

D R A F T

FOR APPROVAL

# REVISED UNIFORM ANATOMICAL GIFT ACT

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-FIFTEENTH YEAR

HILTON HEAD, SOUTH CAROLINA

JULY 7-14, 2006

# REVISED UNIFORM ANATOMICAL GIFT ACT

*WITH PREFATORY NOTE AND COMMENTS*

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By

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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## **DRAFTING COMMITTEE ON REVISED UNIFORM ANATOMICAL GIFT ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in revising this Act consists of the following individuals:

CARLYLE C. RING, JR., 1401 H St. NW, Suite 500, Washington, DC 20005, *Chair*  
PHILLIP CARROLL, 120 E. Fourth St., Little Rock, AR 72201, *Vice-Chair*  
JOHN FOX ARNOLD, 714 Locust St., St. Louis, MO 63101  
JAMES M. BUSH, 3003 N. Central Avenue, Suite 2600, Phoenix, AZ 85012  
JOSEPH M. DONEGAN, 1100 Valley Brook Ave., P.O. Box 790, Lyndhurst, NJ 07071  
DAVID M. ENGLISH, University of Missouri-Columbia, School of Law, Missouri Ave. & Conley Ave., Columbia, MO 65211  
GAIL H. HAGERTY, 514 East Thayer Ave., P.O. Box 1013, Bismarck, ND 58502-1013  
JAMES C. MCKAY, Jr., Office of the Attorney General for the District of Columbia, 441 4<sup>th</sup> St. NW, 6<sup>th</sup> Floor South, Washington, DC 20001  
DAVID G. NIXON, 2340 Green Acres Rd., Suite 12, Fayetteville, AR 72703  
ARTHUR H. PETERSON, P.O. Box 20444, Juneau, AK 99802  
GLEE S. SMITH, P.O. Box 667, Lawrence, KS 66044  
SHELDON F. KURTZ, University of Iowa College of Law, 446 BLB, Iowa City, IA 52242, *National Conference Reporter*

### **EX OFFICIO**

HOWARD J. SWIBEL, 120 S. Riverside Plaza, Suite 1200, Chicago, IL 60606, *President*  
JACK DAVIES, 687 Woodridge Dr., Mendota Heights, MN 55118, *Division Chair*

### **AMERICAN BAR ASSOCIATION ADVISORS**

SANDRA MALISZEWSKI, 132 Henry St., Westbury, NY 11590, *ABA Advisor*  
ROBERT A. KATZ, Indiana University School of Law-Indianapolis, 530 W. New York St., Room 327, Indianapolis, IN 46202-3225, *ABA Section Advisor*

### **EXECUTIVE DIRECTOR**

WILLIAM H. HENNING, University of Alabama, School of Law, Box 870382, Tuscaloosa, AL 35487-0382, *Executive Director*

Copies of the Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS  
211 E. Ontario Street, Suite 1300  
Chicago, IL 60611  
312-915-0195  
[www.nccusl.org](http://www.nccusl.org)

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# **REVISED UNIFORM ANATOMICAL GIFT ACT**

## **Prefatory Note**

Every hour another patient dies in the United States due to the lack of an available organ suitable for transplantation. As of April 14, 2006, there were 98,471 individuals on the waiting list for organ transplantation.

In the year 2004, there were only 6,448 decedent donors who provided 25,237 transplantable organs. However, there were a total of 11,420 eligible deaths reported. Thus, only 56.5% of those reported as dying under circumstances that would permit donation, actually made anatomical gifts to those on the list awaiting organ transplants to survive. (See [www.optn.org](http://www.optn.org)). In addition to organ transplants, annually there are over 25,000 eye and tissue donors and over 1,000,000 eye and tissue transplants.

This Revised Uniform Anatomical Gift Act (“UAGA”) is promulgated by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) to address this critical shortage. The original UAGA was promulgated by NCCUSL in 1968 and promptly enacted by all states. In 1987, the UAGA was revised and updated, but only 26 states adopted that version. Since 1987, many states have adopted non-uniform amendments to their anatomical gift acts. The law among the various states is no longer uniform and harmonious, and the diversity of law is an impediment to transplantation. Furthermore the federal government has been increasingly active in the organ transplant process.

Since 1967, there also have been substantial improvements in the technology and practice of organ and tissue transplantation and therapy. Also, the need for organs and tissue for research and education has increased to assure more successful transplantations and therapies. The improvements in technology and needs of the research community have correspondingly increased the need for more donors.

