

Assembly Bill No. 238—Assemblymen Evans, Manendo, Gibbons, Humke, Williams, Goldwater, Segerblom, Chowning, Giunchigliani, Arberry, Hettrick, Freeman and Cegavske

CHAPTER.....

AN ACT relating to public health; requiring the establishment and maintenance of a system for the collection and analysis of information concerning birth defects and other adverse birth outcomes; restricting access to and the use of information obtained by the system; making various changes to the Uniform Anatomical Gift Act; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 440.170 is hereby amended to read as follows:

440.170 1. All certificates in the custody of the state registrar are open to inspection subject to the provisions of this chapter. It ~~shall be~~ *is* unlawful for any employee of the state to disclose data contained in vital statistics, except as authorized by this chapter or by the board.

2. Information in vital statistics indicating that a birth occurred out of wedlock ~~shall~~ *must* not be disclosed except upon order of a court of competent jurisdiction.

3. The board ~~may permit~~ :

(a) Shall allow the use of data contained in vital statistics to carry out the provisions of sections 3 to 9, inclusive, of this act; and

(b) May allow the use of data contained in vital statistics ~~records~~ for *other* research purposes, but without identifying the persons to whom the records relate.

Sec. 2. Chapter 442 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 9, inclusive, of this act.

Sec. 3. *As used in sections 3 to 9, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4, 5 and 6 of this act have the meanings ascribed to them in those sections.*

Sec. 4. *“Birth defect” means any structural or chemical abnormality present in a child at birth.*

Sec. 5. *“Adverse birth outcome” includes stillbirths.*

Sec. 6. *“System” means the system established and maintained pursuant to section 7 of this act.*

Sec. 7. 1. *The health division, in cooperation with the University of Nevada School of Medicine, shall establish and maintain a statewide system for the collection and analysis of information concerning birth defects and other adverse birth outcomes.*

2. The state board of health shall adopt regulations to carry out the provisions of sections 3 to 9, inclusive, of this act. The regulations must:

(a) Establish a procedure to inform a patient that his name will be used for research and referrals to related services unless he requests the exclusion of his name from the system; and

(b) Require the exclusion from the system of the name of a patient if the patient or, if the patient is a minor, a parent or legal guardian of the patient has requested in writing to exclude the name of the patient from the system.

3. The provisions of sections 3 to 9, inclusive, of this act do not authorize any prenatal genetic testing of children.

Sec. 8. 1. Except as otherwise provided in subsection 2, the chief administrative officer of each hospital and obstetric center or his representative shall:

(a) Prepare and make available to the state health officer or his representative a list of:

(1) Patients who are under 7 years of age and have been diagnosed with one or more birth defects; and

(2) Patients discharged with adverse birth outcomes; and

(b) Make available to the state health officer or his representative the records of the hospital or obstetric center regarding:

(1) Patients who are under 7 years of age and have been diagnosed with one or more birth defects; and

(2) Patients discharged with adverse birth outcomes.

2. The name of a patient must be excluded from the information prepared and made available pursuant to subsection 1 if the patient or, if the patient is a minor, a parent or legal guardian of the patient has requested in writing to exclude the name of the patient from that information in the manner prescribed by the state board of health pursuant to section 7 of this act. The provisions of this subsection do not relieve the chief administrative officer of the duty of preparing and making available the information required by subsection 1.

3. The state health officer or his representative shall abstract from the records and lists required to be prepared and made available pursuant to this section such information as is required by the state board of health for inclusion in the system.

4. As used in this section, "hospital" has the meaning ascribed to it in NRS 449.012.

Sec. 9. 1. Information obtained by the system from any source may be used only:

(a) To investigate the causes of birth defects and other adverse birth outcomes;

(b) To determine, evaluate and develop strategies to prevent the occurrence of birth defects and other adverse birth outcomes;

(c) To assist in the early detection of birth defects; and

(d) To assist in ensuring the delivery of services for children identified with birth defects.

2. *The state board of health shall adopt regulations to ensure that:*
(a) *Access to information contained in the system is limited to persons authorized and approved by the state health officer or his representative who are employed by the health division or the University of Nevada School of Medicine.*

(b) *Any information obtained by the system that would reveal the identity of a patient remains confidential.*

(c) *Except as otherwise provided in subsection 3, information obtained by the system is used solely for the purposes set forth in subsection 1.*

3. *This section does not prohibit the publishing of statistical compilations relating to birth defects and other adverse birth outcomes that do not in any manner identify individual patients or individual sources of information.*

Sec. 10. NRS 442.003 is hereby amended to read as follows:

442.003 As used in this chapter, unless the context requires otherwise:

1. "Advisory board" means the advisory board on maternal and child health.
2. "Department" means the department of human resources.
3. "Director" means the director of the department of human resources.
4. "Fetal alcohol syndrome" includes fetal alcohol effects.
5. "Health division" means the health division of the department of human resources.

