cannot sign, the document may be signed for him
31 at his discretion and in his presence, in the presence of two witnesses who
32 must, likewise, sign the document in the presence of the testator. Delivery
33 of the document of legacy during the testator's lifetime is not necessary to

1 make the legacy valid.

2
3 c. The legacy may be made to a specified legatee or without specifying a
4 legatee. If the legacy is made to a specified legatee who is not available at
5 the time and place of the testator's death, the attending physician or
6 surgeon, in the absence of any expressed indication that the testator
7 desired otherwise, may accept the legacy as legatee. If the legacy does not
8 specify a legatee, the legacy may be accepted by the attending physician
9 or surgeon as legatee upon or following the testator's death. The physician
10 who becomes a legatee under this subsection shall not participate in the
11 procedures for removing or transplanting a part or parts of the body of the
12 decedent.

13
14 d. The testator may designate in his will, card or other document, the
15 surgeon or physician who will carry out the appropriate procedures. In the
16 absence of a designation, or if the designee is not available, the legatee or
17 other persons authorized to accept the legacy may authorize any surgeon
18 or physician for the purpose.

19
20 **SEC. 15. *Manner of Executing a Donation.*** – Any donation by a person
21 authorized under subsection (a) of Section 4 hereof shall be sufficient if it
22 complies with the formalities of a donation of a movable property.

23
24 In the absence of any of the persons specified under Section 4 hereof and in
25 the absence of any document of organ donation, the physician in charge of
26 the patient, the head of the hospital or a designated officer of the hospital who
27 has custody of the body of the deceased classified as accident, trauma, or
28 other medico-legal cases, may authorize in a public document the removal
29 from such body for the purpose of transplantation of the organ to the body of
30 a living person: Provided, That the physician, head of hospital or officer
31 designated by the hospital for this purpose has exerted reasonable efforts,
32 within forty-eight (48) hours, to locate the nearest relative listed in Section 4
33 hereof or guardian of the decedent at the time of death.

1 In all donations, the death of a person from whose body an organ will be
2 removed after his death for the purpose of transplantation to a living person,
3 shall be diagnosed separately and certified by two (2) qualified physicians
4 neither of whom should be:

5
6 a. A member of the team of medical practitioners who will effect the
7 removal of the organ from the body; nor

8 b. The physician attending to the receipt of the organ to be removed; nor

9 c. The head of hospital or the designated officer authorizing the removal of
10 the organ.

11
12 **SEC. 16. *Person(s) Authorized to Remove Transplantable Organs.*** –

13 Only authorized medical practitioners in a hospital shall remove and/or
14 transplant any organ which is authorized to be removed and/or transplanted
15 pursuant to Section 5 hereof.

16
17 **SEC. 17. *Delivery of Document of Legacy or Donation.*** – If the legacy
18 or donation is made to a specified legatee or donee, the will, card or other
19 document, or an executed copy thereof, may be delivered by the testator or
20 donor, or is authorized representative, to the legatee or donee to expedite the
21 appropriate procedures immediately after death. The will, card or other
22 document, or an executed copy thereof, may be deposited in any hospital or
23 organ bank storage facility that accepts it for safekeeping or for facilitation or
24 procedures after death. On the request of any interested party upon or after
25 the testator's death, the person in possession shall produce the document of
26 legacy or donation for verification.

27
28 **SEC. 18. *Amendment or Revocation of Legacy or Donation.*** – If the
29 will, card or other document, or an executed copy thereof, has been delivered
30 to a specific legatee or donee, the testator or donor may amend or revoke the
31 legacy or donation either by:

32 a. The execution and delivery to the legatee or donee of a signed statement

1 to that effect; or

2 b. An oral statement to that effect made in the presence of two other
3 persons and communicated to the legatee or donee; or

4 c. A statement to that effect during a terminal illness or injury addressed
5 to an attending physician and communicated to the legatee or donee; or

6 d. A signed card or document to that effect found on the person or effects
7 of the testator or donor.

8 e. Any will, card or other document, or an executed copy thereof, which
9 has not been delivered to the legatee or donee may be revoked by the
10 testator or donor in the manner provided in subsection (a) of this Section
11 or by destruction, cancellation or mutilation of the document and all
12 executed copies thereof.

13
14 Any legacy made by a will may also be amended or revoked in the manner
15 provided for amendment or revocation of wills, or as provided in subsection
16 (a) of this Section.

17
18 **SEC. 19. *Rights and Duties After Death.* –**

19
20 a. The legatee or donee may accept or reject the legacy or donation as the
21 case may be. If the legacy of donation is of a part of the body, the legatee
22 or donee, upon the death of the testator and prior to embalming, shall
23 effect the removal of the part, avoiding unnecessary mutilation. After
24 removal of the part, custody of the remainder of the body vests in the
25 surviving spouse, next of kin or other persons under obligation to dispose
26 of the body of the decedent.

27
28 b. Any person who acts in good faith in accordance with the terms of this
29 Act shall not be liable for damages in any civil action or subject to
30 prosecution in any criminal proceeding of this Act.

31 **SEC. 20. *International Sharing of Human Organs or Tissues.* –**

1 Sharing of human organs or tissues shall be made only through exchange
2 programs duly approved by the Department of Health: Provided, That foreign
3 organ or tissue bank storage facilities and similar establishments grant
4 reciprocal rights to their Philippine counterparts to draw organs or tissues at
5 any time.

6
7 **SEC. 21. Information Drive.** – In order that the public will obtain the
8 maximum benefits from this Act, the Department of Health, in cooperation
9 with institutions, such as the National Kidney Institute, civic and non-
10 government health organizations and other health related agencies, involved
11 in the donation and transplantation of human organs, shall undertake a
12 public information program.

13 The Secretary of Health shall endeavor to persuade all health professionals,
14 both government and private, to make an appeal for human organ donation.

15
16 **SEC. 22. Implementation.** The provisions of this law relating to
17 “Deemed Consent” as defined and provided for by Section 11, shall be
18 applicable to a deceased citizen of the Republic of the Philippines, five (5) years
19 after the effectivity of this Act.

20
21 **SEC. 23. Rules and Regulations.** – The Secretary of Health, after
22 consultation with all health professionals, both government and private, and
23 non-government health organizations shall promulgate such rules and
24 regulations as may be necessary or proper to implement this Act.

25
26 **SEC. 24. Repealing Clause.** – All laws, decrees, ordinances, rules and
27 regulations, executive or administrative orders, and other presidential
28 issuance inconsistent with this Act, are hereby repealed, amended or modified
29 accordingly.

30
31 **SEC. 25. Separability Clause.** – The provisions of this Act are hereby
32 deemed separable. If any provision hereof should be declared invalid or
33 unconstitutional, the remaining provisions shall remain in full force and

1 effect.

2

3 **SEC. 26. *Effectivity.*** – This Act shall take effect after fifteen (15) days
4 following its publication in the Official Gazette or at least two (2) newspapers
5 of general circulation.

Approved.