

## Assembly Bill No. 1225

### CHAPTER 457

An act to amend Sections 27491.4, 27491.41, and 27491.47 of the Government Code, to amend Section 7150.5 of, and to add Chapter 3.55 (commencing with Section 7158) to Part 1 of Division 7 of, the Health and Safety Code, relating to health.

[Approved by Governor September 13, 1998. Filed with Secretary of State September 14, 1998.]

#### LEGISLATIVE COUNSEL=S DIGEST

AB 1225, Granlund. Health: sudden infant death syndrome and anatomical gifts.

(1) Existing law requires a coroner to inquire into and determine the circumstances, manner, and cause of all violent, sudden, or unusual deaths, including deaths where the suspected cause is sudden infant death syndrome.

Existing law permits a coroner, as part of this inquiry, to take possession of the body and make, or cause to be made, a postmortem examination or autopsy of the body to make findings pertinent to establishing the cause of death.

Existing law requires a coroner to perform an autopsy in any case where an infant has died suddenly and unexpectedly. Existing law provides that no consent is required prior to undertaking this autopsy. Existing law provides, however, that no autopsy is required if the physician of record certifies the cause of death is sudden infant death syndrome and the parents object to an autopsy on religious or ethical grounds.

This bill would revise this exception to provide, instead, that an autopsy may be performed at the discretion of the coroner if the attending physician desires to certify that the cause of death is sudden infant death syndrome.

(2) The Uniform Anatomical Gift Act sets forth the standards and procedures for making, revoking, and refusing anatomical gifts. Among other things, the act authorizes an individual who is at least 18 years of age to make an anatomical gift for certain purposes, limit an anatomical gift to one or more of those purposes, refuse to make an anatomical gift, or amend or revoke an anatomical gift. Existing law also specifies the manner that consent may be given to make an anatomical gift.

This bill would permit a person between 15 and 18 years of age to make an anatomical gift, to the same extent as a person who is at least 18 years of age, upon the written consent of the person=s parent or guardian. This bill would also permit an anatomical gift to be made, amended, or revoked by an oral statement made by means of a tape recording in the donor=s own voice.

(3) Existing law authorizes the Department of Motor Vehicles to indicate on a form carried with the driver=s license or an identification card the licensee=s or cardholder=s desires with regard to making an anatomical gift.

This bill would exempt these provisions from the authority granted by this bill regarding anatomical gifts and would make conforming changes.

(4) Existing law authorizes a coroner, in the course of an autopsy, to remove and release, or authorize the removal and release of, corneal eye tissue from a body within the coroner=s custody if certain conditions are met, including that the coroner has no knowledge of objection to the removal and release of the tissue by the decedent or any other person as specified by law.

This bill would in addition require the coroner or medical examiner to obtain the written consent or an audio tape, transcript, or other document, recording the telephonic consent of the donor, the decedent=s next of kin, or any other person as specified by law.

(5) Existing law regulates the donation of human organs and tissues in a variety of contexts.

This bill would require the Controller to prepare, or cause to be prepared, an organ donor information brochure for insertion in all payroll warrants issued by the Controller for specified pay periods.

This bill would require the Licensing and Certification Division of the State Department of Health Services to audit, as part of its ongoing audit and review process, the existence of organ and tissue and procurement procedures for all inpatient hospital facilities. The bill would require the department to note and report any deficiencies in these procedures in a written audit or site review.

This bill would also set forth requirements, applicable to specified health care service plan contracts, regarding the establishment and maintenance of organ and tissue procurement procedures.

*The people of the State of California do enact as follows:*

SECTION 1. Section 27491.4 of the Government Code is amended to read:

27491.4. (a) For purposes of inquiry the coroner shall, within 24 hours or as soon as feasible thereafter, where the suspected cause of death is sudden infant death syndrome and, in all other cases, the coroner may, in his or her discretion, take possession of the body, which shall include the authority to exhume the body, order it removed to a convenient place, and make or cause to be made a postmortem examination or autopsy thereon, and make or cause to be made an analysis of the stomach, stomach contents, blood, organs, fluids, or tissues of the body. The detailed medical findings resulting from an inspection of the body or autopsy by an examining physician shall be either reduced to writing or permanently preserved on recording discs or other similar recording media, shall include all positive and negative findings pertinent to establishing the cause of death in accordance with medicolegal practice and this, along with the written opinions and conclusions of the examining physician, shall be included in the coroner=s record of the death. The coroner shall have the right to retain only those tissues of the body removed at the time of the autopsy as may, in his or her opinion, be necessary or advisable to the inquiry into the case, or for the verification of his or her findings. No person may be present during the performance of a coroner=s autopsy without the express consent of the coroner.