This 2006 Revised UAGA is promulgated with the substantial and active participation of the major stakeholders representing donors, recipients, doctors, procurement organizations, regulators and others affected. The Drafting Committee has held four meetings with the stakeholders beginning on Friday morning and ending Sunday noon, reading and discussing each section of the act word by word (Chicago, December 3-5, 2004; Philadelphia, March 18-20; Chicago, November 2-4, 2005; and Detroit, April 21-23). The following Stakeholders were actively engaged in the dialogue at the table working for a consensus that could and should be adopted on a uniform basis to facilitate the interstate allocation and transplantation of organs: American Bar Association, American Medical Association, American Lung Association, Association of Organ Procurement Organizations, American Association of Tissue Banks, Eye Bank Association of America, Health Law Institute and Center for Race and Bioethics, Life Alaska Donor Services, Musculoskeletal Transplant Foundation, National Association of Medical Examiners, National Disease Research Interchange, National Kidney Foundation, North American Transplant Coordinators Organization, RTI Donor Services, United Network for

Organ Sharing (UNOS) and United States Department of Health & Human Services. In addition, there were many who contributed their views and comments by correspondence, including the Funeral Consumers Alliance, Inc. and Funeral Ethics Organization.

### **History of 1968 & 1987 Acts**

The first reported medical transplant occurred in the third century. However, medical miracles flowing from transplants are truly a modern story beginning in the first decade of the twentieth century with the first successful transplant of a cornea. But, not until three events occurred in the twentieth century, in addition to the development of surgical techniques to effectuate a transplant, could organ transplants become a viable option to save and meaningfully extend lives.

The first event was the development in the late 1960s of the first set of neurological criteria for determining death. These criteria allowed persons to be declared dead upon the cessation of all brain activity. Ultimately these criteria, together with the historic measure of determining death by cessation of circulation and respiration, were incorporated into Section 1 of the Uniform Determination of Death Act providing that: “An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead.”

The second event, following shortly after Dr. Christian Barnard’s successful transplant of a heart in November 1967, was this Conference’s adoption of the first Uniform Anatomical Gift Act which it did with only one reading in the summer of 1968. In short order, every jurisdiction uniformly adopted the 1968 Act. The most significant contribution of the ’68 Act was to create a right to donate organs, eyes, and tissue. This right was not legally recognized at common law. By creating this right, individuals became empowered to donate their parts or their loved one’s parts to save or improve the lives of others.

The last event was the development of immunosuppressive drugs that prevented organ recipients from rejecting transplanted organs. This permitted many more successful organ transplants, thus contributing to the rapid growth in the demand for organs and the need for changes in the law to facilitate the making of anatomical gifts.

In 1987, a revised Uniform Anatomical Gift Act was promulgated to address changes in circumstances and in practice. Only 26 jurisdictions enacted the 1987 revision. Consequently, there is significant non-uniformity between states with the 1968 Act and those with the 1987 revisions. Neither of those acts comports with changes in federal law adopted subsequent to the 1987 Act relating to the role of hospitals and procurement organizations in securing organs for transplantation.

The two previous anatomical gift acts, as well as this [act], adhere to an “opt in” principle as its default rule. Thus, an individual becomes a donor only if the donor or someone acting on the donor’s behalf affirmatively makes an anatomical gift. The system universally adopted in this country is contrary to the system adopted in many other developed countries, primarily in

Europe. In many European countries an individual is deemed to be a donor unless the individual or another person acting on the individual's behalf "opts out." This other system is known as "presumed consent." While this [act] does not include an "opt out" system, proponents of presumed consent believe that in time the concept of presumed consent could receive a favorable reception in this country.

### **Scope of the 2006 Revised Act**

This [act] is limited in scope to donations from deceased donors as a result of gifts made before or after their deaths. Although recently there has been a significant increase in so-called "living donations" where a living donor immediately donates an organ (typically kidney or a section of a liver) to a recipient, donations by living donors are not treated in this [act] because they raise distinct and difficult legal issues.

A majority of donors or prospective donors are candidates for donation of eye or tissue but only a small percentage of them die under circumstances that permit an anatomical gift of an organ. To procure an anatomical gift for transplantation, therapy, research, or education, a donor or prospective donor must be declared dead (see Uniform Determination of Death Act). Generally, the body of the donor or prospective donor must be kept on life support systems until the parts are procured.

