

Republic of the Philippines  
**HOUSE OF REPRESENTATIVES**  
Quezon City  
**SEVENTEENTH CONGRESS**  
Third Regular Session  
8609  
House Bill no. \_\_\_\_\_



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Introduced by Representative Wes Gatchalian

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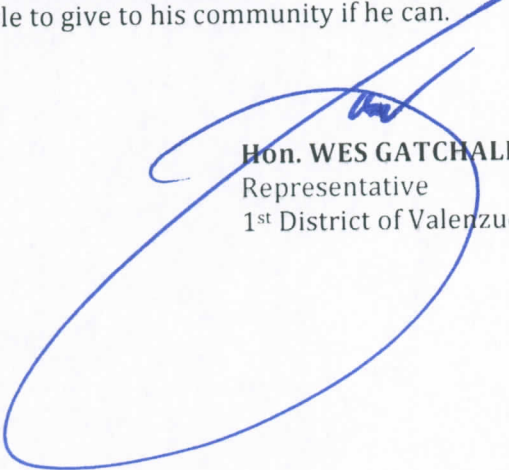
**EXPLANATORY NOTE**

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

According to the numbers collated by the Department of Health (DOH) and by the Philippine Network for Organ Sharing (PHILNOS), each year there are at least twelve-thousand (12 000) new patients requiring kidney transplant. At present only ten percent (10%) of those requiring transplant are able to avail of it primarily due to the scarcity of available organs. In comparison to other countries in the west, who themselves are plagued with continuing problems of organ scarcity, and whose average donor per million runs between to 10-35, our country's average is currently at a measly 0.5 donor per million. These staggering numbers are but a translucent window into a much dimmer reality where a number of our people would rather not even opt for any medical service, knowledgeable of the fact that the costs they entail are beyond their financial capacities. These people do not form part of our statistics, and yet their plights are equally our business. It is submitted that the effect of this act, as was seen in other countries like Austria, France, Spain, Belgium, etc., that have adopted the same measure, would be to create an increase in the supply of organs available, proportionately decreasing the barrier of cost and increasing the chance of survival of those who require it. It is also submitted that a residual effect is to also weaken the black market in organ selling as the necessity for it is dissipated by the availability of legitimate avenues to receive organs.

Presuming the consent or the will of a deceased is without a doubt a crucial policy consideration. Globally it is an accepted policy, and as established in the preceding paragraph, has led strides towards solving the ills of organ scarcity. Furthermore, contrary to the knee-jerk impulse of the reader, it is also not a new concept in our country as we have the same policy in intestate succession whereby by statute we presume the will of the decedent. Even more in our system of legitimes, by statute we compel the disposition of a decedent his actual intent notwithstanding. It is submitted that fundamentally the core policy of this bill merely does the same.

As a final word, I concede that proposing this bill opens floodgates of discussions that would thrust us into the very core of our understanding of what this elusive term "human dignity" entails. This bill will force people into diametrically opposing positions. And each of us will be forced to decide whether or not we believe that giving a part of ourselves, when we no longer require them, is a duty we have to our fellows. But lest I pre-empt these discussions, and lest I argue with strawmen, it is for the current purposes sufficient to note my belief that it is in the Filipino spirit and consciousness that he has this most noble animus of generosity. It is who we are as a people that we derive pleasure, perhaps at times irrationally, to give and to provide for others sometimes even to a fault. This bill is in the spirit of "*bayanihan*." It is therefore not a stretch to presume that a person who dies would beyond the grave want to be able to give to his community if he can.



**Hon. WES GATCHALIAN**  
Representative  
1<sup>st</sup> District of Valenzuela

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

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

**SECTION 1. *Short Title.*** - This Act shall be known as the "*OPT-OUT ORGAN TRANSPLANTATION ACT OF 2017*"

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

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

- (a) "*Organ Bank Storage Facility*" - a facility licensed, accredited or approved under the law for storage of human bodies or parts thereof.
- (b) "*Decedent*" - a deceased individual, and includes a still-born infant or fetus.
- (c) "*Testator*" - an individual who makes a legacy of all or part of his body.
- (d) "*Donor*" - an individual authorized under this Act to donate all or part of the body of a decedent.
- (e) "*Opt-Out*" - As provided in this act, "Opt-Out" shall mean to be as the positive act of a person categorically registering themselves to the appropriate office as indicated herein that he or she does not consent to subject his human organs, remains and / or any parts of his body to be subject for transplantation to another persons.
- (f) "*Deemed Consent*" - Is the presumption of consent by the failure of a person to register in the appropriate office of his desire not to subject his human organs, remains and / or any parts of his body for transplantation to another persons.
- (g) "*Hospital*" - a hospital licensed, accredited or approved under the law, and includes, a hospital operated by the Government.
- (h) "*Part*" - includes transplantable organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of the human body.

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

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

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

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

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

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

The death of the person shall be determined in accordance with the acceptable standards of medical practice and shall be diagnosed separately by the attending physician and another consulting physician, both of whom must be appropriately qualified and suitably experienced in the care of such parties. The death shall be recorded in the patient's medical record.

**Section 4. *Transplantation Activities, When Lawful*** - Transplantation activities are lawful if done with express consent when one is required, or otherwise with "deemed consent."

