

SEVENTEENTH DAY

MORNING SESSION

Senate Chamber, Olympia, Wednesday, January 30, 2008

The Senate was called to order at 10:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present.

The Sergeant at Arms Color Guard consisting of Pages Chris Rushing and Matthew Seastrom, presented the Colors. Reverend Irene Martin of Saint James Episcopal Church offered the prayer.

MOTION

On motion of Senator Eide, the reading of the Journal of the previous day was dispensed with and it was approved.

MOTION

There being no objection, the Senate advanced to the first order of business.

REPORTS OF STANDING COMMITTEES

January 29, 2008

SB 5892 Prime Sponsor, Senator Honeyford: Regarding the state building code. Reported by Committee on Government Operations & Elections

MAJORITY recommendation: That it be referred without recommendation. Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach; Kline; McDermott; Pridemore and Swecker.

Passed to Committee on Consumer Protection & Housing.

January 28, 2008

SB 6226 Prime Sponsor, Senator Jacobsen: Enhancing natural resource collections at the Washington park arboretum. Reported by Committee on Natural Resources, Ocean & Recreation

MAJORITY recommendation: That it be referred without recommendation. Signed by Senators Jacobsen, Chair; Hatfield, Vice Chair; Morton; Fraser; Rockefeller; Spanel; Stevens and Swecker.

Passed to Committee on Ways & Means.

January 29, 2008

SB 6263 Prime Sponsor, Senator Zarelli: Concerning property tax value changes as a result of government intervention. Reported by Committee on Government Operations & Elections

MAJORITY recommendation: That it be referred without recommendation. Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach; Kline; McDermott; Pridemore and Swecker.

Passed to Committee on Ways & Means.

January 28, 2008

SB 6493 Prime Sponsor, Senator Hobbs: Providing loans to small cities for certain appeals under the growth management act. Reported by Committee on Government Operations & Elections

MAJORITY recommendation: That Substitute Senate Bill No. 6493 be substituted therefor, and the substitute bill do pass. Signed by Senators Fairley, Chair; Oemig, Vice Chair; Kline; McDermott; Pridemore and Swecker.

MINORITY recommendation: Do not pass. Signed by Senator and Roach.

Passed to Committee on Ways & Means.

January 28, 2008

SB 6500 Prime Sponsor, Senator Eide: Authorizing leave sharing for victims of domestic violence, sexual assault, and stalking. Reported by Committee on Labor, Commerce, Research & Development

MAJORITY recommendation: That Substitute Senate Bill No. 6500 be substituted therefor, and the substitute bill do pass. Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist; Franklin; Hewitt; King; Murray and Prentice.

Passed to Committee on Rules for second reading.

January 29, 2008

SB 6516 Prime Sponsor, Senator Pridemore: Regarding greenhouse gases emissions and providing for green collar jobs. Reported by Committee on Water, Energy & Telecommunications

MAJORITY recommendation: That Substitute Senate Bill No. 6516 be substituted therefor, and the substitute bill do pass. Signed by Senators Rockefeller, Chair; Murray, Vice Chair; Fraser; Oemig; Pridemore and Regala.

MINORITY recommendation: Do not pass. Signed by Senators Honeyford; Delvin; Hatfield; Holmquist and Morton.

Passed to Committee on Ways & Means.

January 28, 2008

SB 6570 Prime Sponsor, Senator Fairley: Regarding private business activities in state-owned housing provided by the department of fish and wildlife or the parks and recreation commission. Reported by Committee on Government Operations & Elections

MAJORITY recommendation: That Substitute Senate Bill No. 6570 be substituted therefor, and the substitute bill do pass. Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach; Kline; McDermott; Pridemore and Swecker.

Passed to Committee on Rules for second reading.

January 28, 2008

SB 6637 Prime Sponsor, Senator Murray: Allowing certain alcohol permit holders to obtain alcohol in nonbeverage form directly from suppliers. Reported by Committee on Labor, Commerce, Research & Development

MAJORITY recommendation: Do pass. Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist; Franklin; Hewitt; King; Murray and Prentice.

Passed to Committee on Rules for second reading.

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Standing Committee report were referred to the committees as designated.

January 28, 2008

SB 6709 Prime Sponsor, Senator Morton: Appropriating money to the department of fish and wildlife to control predators. Reported by Committee on Natural Resources, Ocean & Recreation

MAJORITY recommendation: That it be referred without recommendation. Signed by Senators Jacobsen, Chair; Hatfield, Vice Chair; Morton; Fraser; Rockefeller; Spanel; Stevens and Swecker.

Passed to Committee on Ways & Means.