Pursuant to federal law, when a donor or a prospective donor is dead or near death, a procurement organization, or a designee, is notified, and it begins to develop a medical and family history to determine whether the dying or deceased person can be a medically suitable donor. If the dying or deceased person is a medically suitable donor, the organization checks for evidence of a donation, if not otherwise known, and seeks consent to donation from authorized persons if necessary. In the case of an organ, the organ procurement organization obtains from the Organ Procurement and Transplantation Network ("OPTN") a prioritized list of potential recipients from the national organ waiting list and takes the necessary steps to see that the organ finds its way to the recipient. If eye or tissue is donated, the appropriate procurement organization procures the eye or tissue and takes the necessary steps to screen, test, process, store, or distribute them as required for transplantation, therapy, research, or education. All must be done expeditiously.

Recent technological innovations have increased the types of organs that can be transplanted, the demand for organs, and the range of individuals who can donate or receive an organ, thereby increasing the numbers of organs available each year and the number of transplantations that occur each year. Nonetheless, the number of deaths for lack of available organs also has increased. While the Commissioners are under no illusion that any anatomical gift act can fully supply the need for organs, any change that could increase the supply of organs and thus save lives is an improvement.

Transplantation occurs across state boundaries and requires speed and efficiency. Thus, uniformity of state law is highly desirable. Furthermore, the decision to be a donor is a highly personal decision of great generosity and deserves the highest respect from the law. Because

current state anatomical gift laws are out of harmony with both federal procurement and allocation policies and do not fully respect the autonomy interests of donors, there is a need to harmonize state law with federal policy as well as to improve the manner in which anatomical gifts can be made and respected.

### **Summary of Sections of Revised Act**

The following summary highlights how this [act] attempts to accomplish these goals.

Section 4 authorizes individuals to make anatomical gifts of their bodies or parts. It also permits certain persons, other than donors, to make an anatomical gift on behalf of a donor during the donor's lifetime. The expanded list includes agents acting under a health-care power of attorney or other record, parents of donors under age 18, and guardians. The section also recognizes that it is appropriate that minors who can apply for a driver's license be empowered to make anatomical gifts, but, under Section 8(g), either parent can revoke the gift if the minor dies under the age of 18.

Section 5 recognizes that, since the adoption of the previous versions of this [act], some states and many private organizations have created donor registries for the purpose of making anatomical gifts. Thus, in addition to evidencing a gift on a donor card or driver's license, this [act] allows for the making of anatomical gifts on donor registries. It also permits gifts to be made on state-issued identification cards and, under limited circumstances, to be made orally.

Section 6 permits anatomical gifts to be amended or revoked by the execution of a later-executed record or by inconsistent documents of gifts. It also permits revocation by destruction of a document of gift and, under limited circumstances, permits oral revocations.

Section 7 permits an individual to sign a refusal that bars all other persons from making an anatomical gift of the individual's body or parts. A refusal generally can be made by a signed record, a will, or, under limited circumstances, orally. By permitting refusals, this [act] recognizes the autonomy interest of an individual either to be or not to be a donor. The section also recognizes that a refusal can be revoked.

Section 8 is intended to substantially strengthen the respect due a decision to make or refuse to make an anatomical gift. While the '87 Act provided that a donor's anatomical gift was irrevocable (except by the donor), until quite recently it had been a common practice for procurement organizations to seek affirmation of the gift from the donor's family. This could result in unnecessary delays in the recovery of organs as well as a reversal of a donor's donation decision.

Section 8 intentionally dis-empowers families from making or refusing to make anatomical gifts in contravention of a donor's wishes. Thus, under the strengthened language of this [act], if a donor had made an anatomical gift, there is no reason to seek consent from the donor's family as they have no right to give it legally. Section 8(a). Of course, that would not bar, nor should it bar, a procurement organization from advising the donor's family of the

donor's express wishes, but that conversation should be focused more on what procedures will be followed to carry out the donor's wishes rather than on seeking approval of the donation.

Section 8 creates a series of additional rules designed to honor the autonomy of a donor's decision. For example, a refusal bars all other persons from making a gift at a later time. On the other hand, Section 8 recognizes that some decisions of a donor are inherently ambiguous, making it appropriate to adopt rules that favor the making of anatomical gifts. For example, a donor's revocation of a gift of a part is not to be construed as a refusal for others to make gifts of other parts. Likewise, a donor's gift of one part is not construed as a refusal that would bar others from making gifts of other parts.