6. *"Obstetric center" has the meaning ascribed to it in NRS 449.0155.*

7. "Provider of health care or other services" means:

- (a) A person who has been certified as a counselor or an administrator of an alcohol and drug abuse program pursuant to chapter 458 of NRS;
- (b) A physician or a physician's assistant who is licensed pursuant to chapter 630 of NRS and who practices in the area of obstetrics and gynecology, family practice, internal medicine, pediatrics or psychiatry;
- (c) A licensed nurse;
- (d) A licensed psychologist;
- (e) A licensed marriage and family therapist;
- (f) A licensed social worker; or
- (g) A holder of a certificate of registration as a pharmacist.

Sec. 11. NRS 442.040 is hereby amended to read as follows:

442.040 1. Any physician, midwife, nurse, ~~[maternity home]~~ *obstetric center* or hospital of any nature, parent, relative or person ~~[attendant-on]~~ *attending* or assisting in any way ~~[whatever]~~ any infant, or the mother of any infant, at childbirth, or any time within 2 weeks after childbirth, knowing the condition defined in NRS 442.030 to exist, shall immediately report such fact in writing to the local health officer of the county, city or other political subdivision within which the infant or the mother of any infant may reside.

2. Midwives shall immediately report conditions to some qualified practitioner of medicine and thereupon withdraw from the case except as they may act under the physician's instructions.

3. On receipt of such report, the health officer, or the physician notified by a midwife, shall immediately give to the parents or persons having charge of such infant a warning of the dangers to the eye or eyes of the infant, and shall, for indigent cases, provide the necessary treatment at the expense of the county, city or other political subdivision.

Sec. 12. NRS 442.110 is hereby amended to read as follows:

442.110 Any physician, midwife, nurse, manager or person in charge of ~~{a maternity home}~~ **an obstetric center** or hospital, parent, relative or person attending upon or assisting at the birth of an infant who violates any of the provisions of NRS 442.030 to 442.100, inclusive, shall be punished by a fine of not more than \$250.

Sec. 13. NRS 442.115 is hereby amended to read as follows:

442.115 1. The state board of health, upon the recommendation of the state health officer, shall adopt regulations governing examinations and tests required for the discovery in infants of preventable or inheritable disorders, including tests for the presence of sickle cell anemia.

2. Any physician, midwife, nurse, ~~{maternity home}~~ **obstetric center** or hospital of any nature ~~{attendant on}~~ **attending** or assisting in any way ~~{whatever}~~ any infant, or the mother of any infant, at childbirth shall make or cause to be made an examination of the infant, including standard tests, to the extent required by regulations of the state board of health as **is** necessary for the discovery of conditions indicating such disorders.

3. If the examination and tests reveal the existence of such conditions in an infant, the physician, midwife, nurse, ~~{maternity home}~~ **obstetric center** or hospital ~~{attendant on}~~ **attending** or assisting at the birth of the infant shall immediately:

(a) Report the condition to **the state health officer or his representative**, the local health officer of the county or city within which the infant or the mother of the infant resides, and the local health officer of the county or city in which the child is born; and

(b) Discuss the condition with the parent, parents or other persons responsible for the care of the infant and inform them of the treatment necessary for the amelioration of the condition.

4. An infant is exempt from examination and testing if either parent files a written objection with the person or institution responsible for making the examination or tests.

Sec. 14. NRS 449.720 is hereby amended to read as follows:

449.720 Every patient of a medical facility, facility for the dependent or home for individual residential care has the right to:

1. Receive considerate and respectful care.

2. Refuse treatment to the extent permitted by law and to be informed of the consequences of that refusal.

3. Refuse to participate in any medical experiments conducted at the facility.

4. Retain his privacy concerning his program of medical care.

Discussions of a patient's care, consultation with other persons concerning the patient, examinations or treatments, and all communications and records concerning the patient, except as otherwise provided in NRS 108.640 and 449.705, *sections 3 to 9, inclusive, of this act* and chapter 629 of NRS, are confidential. The patient must consent to the presence of any person who is not directly involved with his care during any examination, consultation or treatment.