January 28, 2008

SB 6725 Prime Sponsor, Senator Morton: Authorizing the director of fish and wildlife to carry out predatory animal control functions. Reported by Committee on Natural Resources, Ocean & Recreation

MAJORITY recommendation: That it be referred without recommendation. Signed by Senators Jacobsen, Chair; Hatfield, Vice Chair; Morton; Fraser; Rockefeller; Spanel; Stevens and Swecker.

Passed to Committee on Ways & Means.

REPORTS OF STANDING COMMITTEES GUBERNATORIAL APPOINTMENTS

January 29, 2008

SGA 9369 GLENN GORTON, reappointed on December 3, 2007 as Member of the Investment Board. Reported by Committee on Financial Institutions & Insurance

MAJORITY recommendation: That said appointment be confirmed. Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin; Parlette; Prentice and Schoesler.

Passed to Committee on Rules for second reading.

January 29, 2008

SGA 9371 MIKE RAGAN, appointed on December 3, 2007 as Member of the Investment Board. Reported by Committee on Financial Institutions & Insurance

MAJORITY recommendation: That said appointment be confirmed. Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin; Parlette; Prentice and Schoesler.

Passed to Committee on Rules for second reading.

January 29, 2008

SGA 9377 ELDON VAIL, appointed on January 9, 2008, for the term ending at the governors pleasure, as Secretary of the Department of Corrections. Reported by Committee on Human Services & Corrections

MAJORITY recommendation: That said appointment be confirmed. Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens; Brandland; Carrell; Marr and McAuliffe.

Passed to Committee on Rules for second reading.

MOTION

On motion of Senator Eide, all measures listed on the

MOTION

On motion of Senator Eide, the Senate advanced to the fifth order of business.

INTRODUCTION AND FIRST READING

SB 6870 by Senators Hargrove, Stevens and Spanel

AN ACT Relating to community public health and safety networks; amending RCW 70.190.060 and 70.190.100; making an appropriation; and providing an effective date.

Referred to Committee on Human Services & Corrections.

SB 6871 by Senator Hargrove

AN ACT Relating to contracting for services provided to dependent children; amending RCW 74.13.031, 74.13.165, and 41.06.142; creating a new section; and providing an effective date.

Referred to Committee on Human Services & Corrections.

SB 6872 by Senators McDermott, Kohl-Welles, McAuliffe, Kline and Marr

AN ACT Relating to community and surplus schools; amending RCW 43.63A.135 and 28A.525.050; adding a new section to chapter 43.63A RCW; adding a new section to chapter 28A.525 RCW; and creating new sections.

Referred to Committee on Early Learning & K-12 Education.

SB 6873 by Senators Holmquist and Roach

AN ACT Relating to election certification; and adding a new section to chapter 29A.60 RCW.

Referred to Committee on Government Operations & Elections.

SB 6874 by Senators Brown, Rockefeller, Kauffman and Rasmussen

AN ACT Relating to the Columbia river water delivery account; adding new sections to chapter 90.90 RCW; making appropriations; and providing an effective date.

Referred to Committee on Water, Energy & Telecommunications.

SB 6875 by Senator Tom

AN ACT Relating to creation of the condominium act governance task force; creating new sections; and providing an expiration date.

Referred to Committee on Consumer Protection & Housing.

SB 6876 by Senator Stevens

AN ACT Relating to prioritizing existing funding for special safety corridor projects; amending RCW 46.68.041; adding

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a new section to chapter 46.68 RCW; and declaring an emergency.

Senator Rasmussen moved adoption of the following resolution:

Referred to Committee on Transportation.

SENATE RESOLUTION
8714

SB 6877 by Senator Stevens

AN ACT Relating to prioritizing existing funding for special safety corridor projects; amending RCW 82.08.020; adding a new section to chapter 46.68 RCW; and declaring an emergency.

By Senators Rasmussen, Jacobsen, Hatfield, Schoesler, Morton, Shin, Kohl-Welles, Swecker, Honeyford, and Spanel

Referred to Committee on Transportation.

WHEREAS, The dairy farmers of Washington are working hard to provide safe, nutritious dairy products for the families of Washington state; and

WHEREAS, There are approximately 485 family dairy farms in Washington state with approximately 235,000 dairy cows; and

SB 6878 by Senator Stevens

AN ACT Relating to prioritizing existing funding for special safety corridor projects; amending RCW 46.16.270; adding a new section to chapter 46.68 RCW; and declaring an emergency.

WHEREAS, Washington state ranks tenth in total milk production in the United States with 5.6 billion pounds annually; and

WHEREAS, Washington ranks second in milk production per cow with 23,055 pounds of milk; and

Referred to Committee on Transportation.