A limited exception applies where a donor dies under the age of 18. In this case, either parent may amend or revoke the donor's anatomical gift. See Section 8(g).

Section 9 sets forth a prioritized list of classes of persons who can make an anatomical gift of a decedent's body or part if the decedent was neither a donor nor had signed a refusal. The list is more expansive than the list provided under previous versions of this [act]. It includes persons acting as agents at the decedent's death, adult grandchildren, and close friends.

Section 10 deals with the manner of making, amending, or revoking an anatomical gift following the decedent's death.

Section 11 deals with the passing of parts to named persons and more generally to eye banks, tissue banks, and organ procurement organizations. In part, the section is designed to harmonize this [act] with federal law, particularly with respect to organs donated for transplantation or therapy. The National Organ Transplant Act created the nationwide Organ Procurement and Transplantation Network ("OPTN") to facilitate the nationwide, equitable distribution of organs. United Network Organ Sharing ("UNOS") operates the OPTN under contract with the U.S. Department of Health and Human Services. When an organ donor dies, the donor's organs, barring the rare instance of a donation to a named individual, are recovered by the organ procurement organization for the service area in which the donor dies, as custodian of the organs, to be allocated by it either locally, regionally, or nationally in accordance with allocation policies established by the OPTN.

The section includes two important improvements to previous versions of this [act]. First, it creates a priority for transplantation and therapy over research and education when an anatomical gift is made for all four purposes in a document of gift that fails to establish a priority.

Second, it specifies the person to whom a part passes when the document of gift merely expresses a "general intent" to be an "organ donor." This type of general designation is common on a driver's license. Under Section 11 a general statement of intent to be a donor results only in an anatomical gift of the donor's eyes, tissues, and organs (not the whole body) for transplantation, therapy, research, or education. Furthermore, of the four purposes, a preference is given for transplantation and therapy over research and education. Since, a general statement



of intent to be an organ donor does not result in the making of an anatomical gift of the whole body for research or education, more specific language is required to make such a gift.

This [act] provides that, if a decedent's body or parts do not pass to a named person or to procurement organization or they cannot be used for transplantation, therapy, research, or education, custody of the decedent's body or parts vests in the "person under obligation to dispose of the body." Typically that person will be someone in the decedent's family as determined by other law or by the terms of the document of gift.

Section 11(g) prohibits a person from accepting an anatomical gift if the person knows that the gift was not validly made. For this purpose, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of a refusal to make a gift if the refusal is on the same document of gift.

Lastly, Section 11(h) makes the obvious explicit by providing that organs passing to an organ procurement organization or transplant hospital for purposes of transplantation or therapy are allocated in accordance with the contractual obligations between it and the OPTN.

Section 12 permits reasonable searches by an emergency responder or hospital in order to determine if an individual has made or has refused to make an anatomical gift.

Section 14 has been redrafted to accord with federal law and particularly the federal rules relating to the identification of potential organ, tissue, and eye donors. The federal rules require hospitals to notify an organ procurement organization or third party designated by the organ procurement organization of an individual whose death is imminent or who has died in the hospital to increase donation opportunity, and thus, transplantation. See 42 CFR § 482.45 (Medicare and Medicaid Programs: Conditions of Participation: Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data). The right of the procurement organization to inspect a patient's medical records does not violate HIPAA See 45 CFR § 164.512(h) ("A covered entity may use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation").

Section 14(j) tracks previous versions of this [act] and is designed to assure that no conflict of interest exists for a patient's attending physician if that physician also is treating another individual who may be in need of a transplant. Some surveys have suggested that a small segment of the population believes that a patient who might die without proper medical attention may not be treated in order that the patient's organs can be used for another. While there is absolutely no evidence that this has ever occurred, this section is included in this [act] to address any public misperceptions by making clear that it should not be able to happen legally.

Section 16, relating to sales of parts, is essentially unchanged from prior law.

Section 17 and Section 18 deal with liability and immunity. Section 17 includes a new provision relating to falsifying the making, amending, or revoking of an anatomical gift.

Section 19 also is new to this version of the anatomical gift acts. It sets forth rules relating to the validity of documents of gift executed outside of the state while providing that any document of gift shall be interpreted in accordance with the laws of the state.