(b) In any case in which the coroner knows, or has reason to believe, that the deceased has made valid provision for the disposition of his or her body or a part of parts thereof for medical or scientific purposes in accordance with Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code, the coroner shall neither perform nor authorize any other person to perform an autopsy on the body unless the coroner has contacted or attempted to contact the physician last in attendance to the deceased. If the physician cannot be contacted, the coroner shall then notify or attempt to notify one of the following of the need for an autopsy to determine the cause of death: (1) the surviving spouse; (2) a surviving child or parent; (3) a surviving brother or sister; (4) any other kin or person who has acquired the right to control the disposition of the remains. Following a period of 24 hours after attempting to contact the physician last in attendance and notifying or attempting to notify one of the responsible parties listed above, the coroner may perform or authorize the performance of an autopsy, as otherwise authorized or required by law.

(c) Nothing in this section shall be deemed to prohibit the discretion of the coroner to conduct autopsies upon any victim of sudden, unexpected, or unexplained death or any death known or suspected of resulting from an accident, suicide, or apparent criminal means, or other death, as described in Section 27491.

SEC. 2. Section 27491.41 of the Government Code is amended to read:

27491.41. (a) For purposes of this section, Sudden infant death syndrome@ means the sudden death of any infant that is unexpected by the history of the infant and where a thorough postmortem examination fails to demonstrate an adequate cause of death.

(b) The Legislature finds and declares that sudden infant death syndrome (SIDS) is the leading cause of death for children under age one, striking one out of every 500 children. The Legislature finds and declares that sudden infant death syndrome is a serious problem within the State of California, and that public interest is served by research and study of sudden infant death syndrome, and its potential causes and indications.

(c) (1) To facilitate these purposes, the coroner shall, within 24 hours, or as soon thereafter as feasible, perform an autopsy in any case where an infant has died suddenly and unexpectedly.

(2) However, if the attending physician desires to certify that the cause of death is sudden infant death syndrome, an autopsy may be performed at the discretion of the coroner. If the coroner performs an autopsy pursuant to this section, he or she shall also certify the cause of death.

(d) The autopsy shall be conducted pursuant to a standardized protocol developed by the State Department of Health Services. The protocol is exempt from the procedural requirements pertaining to the adoption of administrative rules and regulations pursuant to Article 2 (commencing with Section 11342) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The protocol shall be developed and approved by July 1, 1990.

(e) The protocol shall be followed by all coroners throughout the state when conducting the autopsies required by this section. The coroner shall state on the certificate of death that sudden infant death syndrome was the cause of death when the coroner=s findings are consistent with the definition of sudden infant death syndrome specified in the standardized autopsy protocol. The protocol may include requirements and standards for scene investigations, requirements for specific data, criteria for ascertaining cause of death based on the autopsy, and criteria for any specific tissue sampling, and any other requirements. The protocol may also require that specific tissue samples must be provided to a central tissue repository designated by the State Department of Health Services.

(f) The State Department of Health Services shall establish procedures and protocols for access by researchers to any tissues, or other materials or data authorized by this section. Research may be conducted by any individual with a valid scientific interest and prior approval from the State Committee for the Protection of Human Subjects. The tissue samples, the materials, and all data shall be subject to the confidentiality requirements of Section 103850 of the Health and Safety Code.

(g) The coroner may take tissue samples for research purposes from infants who have died suddenly and unexpectedly without consent of the responsible adult if the tissue removal is not likely to result in any visible disfigurement.

(h) A coroner shall not be liable for damages in a civil action for any act or omission done in compliance with this section.

(i) No consent of any person is required prior to undertaking the autopsy required by this section.

SEC. 3. Section 27491.47 of the Government Code is amended to read:

27491.47. (a) Notwithstanding any other provision of law, the coroner may, in the course of an autopsy, remove and release or authorize the removal and release of corneal eye tissue from a body within the coroner's custody, if all of the following conditions are met:

(1) The autopsy has otherwise been authorized.

(2) The coroner has no knowledge of objection to the removal and release of corneal tissue having been made by the decedent or any other person specified in Section 7151 of the Health and Safety Code and has obtained any one of the following:

(A) A dated and signed written consent by the donor, next of kin, or any other person specified in Section 7151 of the Health and Safety Code on a form that clearly indicates the general intended use of the tissue and contains the signature of at least one witness.

(B) Proof of the existence of a recorded telephonic consent by the donor, next of kin, or any other person specified in Section 7151 of the Health and Safety Code in the form of an audio tape recording of the conversation or a transcript of the recorded conversation, which indicates the general intended use of the tissue.

(C) A document recording a verbal telephonic consent by the donor, next of kin, or any other person specified in Section 7151 of the Health and Safety Code, witnessed and signed by no less than two members of the requesting entity, hospital, eye bank, or procurement organization, memorializing the consenting person's knowledge of and consent to the general intended use of the gift.

The form of consent obtained under subparagraph (A), (B), or (C) shall be kept on file by the requesting entity and the official agency for a minimum of three years.

(3) The removal of such tissue will not unnecessarily mutilate the body, be accomplished by enucleation, nor interfere with the autopsy.

(4) The tissue will be removed by a coroner, licensed physician and surgeon, or a trained transplant technician.

(5) The tissue will be released to a public or nonprofit facility for transplant, therapeutic, or scientific purposes.