WHEREAS, Milk is the second highest dollar-valued agricultural commodity produced in Washington, valued at 688 million dollars; and

SB 6879 by Senators McAuliffe, Tom, McDermott and Rasmussen

AN ACT Relating to the joint task force on basic education finance; and amending 2007 c 399 s 2 (uncodified).

WHEREAS, Dairy farming has an annual economic impact of 3.5 billion dollars; and

WHEREAS, Milk processing jobs help employment growth in Washington. Every 1 million dollars in finished milk product is responsible for twenty jobs in our state; and

Referred to Committee on Early Learning & K-12 Education.

WHEREAS, Washington state dairy farmers lost more than 700 animals during the December 2007 storm worth millions of dollars; and

SB 6880 by Senators Benton, Roach, McCaslin, Honeyford, Stevens, Parlette and Rasmussen

AN ACT Relating to excluding medical expenses for property tax exemption purposes from the income eligibility requirements for persons sixty-one years of age or older, armed forces veterans with service-connected disabilities, and persons retired because of disability; amending RCW 84.36.383; and creating a new section.

WHEREAS, The Washington State Dairy Ambassadors for 2007-2008 are Ambassador Kalin Fohn of Mount Vernon and alternate Ambassadors Whitney Chamberlain, representing Grant/Adams Counties, and Tasha Daniel of Yakima Valley; and

WHEREAS, Dairy Day at the Legislature is January 30, 2008, when the legislators will visit with the dairy producers of the state and enjoy ice cream bars that will be handed out by the Washington State Dairy Federation and the state and county Dairy Ambassadors;

Referred to Committee on Ways & Means.

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate acknowledge and honor the women and men whose work on dairy farms throughout Washington has contributed much to the strength and vitality of our economy, the character of our communities, and the general well-being of our citizens; and

SB 6881 by Senator Fraser

AN ACT Relating to environmental noise abatement; amending RCW 46.09.120 and 46.09.190; prescribing penalties; and providing an effective date.

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Secretary of the Senate to Washington State Dairy Ambassador Kalin Fohn, alternate Ambassadors Whitney Chamberlain and Tasha Daniel, and the Washington State Dairy Federation.

Referred to Committee on Natural Resources, Ocean & Recreation.

Senators Rasmussen, Schoesler, Spanel, Honeyford and Morton spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8714.

The motion by Senator Rasmussen carried and the resolution was adopted by voice vote.

MOTION

On motion of Senator Eide, all measures listed on the Introduction and First Reading report were referred to the committees as designated with the exception of Senate Bill No. 6874 which was referred to the Committee on Water, Energy & Telecommunications.

INTRODUCTION OF SPECIAL GUEST

The President introduced Miss. Kalin Fohn, the Washington State Dairy Ambassador.

MOTION

On motion of Senator Eide, the Senate advanced to the eighth order of business.

REMARKS BY KALIN FOHN

Kalin Fohn: "Honorable Lieutenant Governor, Senate members and guests: What is a dairy farmer? A dairy farmer is an executive with a corner office overlooking the lagoon, a purchasing agent in a beat up baseball cap, a personal director of cows and employees, a dietitian for animals. A production expert and a manager battling a cost price squeeze but more importantly a dairy farmer is a father and mother determined to secure the future of the dairy industry for generations to come.

MOTION

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Washington is fortunate to have four-hundred eighty-five dedicated dairy farmers that continually provide reliable and safe dairy products. Our dairy farmers directly employ twelve thousand, six-hundred and fifty individuals and contribute 1.5 billion dollars to the economic output annually. Farmers don't know an eight hour work day, little boys follow them, sales men detain them but the reward of a long and hard work day is pride and accomplishments. On behalf of the dairy farmers of Washington, thank you for your effort to ensure that dairy farmers, executives or dietitians, whatever you prefer to call them can continue farming for the future."

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced members of the Dairy Federation who were seated in the gallery.

MOTION

On motion of Senator Eide, the Senate reverted to the sixth order of business.

SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Pridemore moved that Gubernatorial Appointment No. 9254, Ariele Belo, as a member of the Board of Trustees, State School for the Deaf, be confirmed.

Senator Pridemore spoke in favor of the motion.

APPOINTMENT OF ARIELE BELO

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9254, Ariele Belo as a member of the Board of Trustees, State School for the Deaf.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9254, Ariele Belo as a member of the Board of Trustees, State School for the Deaf and the appointment was confirmed by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

Gubernatorial Appointment No. 9254, Ariele Belo, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, State School for the Deaf.

SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Regala moved that Gubernatorial Appointment No. 9256, Steven Drury, as a member of the Member, Board of Directors Small Business Export Finance Assistance Center, be confirmed.

Senator Regala spoke in favor of the motion.