Section 20 authorizes an appropriate state agency to establish or contract for the establishment of a donor registry. It also provides that a registry can be established without a state contract. While this [act] does not specify in great detail what could or should be on a donor registry, it does mandate a few minimum requirements for all registries. First, the registry must provide a database that allows a donor or other person authorized to make an anatomical gift to include on the registry a statement or symbol that the donor has made a gift. Second, at or near the death of a donor or prospective donor, the registry must be accessible to a procurement organization to obtain information relevant to determine whether the donor or prospective donor has made, amended, or revoked an anatomical gift. Lastly, the registry must be accessible on a 24-hour, 7 day a week basis.

Section 21 creates a default rule to adjust the tension that could exist between preserving organs to assure their medical suitability for transplantation or therapy and the expression of intent by the donor or prospective donor in either a declaration or advance health-care directive not to have life prolonged by use of life support systems. The default rule under this [act] is that life support systems should be administered if necessary to assure the medical suitability of an organ that may be the subject of an anatomical gift. An individual could expressly provide otherwise in the declaration or advance health-care directive.

Sections 22 and 23 represent a complete revision of the relationship of the [coroner][medical examiner] to the anatomical gift process. Previous versions of this [act] permitted the [coroner][medical examiner], under limited circumstances, to make anatomical gifts of the eyes of a decedent in the [coroner's][medical examiner's] possession. In light of a series of Section 1983 actions in which the [coroner's][medical examiner's] actions were held to violate the property rights of surviving family members, *see, e.g., Brotherton v. Cleveland*, 923 F.2d 477 (6<sup>th</sup> Cir. 1991), the Commissioners decided to delete the authority of the [coroner][medical examiner] to make anatomical gifts. In lieu thereof, a series of new provisions has been included relating to the relationship between the [coroner][medical examiner] and procurement organizations. The intent of these provisions is to encourage meaningful cooperation between these groups in hopes of increasing the number of anatomical gifts. Importantly, the section does not permit a [coroner][medical examiner] to make an anatomical gift. Rather, parts from a decedent can be the subject of an anatomical gift only if an anatomical gift was made under Section 5 or Section 10 of this [act].

1                                   **REVISED UNIFORM ANATOMICAL GIFT ACT**

2

3                   **SECTION 1. SHORT TITLE.** This [act] may be cited as the Revised Uniform  
4 Anatomical Gift Act.

5                   **SECTION 2. DEFINITIONS.** In this [act]:

6                   (1) “Agent” means an individual:

7                                   (A) authorized to make health-care decisions on the principal’s behalf by a power  
8 of attorney for health care; or

9                                   (B) expressly authorized to make an anatomical gift on the principal’s behalf by  
10 any other record signed by the principal.

11                   (2) “Anatomical gift” means a donation of all or part of a human body to take effect after  
12 the donor’s death.

13                   (3) “Decedent” means a deceased individual whose body or part is or may be the source  
14 of an anatomical gift for the purposes of transplantation, therapy, research, or education. The  
15 term includes a stillborn infant or fetus.

16                   (4) “Disinterested witness” means a witness other than the spouse, child, parent, sibling,  
17 grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to  
18 make an anatomical gift, or another adult who exhibited special care and concern for the  
19 individual. The term does not include a person to which an anatomical gift could pass under  
20 Section 11.

21                   (5) “Document of gift” means a donor card or other record used to make an anatomical  
22 gift. The term includes a statement or symbol on a driver’s license, identification card, or donor  
23 registry.

1 (6) “Donor” means an individual whose body or part is the subject of an anatomical gift.

2 (7) “Donor registry” means a database that contains records of anatomical gifts and  
3 amendments to or revocations of anatomical gifts.

4 (8) “Driver’s license” means a license or permit issued by the [state department of motor  
5 vehicles] to operate a vehicle whether or not conditions are attached to the license or permit.

6 (9) “Eye bank” means a person that is licensed, accredited, registered, or regulated under  
7 federal or state law to engage in the recovery, screening, testing, processing, storage, or  
8 distribution of human eyes or portions of human eyes.

9 (10) “Guardian” means a person appointed by a court to make decisions regarding the  
10 support, care, education, health, and welfare of a minor or adult individual. The term does not  
11 include a guardian ad litem.

