



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-SECOND LEGISLATURE

Bill 399

**An Act to establish a presumption of
consent to organ or tissue donation
after death**

Introduction

**Introduced by
Mr. André Fortin
Member for Pontiac**

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EXPLANATORY NOTES

The purpose of this bill is to simplify organ or tissue donation.

The bill amends the Civil Code so that persons of full age are presumed to authorize the removal of organs or tissues after death.

The bill provides that, except in urgent cases, a person requesting the removal of organs or tissues must check with persons close to the deceased that the deceased had not refused consent by any means.

The bill amends the Act respecting the Régie de l'assurance maladie du Québec so as to rename the consent registry for the post-mortem removal of organs and tissues the "consent and refusal of consent registry for the post-mortem removal of organs and tissues".

The bill amends the form or notice provided by the Régie de l'assurance maladie so that persons of full age are informed of the presumption of consent, the possibility of expressing their refusal of consent and the fact that, if they do not express their refusal of consent, certain information concerning them will be sent, upon request, to the bodies that coordinate organ and tissue donations.

Lastly, the bill amends the Notaries Act and the Règlement sur les registres de la Chambre des notaires du Québec so that the registry kept by the Chambre des notaires is renamed the "consent to or revocation of consent for organ and tissue donors".

LEGISLATION AMENDED BY THIS BILL:

- Civil Code of Québec;
- Notaries Act (chapter N-3);
- Act respecting the Régie de l'assurance maladie du Québec (chapter R-5);
- Act respecting health services and social services (chapter S-4.2).

REGULATION AMENDED BY THIS BILL:

- Règlement sur les registres de la Chambre des notaires du Québec (chapter N-3, r. 13, French only).

Bill 399

AN ACT TO ESTABLISH A PRESUMPTION OF CONSENT TO ORGAN OR TISSUE DONATION AFTER DEATH

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CIVIL CODE OF QUÉBEC

1. Article 43 of the Civil Code of Québec is replaced by the following article:

“43. A person may, for medical or scientific purposes, give his body or authorize the removal of organs or tissues therefrom. However, for a minor under 14 years of age, the consent of the person having parental authority or of his tutor is required.

The authorization or refusal is expressed verbally before two witnesses, or in writing, and may be revoked in the same manner. The authorization or approval expressed shall be followed, unless there is a compelling reason not to do so.”

2. Article 44 of the Code is replaced by the following article:

“44. A person of full age is presumed to authorize the removal of organs or tissues from his body.

A part of the body of a deceased minor may be removed, if the wishes of the deceased are not known, with the consent of the person who was or would have been qualified to give consent to care.

The person who requests the removal must take reasonable measures with the persons close to the deceased to ensure that the deceased had not, by any means, refused consent.

The measures provided for in the third paragraph are not required where two physicians attest in writing to the urgency of the operation and the serious hope of saving a human life or improving its quality to an appreciable degree.”

ACT RESPECTING THE RÉGIE DE L'ASSURANCE MALADIE
DU QUÉBEC

3. Section 2 of the Act respecting the Régie de l'assurance maladie du Québec (chapter R-5) is amended by inserting “and refusal of consent” after “consent” in the seventh paragraph.

4. Section 2.0.8 of the Act is amended

(1) by replacing “a person may, at any time after applying to be registered with the Board under section 9 of the Health Insurance Act (chapter A-29), authorize in writing on a consent form provided by the Board for that purpose,” in the first paragraph by “at any time after applying to be registered with the Board under section 9 of the Health Insurance Act (chapter A-29), a person may, in writing on a form provided by the Board for that purpose, authorize or refuse consent to”;

(2) by replacing “Consent may be revoked” in the second paragraph by “These wishes may be changed”.

5. Section 2.0.9 of the Act is replaced by the following section:

“2.0.9. The form for consenting or refusing consent to the removal of organs or tissues, or the accompanying notice, must inform the person concerned

(1) that, unless the person expressly refuses consent, a person of full age is presumed to authorize the post-mortem removal of organs or tissues;

(2) that the identification information obtained for the carrying out of the Health Insurance Act (chapter A-29) and the information appearing on the form for consenting or refusing consent to the removal of organs or tissues may be sent, on request, to a body that coordinates organ or tissue donations and is designated on the list drawn up by the Minister and published on the Board’s website;

(3) that the person may, at any time, in writing using the form provided by the Board for that purpose, withdraw the decision to authorize or refuse to consent to the removal of organs or tissues; and

(4) that the Board will not solicit the person’s consent again if the person has already given it.”

6. Section 2.0.10 of the Act is amended

(1) by inserting “or refusal of consent” after “the consent” in the introductory clause of the first paragraph;

(2) by replacing “consent to” in subparagraph 1 of the first paragraph by “authorization of or refusal of consent to”;

(3) by inserting “and refusal of consent” after “consent” in subparagraph 4 of the first paragraph;

(4) by replacing “the consent form” in the second paragraph by “the form for consenting or refusing consent”.

7. Section 2.0.11 of the Act is amended by inserting “or refusal of consent” after “consent”.

8. Section 2.0.12 of the Act is amended by inserting “or refusal of consent” after “consent”.

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES

9. Section 204.1 of the Act respecting health services and social services (chapter S-4.2) is amended

(1) by replacing “consent for” in subparagraph 1 of the first paragraph by “consent to or refusal of consent to”;

(2) by inserting “and refusal of consent” after “in the consent” in subparagraph 1 of the first paragraph;

(3) by inserting “or if it has been presumed” after “if the consent has been given” in subparagraph 2 of the first paragraph.

NOTARIES ACT

10. Section 93 of the Notaries Act (chapter N-3) is amended by replacing “consents to” by “consent to or refusal of consent to”.

11. Section 94 of the Act is amended by inserting “consent to or refusal of consent for” after “register of”.

RÈGLEMENT SUR LES REGISTRES DE LA CHAMBRE DES NOTAIRES DU QUÉBEC

12. Section 1 of the Règlement sur les registres de la Chambre des notaires du Québec (chapter N-3, r. 13, French only) is amended

(1) by inserting “et des refus” after “consentements” in the first paragraph;

(2) by replacing “dans le cas d’un donneur” in subparagraph 1 of the second paragraph by “s’il y a consentement ou refus au don d’organes et de tissus”;

(3) by inserting “ou du refus” after “consentement” in subparagraph 2 of the second paragraph.

13. Section 2 of the Regulation is amended by replacing “ou consentement” by “, consentement ou refus”.

14. Section 5 of the Regulation is amended by inserting “et des refus” after “consentements” in the last paragraph.

15. Section 6 of the Regulation is amended by replacing “ou de consentement” in the first paragraph by “, de consentement ou de refus”.

16. Section 7 of the Regulation is amended by inserting “ou d’un refus” after “consentement” in the last paragraph.

17. Section 8 of the Regulation is amended by inserting “ou de refus” after both occurrences of “consentements” in the last paragraph.

FINAL PROVISIONS

18. The Minister of Health and Social Services must, not later than (*insert the date that is five years after the date of coming into force of this Act*), report to the Government on the implementation of this Act and subsequently every five years, report to the Government on the carrying out of this Act.

The Minister must table the report in the National Assembly within 30 days or, if the Assembly is not sitting, within 30 days of resumption. The competent committee of the National Assembly shall examine the report.

19. This Act comes into force on the date to be set by the Government.