APPOINTMENT OF STEVEN DRURY

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9256, Steven Drury as a member of the Member, Board of Directors Small Business Export Finance Assistance Center.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9256, Steven Drury as a member of the Member, Board of Directors Small Business Export Finance Assistance Center and the appointment was confirmed by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

Gubernatorial Appointment No. 9256, Steven Drury, having received the constitutional majority was declared confirmed as a member of the Member, Board of Directors Small Business Export Finance Assistance Center.

The Senate resumed consideration of Senate Bill No. 5657 which had been deferred on January 25, 2008 and held on the second reading calendar.

WITHDRAWAL OF AMENDMENT

On motion of Senator Keiser, the striking amendment by Senator Keiser to Senate Bill No. 5657 was withdrawn.

MOTION

Senator Keiser moved that the following striking amendment by Senator Keiser be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. This chapter may be cited as the revised uniform anatomical gift act.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult" means an individual who is at least eighteen years old.

(2) "Agent" means an individual:

(a) Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

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

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

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift.

(5) "Disinterested witness" means a witness other than the spouse or state registered domestic partner, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift. The term does not include a person to which an anatomical gift could pass under section 11 of this act.

(6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement

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or symbol on a driver's license, identification card, or donor registry.

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

(8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(9) "Driver's license" means a license or permit issued by the department of licensing to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(13) "Identification card" means an identification card issued by the department of licensing.

(14) "Know" means to have actual knowledge.

(15) "Minor" means an individual who is less than eighteen years old.

(16) "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.

(17) "Parent" means a parent whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathic medicine and surgery under the law of any state.

(21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(22) "Prospective donor" means an individual whose death is imminent and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. "Prospective donor" does not include an individual who has made a refusal.

(23) "Reasonable costs" include: (a) Programming and software installation and upgrades; (b) employee training that is specific to the organ and tissue donor registry or the donation program created in RCW 46.12.510; (c) literature that is specific to the organ and tissue donor registry or the donation program created in RCW 46.12.510; and (d) hardware upgrades or other issues important to the organ and tissue donor registry or the donation program created in RCW 46.12.510 that have been mutually agreed upon in advance by the department of licensing and the Washington state organ procurement organizations.

(24) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

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

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

(27) "Refusal" means a record created under section 7 of this act that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

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(28) "Sign" means, with the present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

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

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

(30) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(31) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(32) "Tissue bank" means a person that is licensed to conduct business in this state, accredited, and regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

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

(34) "Washington state organ procurement organization" means an organ procurement organization that has been designated by the United States department of health and human services to coordinate organ procurement activities for any portion of Washington state.

NEW SECTION. Sec. 3. This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

NEW SECTION. Sec. 4. Subject to section 8 of this act, an anatomical gift of a donor's body or part may be made during the life of the donor in the manner provided in section 5 of this act by:

(1) The donor, if the donor is an adult or if the donor is a minor and is:

(a) Emancipated; or

(b) Authorized under state law to apply for a driver's license because the donor is at least fifteen and one-half years old;

(2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(3) A parent of the donor, if the donor is an unemancipated minor; provided, however, that an anatomical gift made pursuant to this subsection shall cease to be valid once the donor becomes either an emancipated minor or an adult; or

(4) The donor's guardian.

NEW SECTION. Sec. 5. (1) A donor may make an anatomical gift:

(a) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(b) In a will;

(c) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(d) As provided in subsection (2) of this section.

(2) A donor or other person authorized to make an anatomical gift under section 4 of this act may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

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(b) State that it has been signed and witnessed as provided in (a) of this subsection.

(3) Revocation, suspension, expiration, or cancellation of a driver's license or identification card through which an anatomical gift has been made does not invalidate the gift.

(4) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

NEW SECTION. Sec. 6. (1) Subject to section 8 of this act, a donor or other person authorized to make an anatomical gift under section 4 of this act may amend or revoke an anatomical gift by:

(a) A record signed by:

(i) The donor;

(ii) The other person; or

(iii) Subject to subsection (2) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(b) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(2) A record signed pursuant to subsection (1)(a)(iii) of this section must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) State that it has been signed and witnessed as provided in (a) of this subsection.

(3) Subject to section 8 of this act, a donor or other person authorized to make an anatomical gift under section 4 of this act may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift. The donor or other person shall notify the Washington organ procurement organization of the destruction or cancellation of the document of gift for the purpose of removing the individual's name from the organ and tissue donor registry created in RCW 68.50.635 (as recodified by this act). If the Washington state organ procurement organization that is notified does not maintain a registry for Washington residents, it shall notify all Washington state procurement organizations that do maintain such a registry.

(4) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (1) of this section.