(b) Neither the coroner nor medical examiner authorizing the removal of the corneal tissue, nor any hospital, medical center, tissue bank, storage facility, or person acting upon the request, order, or direction of the coroner or medical examiner in the removal of corneal tissue pursuant to this section, shall incur civil liability for the removal in an action brought by any person who did not object prior to the removal of the corneal tissue, nor be subject to criminal prosecution for the removal of the corneal tissue pursuant to the provisions of this section.

(c) This section may not be construed to interfere with the ability of a person to make an anatomical gift pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

SEC. 4. Section 7150.5 of the Health and Safety Code is amended to read:

7150.5. (a) Except as provided in subdivision (b) of Section 12811 of, and subdivision (b) of Section 13005 of, the Vehicle Code, an individual who is at least 18 years of age, or an individual who is between 15 and 18 years of age as specified in subdivision (m), may make an anatomical gift for any of the purposes stated in subdivision (a) of Section 7153, limit an anatomical gift to one or more of those purposes, or refuse to make an anatomical gift.

(b) An anatomical gift may be made only by one of the following:

(1) A document of gift signed by the donor.

(2) A document of gift signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.

(3) A document of gift orally made by a donor by means of a tape recording in his or her own voice.

(c) If a document of gift is attached to or imprinted on a donor=s motor vehicle operator=s or chauffeur=s license, the document of gift shall comply with subdivision (b). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(d) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(e) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(f) A donor may amend or revoke an anatomical gift, not made by will, only by one or more of the following:

(1) A signed statement.

(2) An oral statement made in the presence of two individuals or by means of a tape recording in the donor=s own voice.

(3) Any form of communication during a terminal illness or injury addressed to a physician or surgeon.

(4) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(g) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subdivision (f).

(h) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor=s death.

(i) An individual may refuse to make an anatomical gift of the individual=s body or part by a writing signed in the same manner as a document of gift, a statement attached to or imprinted on a donor=s motor vehicle operator=s or chauffeur=s license, or any other writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(j) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under Section 7151 or on a removal or release of other parts under Section 7151.5.

(k) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subdivision (i).

(l) Any signed statement that is in compliance with this chapter, or a driver=s license or identification card that meets the requirements for validity set forth in subdivision (b) of Section 12811 of the Vehicle Code or subdivision (b) of Section 13005 of the Vehicle Code, shall be honored and no further consent or approval from the next of kin or other person listed in subdivision (a) of Section 7151 shall be required.

(m) Notwithstanding subdivision (a), an individual who is between 15 and 18 years of age may make an anatomical gift for any purpose stated in subdivision (a) of Section 7153, limit an anatomical gift to one or more of those purposes, refuse to make an anatomical gift or amend or revoke an anatomical gift, only upon the written consent of a parent or guardian.

SEC. 5. Chapter 3.55 (commencing with Section 7158) is added to Part 1 of Division 7 of the Health and Safety Code, to read:

#### CHAPTER 3.55. ORGAN AND TISSUE DONATION INFORMATION AND PROCEDURES

7158. (a) The Controller shall prepare, or cause to be prepared, an organ donor information brochure for insertion in all payroll warrants issued by the Controller for the March 1999 pay period, and for every March pay period thereafter, in recognition of National Organ and Tissue Awareness Week, which occurs in April of each year.

(b) In lieu of developing an organ donor brochure pursuant to subdivision (a), the Controller may use a brochure developed by a regional organ donor organization. The Controller shall screen for appropriateness for wide distribution.

7158.1. (a) As a part of its ongoing audit and review process, the Licensing and Certification Division of the State Department of Health Services shall audit for the existence of organ and tissue procurement procedures for all inpatient hospital facilities. The audit shall include a determination of whether these procedures are in place in the facility, whether the procedures are operational and functioning, and whether the procedures are being used. The department shall not be required to audit for the effectiveness of the procedures. No additional audits shall be required for purposes of this section. Instead, the department shall add an organ and tissue audit element to its regular ongoing audits of inpatient facilities.

(b) For purposes of this chapter, organ and tissue procurement procedures shall include protocols required to be developed pursuant to Section 7184. The audit criteria shall, at a minimum, include all of the following:

(1) That the protocols have been developed.

(2) That the protocols are operational.

(3) That notification requirements to next of kin or other individuals as set forth in Section 7151 and to organ procurement organizations are within a timeframe that is consistent with the maintenance of the organs for the purpose of transplantation.

(c) The absence of any of the required organ and tissue procurement procedures at any facility shall be noted by the division, and included in a written audit report or site review summary. In the event that an audit or facility review is conducted in conjunction with review by a national accreditation agency, and that agency prepares a report, the department shall request that the information required by this section with respect to organ and tissue procurement procedures be included in the report prepared by the national accreditation agency. In this event, the department shall not be required to prepare a separate report.

7158.2. Every health care service plan contract that is issued, amended, delivered, or renewed on or after July 1, 1999, shall provide, upon enrollment and annually thereafter, a notice to subscribers in the evidence of coverage, health plan newsletter, or any direct plan communication to subscribers, information regarding organ donation options. This notice shall inform subscribers of the societal benefits of organ donations and the method whereby they may elect to be an organ or tissue donor.