**Section 5. *Transplantation Activities*** - The following shall be considered as transplantation activities:

a. Storing the body of a deceased person for use for the purpose of transplantation;

b. Removing from the body of a deceased person, for use for that purpose, any relevant material of which the body consists or which it contains;

c. Storing for use for that purpose any relevant material that has come from the human body;

d. Using for that purpose any relevant material that has come from the human body.

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

- (a) The relevant material has been imported into the Philippines, and
- (b) Its removal from a person's body took place outside the Philippines.

**Section 6. *Opt-Out; How Done*** – For purposes of this Act, any person desiring not to have his body parts be subject of transplantation shall register his desire to the same before the Barangay where he is a resident of. For this purpose the barangay is mandated to forward this registration with the Department of Health. Those who failed to register shall, at the time of their death, have deemed to express their consent to subject their body parts for organ transplantation.

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

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

- (1) Spouse;
  - (2) Son or daughter of legal age;
  - (3) Either parent;
  - (4) Brother or sister of legal age; or
  - (5) Guardian over the person of the decedent at the time of his death.
- (b) The persons authorized by sub-section (a) of this Section may make the donation afterdeath.

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

For purposes of this Act, an autopsy shall be conducted on the cadaver of accident, trauma, or other medico-legal cases immediately after the pronouncement of death, to determine qualified and healthy human organs for transplantation and/or in furtherance of medical science.

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

- (a) Any hospital, physician or surgeon - For medical or dental education,

research, advancement of medical or dental science, therapy or transplantation;  
(b) Any accredited medical or dental school, college or university - For education, research, advancement of medical or dental science, or therapy;  
(c) Any organ bank storage facility - For medical or dental education, research, therapy, or transplantation; and  
(d) Any specified individual - For therapy or transplantation needed by him.  
(e) The State in default of any of the preceding, and as defined by the succeeding section.

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

**Section 12. Incentives.** - Any person whose human organs, remains and / or any parts of his / her body will be subjected for transplantation to another persons, shall upon effectivity of this Act, receive incentives from the government, the nature and specifics of the incentives shall be further laid down by the Department of Health by means of an implementing rule.  
Provided the deceased, during his lifetime, shall be entitled to the maximum benefits provided by the PhilHealth if he registers to bequeath his organs to the State within the period defined by Section 22 of this Act.  
Provided further than in all cases, a person who consents, whether express or implied, to donate his organs to the State, his estate shall be entitled to a ten percent (10%) reduction of its tax duties.

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

**Section 14. Manner of Executing a Legacy.** -

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

(b) A legacy of all or part of the human body under Section 7 hereof may also be made in any document other than a will. The legacy becomes effective upon death of the testator and shall be respected by and binding upon his executor or administrator, heirs, assigns, successors-in-interest and all members of the family. The document, which may be a card or any paper designed to be carried on a person, must be signed by the testator in the presence of two witnesses who must sign the document in his presence. If the testator cannot sign, the document

may be signed for him at his discretion and in his presence, in the presence of two witnesses who must, likewise, sign the document in the presence of the testator. Delivery of the document of legacy during the testator's lifetime is not necessary to make the legacy valid.

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

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

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

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

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

(a) A member of the team of medical practitioners who will effect the removal of the organ from the body; nor

(b) The physician attending to the receipt of the organ to be removed; nor

(c) The head of hospital or the designated officer authorizing the removal of the organ.

**Section 16. *Person(s) Authorized to Remove Transplantable Organs.*** – Only authorized medical practitioners in a hospital shall remove and/or transplant any organ which is authorized to be removed and/or transplanted pursuant to Section 5 hereof.

**Section 17. *Delivery of Document of Legacy or Donation.*** – If the legacy or donation is made to a specified legatee or donee, the will, card or other

document, or an executed copy thereof, may be delivered by the testator or donor, or is authorized representative, to the legatee or donee to expedite the appropriate procedures immediately after death. The will, card or other document, or an executed copy thereof, may be deposited in any hospital or organ bank storage facility that accepts it for safekeeping or for facilitation or procedures after death. On the request of any interested party upon or after the testator's death, the person in possession shall produce the document of legacy or donation for verification.

**Section 18. *Amendment or Revocation of Legacy or Donation.* –**

a) If he will, card or other document, or an executed copy thereof, has been delivered to a specific legatee or donee, the testator or donor may amend or revoke the legacy or donation either by:

(1) The execution and delivery to the legatee or donee of a signed statement to that effect; or

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

(3) A statement to that effect during a terminal illness or injury addressed to an attending physician and communicated to the legatee or donee; or

(4) A signed card or document to that effect found on the person or effects of the testator or donor.

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

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

**Section 19. *Rights and Duties After Death.* –**

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

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

**Section 20. *International Sharing of Human Organs or Tissues.* –** Sharing of human organs or tissues shall be made only through exchange programs duly approved by the Department of Health: Provided, That foreign organ or tissue bank storage facilities and similar establishments grant reciprocal rights to their Philippine counterparts to draw organs or tissues at any time.

**Section 21. *Information Drive.* –** In order that the public will obtain the maximum benefits from this Act, the Department of Health, in cooperation with institutions, such as the National Kidney Institute, civic and non-government

health organizations and other health related agencies, involved in the donation and transplantation of human organs, shall undertake a public information program.

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

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

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

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

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

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

Approved.