NEW SECTION. Sec. 7. (1) An individual may refuse to make an anatomical gift of the individual's body or part by:

(a) A record signed by:

(i) The individual; or

(ii) Subject to subsection (2) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(b) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(c) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(2) A record signed pursuant to subsection (1)(a)(ii) of this section must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(b) State that it has been signed and witnessed as provided in (a) of this subsection.

(3) An individual who has made a refusal may amend or revoke the refusal:

(a) In the manner provided in subsection (1) of this section for making a refusal;

(b) By subsequently making an anatomical gift pursuant to section 5 of this act that is inconsistent with the refusal; or

(c) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(4) Except as otherwise provided in section 8(8) of this act, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

NEW SECTION. Sec. 8. (1) Except as otherwise provided in subsection (7) of this section and subject to subsection (6) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section 5 of this act or an amendment to an anatomical gift of the donor's body or part under section 6 of this act.

(2) A donor's revocation of an anatomical gift of the donor's body or part under section 6 of this act is not a refusal and does not bar another person specified in section 4 or 9 of this act from making an anatomical gift of the donor's body or part under section 5 or 10 of this act.

(3) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 5 of this act or an amendment to an anatomical gift of the donor's body or part under section 6 of this act, another person may not make, amend, or revoke the gift of the donor's body or part under section 10 of this act.

(4) A revocation of an anatomical gift of a donor's body or part under section 6 of this act by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 5 or 10 of this act.

(5) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 4 of this act, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(6) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 4 of this act, an anatomical gift of a part for one or more of the permitted purposes is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 5 or 10 of this act.

(7) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(8) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

NEW SECTION. Sec. 9. (1) Subject to subsections (2) and (3) of this section and unless barred by section 7 or 8 of this act, an anatomical gift of a decedent's body or part may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(a) An agent of the decedent at the time of death who could have made an anatomical gift under section 4(2) of this act immediately before the decedent's death;

(b) The spouse, or domestic partner registered as required by state law, of the decedent;

(c) Adult children of the decedent;

(d) Parents of the decedent;

(e) Adult siblings of the decedent;

(f) Adult grandchildren of the decedent;

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(g) Grandparents of the decedent;

(h) The persons who were acting as the guardians of the person of the decedent at the time of death; and

(i) Any other person having the authority under applicable law to dispose of the decedent's body.

(2) If there is more than one member of a class listed in subsection (1)(a), (c), (d), (e), (f), (g), or (h) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 11 of this act knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(3) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (1) of this section is reasonably available to make or to object to the making of an anatomical gift.

NEW SECTION. Sec. 10. (1) A person authorized to make an anatomical gift under section 9 of this act may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(2) Subject to subsection (3) of this section, an anatomical gift by a person authorized under section 9 of this act may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under section 9 of this act may be:

(a) Amended only if a majority of the reasonably available members agree to the amending of the gift; or

(b) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(3) A revocation under subsection (2) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before transplant procedures have begun on the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

NEW SECTION. Sec. 11. (1) An anatomical gift may be made to the following persons named in the document of gift:

(a) For research or education: A hospital; an accredited medical school, dental school, college, or university; or an organ procurement organization;

(b) Subject to subsection (2) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(c) An eye bank or tissue bank;

(2) If an anatomical gift to an individual under subsection (1)(b) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (7) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(3) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(4) For the purpose of subsection (3) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(5) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (1) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(6) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(7) For purposes of subsections (2), (5), and (6) of this section the following rules apply:

(a) If the part is an eye, the gift passes to the appropriate eye bank.

(b) If the part is tissue, the gift passes to the appropriate tissue bank.

(c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b) of this section, passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to subsections (1) through (8) of this section or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(10) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 5 or 10 of this act or if the person knows that the decedent made a refusal under section 7 of this act that was not revoked. For purposes of this subsection (10), if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in subsection (1)(b) of this section, nothing in this chapter affects the allocation of organs for transplantation or therapy.

NEW SECTION. Sec. 12. (1) A document of gift need not be delivered during the donor's lifetime to be effective.

(2) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 11 of this act.

NEW SECTION. Sec. 13. (1) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the department of licensing and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(2) A procurement organization must be allowed reasonable access to information in the records of the department of licensing to ascertain whether an individual at or near death is a donor.

(3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or

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education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(4) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under section 11 of this act may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(5) Unless prohibited by law other than this chapter, an examination under subsection (3) or (4) of this section may include an examination of all medical records of the donor or prospective donor.