5. Have any reasonable request for services reasonably satisfied by the facility or home considering its ability to do so.

6. Receive continuous care from the facility or home. The patient must be informed:

(a) Of his appointments for treatment and the names of the persons available at the facility or home for those treatments; and

(b) By his physician or an authorized representative of the physician, of his need for continuing care.

Sec. 15. NRS 451.555 is hereby amended to read as follows:

451.555 1. Any person may:

(a) Make an anatomical gift for any of the purposes stated in subsection 1 of NRS 451.560;

(b) Limit an anatomical gift to one or more of those purposes; or

(c) Refuse to make an anatomical gift.

2. Except as otherwise provided in subsection 3, an anatomical gift may be made only by a document of gift signed by the donor. If the donor:

(a) Cannot sign, the document of gift must be signed by another person 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.

(b) Is less than 18 years of age, the document of gift must also be signed by two witnesses, one of whom is a parent or guardian of the donor and consents to the donation, at the direction and in the presence of the donor and of each other and state that it has been so signed.

3. If the donor is less than 12 years of age, the document of gift must be signed by a parent or guardian of the donor, on behalf of the donor, and two witnesses at the direction and in the presence of the parent or guardian and of each other and state that it has been so signed. The document is not required to be signed by the donor.

4. If a document of gift is imprinted on a donor's driver's license or identification card, the document of gift must comply with subsection 2. Revocation, suspension, expiration or cancellation of the license or card does not invalidate the anatomical gift.

5. A document of gift may authorize a particular physician to carry out the appropriate procedures. In the absence of such authorization or if the designated physician is not available, the donee or other person authorized

to accept the anatomical gift may employ or authorize any physician, technician or enucleator to carry out the appropriate procedures.

6. An anatomical gift by will takes effect upon the 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.

7. Except as otherwise provided in subsections 8 and 9, a donor may amend or revoke an anatomical gift, not made by will, only by:

- (a) A signed statement;
- (b) An oral statement made in the presence of two persons;
- (c) Any form of communication during a terminal illness or injury addressed to a physician; or
- (d) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

8. Except as otherwise provided in subsection 9, a donor who is less than 18 years of age may, with the consent of his parent or guardian, amend or revoke an anatomical gift, not made by will, by:

- (a) A signed statement;
- (b) An oral statement made in the presence of two persons;
- (c) Any form of communication during a terminal illness or injury addressed to a physician; or
- (d) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

9. A donor who is less than 12 years of age may not amend or revoke an anatomical gift. The parent or guardian who made the gift on behalf of the donor may amend or revoke an anatomical gift, not made by will, only by:

- (a) A signed statement;
- (b) An oral statement made in the presence of two persons;
- (c) Any form of communication during a terminal illness or injury addressed to a physician; or
- (d) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

10. 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 in chapter 133 of NRS or as provided in subsection 7, 8 or 9.

11. 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. *The intent of a donor to make an anatomical gift, as evidenced by a document of gift, may not be revoked by any member of the classes of persons set forth in subsection 1 of NRS 451.557.*

12. A person may refuse to make an anatomical gift of his body or part by:

- (a) A writing signed in the same manner as a document of gift;
 - (b) A statement imprinted on his driver's license or identification card;
- or

(c) Any other writing used to identify him 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.

13. 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 NRS 451.557.

14. 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, he shall make the refusal pursuant to subsection 12.

Sec. 16. NRS 451.560 is hereby amended to read as follows:

451.560 1. The following persons may become donees of anatomical gifts for the purposes stated:

(a) A hospital, physician, dentist or procurement organization, for transplantation, therapy, medical or dental education, research or advancement of medical or dental science;

(b) An accredited medical or dental school, college or university, for education, research or advancement of medical or dental science; or

(c) A designated person, for transplantation or therapy needed by that person.

2. An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital or procurement organization.

3. *In the absence of evidence that an anatomical gift has been revoked by the donor, a document of gift must be presumed to be valid.* If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under subsection 1 of NRS 451.557, the donee shall not accept the anatomical gift.