(6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(7) Upon referral by a hospital under subsection (1) of this section, a procurement organization shall make a reasonable search for any person listed in section 9 of this act having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(8) Subject to sections 11(9), 21, and 22 of this act, the rights of the person to which a part passes under section 11 of this act are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 11 of this act, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(9) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(10) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

NEW SECTION. Sec. 14. When English is not the first language of the person or persons making, amending, revoking, or refusing anatomical gifts as defined in this act, organ procurement organizations are responsible for providing, at no cost, appropriate interpreter services or translations to such persons for the purpose of making such decisions.

NEW SECTION. Sec. 15. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

NEW SECTION. Sec. 16. (1) Except as otherwise provided in subsection (2) of this section, a person who, for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death is guilty of a class C felony under RCW 9A.20.010.

(2) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

NEW SECTION. Sec. 17. A person who, in order to obtain financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal is guilty of a class C felony under RCW 9A.20.010.

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NEW SECTION. Sec. 18. (1) A person who acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(2) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(3) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in section 9(1)(b) through (g) of this act relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

NEW SECTION. Sec. 19. (1) A document of gift is valid if executed in accordance with:

(a) This chapter;

(b) The laws of the state or country where it was executed;

or

(c) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(2) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(3) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

NEW SECTION. Sec. 20. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Advance health care directive" means a power of attorney for health care or a "directive" as defined in RCW 70.122.020.

(b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(c) "Health care decision" means any decision made regarding the health care of the prospective donor.

(2) If a prospective donor has a declaration or advance health care directive, and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and the prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than this chapter to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 9 of this act. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

NEW SECTION. Sec. 21. (1)(a) A coroner or medical examiner shall cooperate with procurement organizations, to the extent that such cooperation does not prevent, hinder, or impede the timely investigation of death, to facilitate the opportunity to recover anatomical gifts for the purpose of transplantation or therapy. However, a coroner or medical examiner may limit the number of procurement organizations with which he or she cooperates.

(b) The coroner or medical examiner may release the initial investigative information to the tissue or organ procurement

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organization for the purpose of determining the suitability of the potential donor by those organizations. The information released for this purpose shall remain confidential. The coroner or medical examiner is not liable for any release of confidential information by the procurement organization.

(2)(a) Procurement organizations shall cooperate with the coroner or medical examiner to ensure the preservation of and timely transfer to the coroner or medical examiner any physical or biological evidence from a prospective donor that the procurement organization may have contact with or access to that is required by the coroner or medical examiner for the investigation of death.

(b) If the coroner or medical examiner or a designee releases a part for donation under subsection (4) of this section, the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the coroner or medical examiner with a record describing the condition of the part, biopsies, residual tissue, photographs, and any other information and observations requested by the coroner or medical examiner that would assist in the investigation of death.

(3) A part may not be removed from the body of a decedent under the jurisdiction of a coroner or medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift, and has been released by the coroner or medical examiner. The body of a decedent under the jurisdiction of the coroner or medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or medical examiner from performing the medicolegal investigation upon the body or relevant parts of a decedent under the jurisdiction of the coroner or medical examiner.

(4) If an anatomical gift of a part from the decedent under the jurisdiction of the coroner or medical examiner has been or might be made, but the coroner or medical examiner initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death, the collection of evidence, or the description, documentation, or interpretation of injuries on the body, the coroner or medical examiner may consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the coroner or medical examiner may release the part for recovery.

NEW SECTION. Sec. 22. This chapter is subject to the laws of this state governing the jurisdiction of the coroner or medical examiner.

NEW SECTION. Sec. 23. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. Sec. 24. This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.) with respect to electronic signatures and anatomical gifts, but does not modify, limit, or supersede section 101(a) of that act (15 U.S.C. Sec. 7001), or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

Sec. 25. RCW 1.50.010 and 1998 c 59 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Organ donor" means an individual who makes an anatomical gift as specified in ~~((RCW 68.50.530(1)))~~ chapter 68.-- RCW (sections 1 through 24 of this act).

(2) "Organ procurement organization" ~~((means any accredited or certified organ or eye bank))~~ has the same meaning as in section 2 of this act.

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(3) "Person" means a person specified in ~~((RCW 68.50.550))~~ section 9 of this act.

Sec. 26. RCW 46.12.510 and 2003 c 94 s 6 are each amended to read as follows:

An applicant for a new or renewed registration for a vehicle required to be registered under this chapter or chapter 46.16 RCW may make a donation of one dollar or more to the organ and tissue donation awareness account to promote the donation of organs and tissues under the provisions of the uniform anatomical gift act, ~~((RCW 68.50.520 through 68.50.630))~~ chapter 68.-- RCW (sections 1 through 24 of this act). The department shall collect the donations and credit the donations to the organ and tissue donation awareness account, created in RCW 68.50.640 (as recodified by this act). At least quarterly, the department shall transmit donations made to the organ and tissue donation awareness account to the foundation established for organ and tissue donation awareness purposes by the Washington state organ procurement organizations. All Washington state organ procurement organizations will have proportional access to these funds to conduct public education in their service areas. The donation of one or more dollars is voluntary and may be refused by the applicant. The department shall make available informational booklets or other informational sources on the importance of organ and tissue donations to applicants.

The department shall inquire of each applicant at the time the completed application is presented whether the applicant is interested in making a donation of one dollar or more and shall also specifically inform the applicant of the option for organ and tissue donations as required by RCW 46.20.113. The department shall also provide written information to each applicant volunteering to become an organ and tissue donor. The written information shall disclose that the applicant's name shall be transmitted to the organ and tissue donor registry created in RCW 68.50.635 (as recodified by this act), and that the applicant shall notify a Washington state organ procurement organization of any changes to the applicant's donor status.

All reasonable costs associated with the creation of the donation program created under this section must be paid proportionally or by other agreement by a Washington state organ procurement organization.

For the purposes of this section, "reasonable costs" and "Washington state organ procurement organization" have the same meaning as defined in ~~((RCW 68.50.530))~~ section 2 of this act.

Sec. 27. RCW 46.20.113 and 1993 c 228 s 18 are each amended to read as follows:

The department of licensing shall provide a statement whereby the licensee may certify his or her willingness to make an anatomical gift under ~~((RCW 68.50.540))~~ section 4 of this act, as now or hereafter amended. The department shall provide the statement in at least one of the following ways:

- (1) On each driver's license; or
- (2) With each driver's license; or
- (3) With each in-person driver's license application.

Sec. 28. RCW 46.20.1131 and 2003 c 94 s 5 are each amended to read as follows:

The department shall electronically transfer the information of all persons who upon application for a driver's license or identocard volunteer to donate organs or tissue to a registry created in RCW 68.50.635 (as recodified by this act), and any subsequent changes to the applicant's donor status when the applicant renews a driver's license or identocard or applies for a new driver's license or identocard.

NEW SECTION. Sec. 29. Sections 1 through 24 of this act constitute a new chapter in Title 68 RCW.

NEW SECTION. Sec. 30. RCW 68.50.635 and 68.50.640 are each recodified as sections in the new chapter created in section 29 of this act.

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NEW SECTION. Sec. 31. The following acts or parts of acts are each repealed:

(1) RCW 68.50.500 (Identification of potential donors--Hospital procedures) and 1993 c 228 s 20, 1987 c 331 s 71, & 1986 c 129 s 1;

(2) RCW 68.50.510 (Good faith compliance with RCW 68.50.500--Hospital liability) and 1987 c 331 s 72 & 1986 c 129 s 2;

(3) RCW 68.50.520 (Anatomical gifts--Findings--Declaration) and 1993 c 228 s 1;

(4) RCW 68.50.530 (Anatomical gifts--Definitions) and 2003 c 94 s 2, 1996 c 178 s 15, & 1993 c 228 s 2;

(5) RCW 68.50.540 (Anatomical gifts--Authorized--Procedures--Changes--Refusal) and 2003 c 94 s 4, 1995 c 132 s 1, & 1993 c 228 s 3;

(6) RCW 68.50.550 (Anatomical gifts--By person other than decedent) and 2007 c 156 s 26 & 1993 c 228 s 4;

(7) RCW 68.50.560 (Anatomical gifts--Hospital procedure--Records--Liability) and 1993 c 228 s 5;

(8) RCW 68.50.570 (Anatomical gifts--Donees) and 1993 c 228 s 6;

(9) RCW 68.50.580 (Anatomical gifts--Document of gift--Delivery) and 1993 c 228 s 7;

(10) RCW 68.50.590 (Anatomical gifts--Rights of donee--Time of death--Actions by technician, enucleator) and 1993 c 228 s 8;

(11) RCW 68.50.600 (Anatomical gifts--Hospitals--Procurement and use coordination) and 1993 c 228 s 9;

(12) RCW 68.50.610 (Anatomical gifts--Illegal purchase or sale--Penalty) and 2003 c 53 s 312 & 1993 c 228 s 10; and

(13) RCW 68.50.620 (Anatomical gifts--Examination for medical acceptability--Jurisdiction of coroner, medical examiner--Liability limited) and 1993 c 228 s 11."

Senators Keiser and Pflug spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Keiser to Senate Bill No. 5657.

The motion by Senator Keiser carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "act;" strike the remainder of the title and insert "amending RCW 1.50.010, 46.12.510, 46.20.113, and 46.20.1131; adding a new chapter to Title 68 RCW; recodifying RCW 68.50.635, and 68.50.640; repealing RCW 68.50.500, 68.50.510, 68.50.520, 68.50.530, 68.50.540, 68.50.550, 68.50.560, 68.50.570, 68.50.580, 68.50.590, 68.50.600, 68.50.610, and 68.50.620; and prescribing penalties."