Sec. 17. NRS 451.576 is hereby amended to read as follows:

451.576 1. Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

2. *Except as otherwise required by the specific terms of an anatomical gift, an anatomical gift from a resident of this state must be offered to any residents of this state in need of transplantation or therapy and listed on a transplant list generally recognized in the medical field before the anatomical gift may be used by another person.*

Sec. 18. NRS 458.055 is hereby amended to read as follows:

458.055 1. To preserve the confidentiality of any information concerning persons applying for or receiving any services pursuant to NRS 458.010 to 458.350, inclusive, the bureau may establish and enforce rules

governing the confidential nature, custody, use and preservation of the records, files and communications filed with the bureau.

2. Wherever information concerning persons applying for and receiving any services pursuant to NRS 458.010 to 458.350, inclusive, is furnished to or held by any other government agency or a public or private institution, the use of that information by the agency or institution is subject to the rules established by the bureau pursuant to subsection 1.

3. Except as otherwise provided in NRS 449.705 , *sections 3 to 9, inclusive, of this act* and chapter 629 of NRS and except for purposes directly connected with the administration of NRS 458.010 to 458.350, inclusive, a person shall not disclose, use or permit to be disclosed, any confidential information concerning a person receiving services pursuant to NRS 458.010 to 458.350, inclusive.

Sec. 19. NRS 458.280 is hereby amended to read as follows:

458.280 1. Except as otherwise provided in subsection 2, NRS 449.705 , *sections 3 to 9, inclusive, of this act* and chapter 629 of NRS, the registration and other records of a treatment facility are confidential and must not be disclosed to any person not connected with the treatment facility without the consent of the patient.

2. The provisions of subsection 1 do not restrict the use of a patient's records for the purpose of research into the causes and treatment of alcoholism if such information is not published in a way that discloses the patient's name or other identifying information.

Sec. 20. NRS 629.171 is hereby amended to read as follows:

629.171 It is unlawful to disclose or to compel a person to disclose the identity of a person who was the subject of a genetic test or to disclose genetic information of that person in a manner that allows identification of the person, without first obtaining the informed consent of that person or his legal guardian pursuant to NRS 629.181, unless the information is disclosed:

1. To conduct a criminal investigation, an investigation concerning the death of a person, or a criminal or juvenile proceeding;

2. To determine the parentage or identity of a person pursuant to NRS 56.020;

3. To determine the paternity of a person pursuant to NRS 126.121 or 425.384;

4. Pursuant to an order of a court of competent jurisdiction;

5. By a physician and is the genetic information of a deceased person that will assist in the medical diagnosis of persons related to the deceased person by blood;

6. To a federal, state, county or city law enforcement agency to establish the identity of a person or dead human body;

7. To determine the presence of certain preventable or inheritable disorders in an infant pursuant to NRS 442.115 or a provision of federal law;

8. To carry out the provisions of sections 3 to 9, inclusive, of this act;

or

~~{8-}~~ **9.** By an agency of criminal justice pursuant to NRS 179A.075.

Sec. 21. NRS 652.190 is hereby amended to read as follows:

652.190 1. A laboratory may examine specimens only at the request of:

- (a) A licensed physician;
- (b) Any other person authorized by law to use the findings of laboratory tests and examinations; or
- (c) If the examination can be made with a testing device or kit which is approved by the Food and Drug Administration for use in the home and which is available to the public without a prescription, any person.

2. Except as otherwise provided in NRS 441A.150 and 652.193 ~~{1-}~~ **and section 8 of this act**, the laboratory may report the results of the examination only to the person requesting the test or procedure and to the patient for whom the testing or procedure was performed. The laboratory report must contain the name of the laboratory.

3. If a specimen is accepted by a laboratory and is referred to another laboratory, the name and address of the other laboratory must be clearly shown by the referring laboratory on the report to the person requesting the test or procedure.

4. Whenever an examination is made pursuant to paragraph (c) of subsection 1, the laboratory report must contain a provision which recommends that the results of the examination be reviewed and interpreted by a physician or other licensed provider of health care.

Sec. 22. NRS 652.193 is hereby amended to read as follows:

652.193 1. ~~{A-}~~ **Except as otherwise provided in section 8 of this act, a** licensed laboratory may release the results of tests performed at the laboratory regarding a patient of a rural hospital only to:

- (a) The patient;
- (b) The physician who ordered the tests; and
- (c) A provider of health care who is currently treating or providing assistance in the treatment of the patient.

2. As used in this section:

(a) "Provider of health care" has the meaning ascribed to it in NRS 629.031.

(b) "Rural hospital" has the meaning ascribed to it in NRS 449.0177.

Sec. 23. Sections 10, 13, 18 and 20 of this act become effective at 12:01 a.m. on October 1, 1999.

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