On motion of Senator Keiser, the rules were suspended, Engrossed Senate Bill No. 5657 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and Pflug spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5657.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5657 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown,

Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

ENGROSSED SENATE BILL NO. 5657, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, the Senate advanced to the seventh order of business.

THIRD READING

ENGROSSED SUBSTITUTE SENATE BILL NO. 5261, by Senate Committee on Health & Long-Term Care (originally sponsored by Senators Keiser, Franklin, Kohl-Welles, Fairley and Kline).

Granting the insurance commissioner the authority to review individual health benefit plan rates.

The bill was read on Third Reading.

Senator Keiser spoke in favor of passage of the bill.

PARLIAMENTARY INQUIRY

Senator Schoesler: "Recently the voters enacted Initiative 960 which requires OFM to perform fiscal analysis and provide public notice on measures which impose taxes or fees. This measure allows the Insurance Commissioner to increase health benefit plan rates. Regardless of whether this authority characterizes a tax or fee, this language should trigger OFM's duties under I-960. It is true that this measure was introduced last year prior to the enactment of I-960. I-960 requires, however, OFM to perform fiscal analysis and provide public notice at key points along the legislature's consideration of a tax or fee measure. This present floor action certainly could qualify as one of these key points. Because OFM has not provided proper fiscal analysis and public notice on this measure, I believe that the bill is not properly before us and I respectfully request a ruling thereon."

Senate Brown spoke against the parliamentary inquiry.

MOTION

At 10:47 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 11:44 a.m. by President Owen.

RULING BY THE PRESIDENT

President Owen: "In ruling on the inquiry raised by Senator Schoesler as to the application of Initiative Number 960 to Engrossed Substitute Senate Bill 5261, the President finds and rules as follows:

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I-960 contains many provisions, but, for purposes of my analysis, its major sections may be properly segregated as conferring obligations on two branches of government: First, the Office of Financial Management, as part of the executive branch, is charged with providing certain fiscal analysis and public notice when a bill imposes a tax or a fee. Second, I-960 imposes certain obligations upon the Legislature, requiring supermajority votes on and referral to the voters of particular measures under certain circumstances relating to the imposition of tax increases. In this particular case, Senator Schoesler is challenging OFM's determination that this measure is neither a tax nor a fee, and therefore those provisions of I-960 which require OFM to perform fiscal analysis and provide public notice are not triggered.

The President reminds the body that he provides parliamentary rulings, not legal advice. While the President can properly rule on those provisions of I-960 which affect this body and the votes required for a particular measure under consideration, he has no authority to decide the propriety of actions taken by coordinate branches of government. The President renders no opinion as to whether OFM should have applied the mandates of I-960 to this particular bill; instead, under long-established precedent with respect to comity, he defers to OFM's judgment that it has complied with its obligations under I-960. It is not the role of the presiding officer to second-guess the legal judgments of another branch of government.

The President wishes to make clear that he is deferring to OFM's judgment only with respect to its determination of its own duties under I-960; he reserves the right to independently determine whether a measure is a tax or fee for purposes of the ultimate vote needed in this chamber, and need not defer to OFM's prior opinion on this subject with respect to such a ruling. In such a case, his judgment will be independent from that of OFM, and he will analyze each measure on its own merits, irrespective of prior OFM action.

In this particular case, Senator Schoesler's inquiry related to whether or not OFM should have provided fiscal analysis and public notice under I-960. Because it is not the President's role to make a determination as to the legal obligations of a coordinate branch of government, the President finds that this measure is properly before the body for consideration, and Senator Schoesler's point is not well-taken."

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5261.

Senators Pflug, Roach, Parlette and Carrell spoke against passage of the bill.

Senators Marr, Hobbs, Franklin and Keiser spoke in favor of passage of the bill.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5261 and the bill passed the Senate by the following vote: Yeas, 31; Nays, 18; Absent, 0; Excused, 0.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Shin, Spanel, Tom and Weinstein - 31

Voting nay: Senators Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker

and Zarelli - 18

ENGROSSED SUBSTITUTE SENATE BILL NO. 5261, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 12:15 p.m., on motion of Senator Eide, the Senate adjourned until 12:00 noon, Thursday, January 31, 2008.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate

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6878			
Introduction & 1st Reading	3		
6879			
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6880			
Introduction & 1st Reading	3		
6881			
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8714			
Adopted	3		
Introduced	3		
9254 Ariele Belo			
Confirmed	4		
9256 Steven Drury			
Confirmed	4		
9369			
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