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

14 (12) “Identification card” means an identification card issued by the [state department of  
15 motor vehicles].

16 (13) “Know” means to have actual knowledge.

17 (14) “Organ procurement organization” means a person designated by the United States  
18 Secretary of Health and Human Services as an organ procurement organization.

19 (15) “Part” means an organ, an eye, or tissue of a human being. The term does not  
20 include the whole body.

21 (16) “Person” means an individual, corporation, business trust, estate, trust, partnership,  
22 limited liability company, association, joint venture, public corporation, government or  
23 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

1 (17) “Physician” means an individual authorized to practice medicine or osteopathy  
2 under the law of any state.

3 (18) “Procurement organization” means an eye bank, organ procurement organization, or  
4 tissue bank.

5 (19) “Prospective donor” means an individual who is dead or near death and has been  
6 determined by a procurement organization to have a part that could be medically suitable for  
7 transplantation, therapy, research, or education. The term does not include an individual who has  
8 made a refusal.

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

12 (21) “Recipient” means an individual into whose body a decedent’s part has been or is  
13 intended to be transplanted.

14 (22) “Record” means information that is inscribed on a tangible medium or that is stored  
15 in an electronic or other medium and is retrievable in perceivable form.

16 (23) “Refusal” means a record created under Section 7 that bars other persons from  
17 making an anatomical gift of an individual’s body or part.

18 (24) “Sign” means, with the present intent to authenticate or adopt a record:

19 (A) to execute or adopt a tangible symbol; or

20 (B) to attach or logically associate with the record an electronic symbol, sound, or  
21 process.

22 (25) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
23 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of

1 the United States.

2 (26) “Technician” means an individual determined to be qualified to remove or process  
3 parts by an appropriate organization that is licensed, accredited, registered, or regulated under  
4 federal or state law. The term includes an enucleator.

5 (27) “Tissue” means a portion of the human body other than an organ or an eye. The term  
6 does not include blood unless the blood is donated for purposes of research or education.

7 (28) “Tissue bank” means a person that is licensed, accredited, registered, or regulated  
8 under federal or state law to engage in the recovery, screening, testing, processing, storage, or  
9 distribution of tissue.

10 (29) “Transplant hospital” means a hospital that furnishes organ transplants and other  
11 medical and surgical specialty services required for the care of transplant patients.

12 **Comment**

13 “Agent” (paragraph (1)) is an individual who, under certain circumstances, can make an  
14 anatomical gift on behalf of the principal’s behalf. An agent is empowered to make a gift if the  
15 agent is authorized by a power of attorney for health care to make health-care decisions on the  
16 principal’s behalf. Thus, this [act], independent of any other law, empowers an agent acting  
17 under a power of attorney for health care to make an anatomical gift on the principal’s behalf,  
18 and therefore, it is unnecessary that states adopting this [act] amend their power of attorney for  
19 health care statutes to specifically empower agents to make anatomical gifts on behalf of  
20 principals. On the other hand, a state may choose to amend its health-care power of attorney  
21 statute in order that all of the agent’s powers, including the power to make an anatomical gift,  
22 are located in one comprehensive statute. Even though this [act] enables an agent acting under a  
23 power of attorney for health-care to make an anatomical gift, if the principal prohibits the agent  
24 from making an anatomical gift of the principal’s part, the agent would have no authority to do  
25 so. See Section 4(2).

26  
27 An agent also may be designated by a record, other than a power of attorney for health  
28 care that authorizes the agent to make an anatomical gift. This would permit a principal to  
29 empower one individual to make health-care decisions and another individual to make  
30 anatomical gift decisions. In light of the definition of record, this authority also could be  
31 expressed in a financial power of attorney.

32  
33 “Anatomical gift” (paragraph (2)) means a gift that takes effect after the donor’s death.

1 Thus, an “anatomical gift” does not include a gift of an organ from a living donor to a living  
2 recipient.

3  
4 “Decedent” (paragraph (3)) is defined as it was under prior versions of this [act] to  
5 include both stillborns and fetuses. Under other law fetuses can be used for research. See, 42  
6 U.S.C. § 289g-1 & 289g-2; 42 CFR § 46.201. By including them in the definition of “decedent,”  
7 this [act] assures that the parents are in a position to make a donation of the stillborn or fetus for  
8 appropriate and lawful purposes.

9  
10 “Disinterested witness” (paragraph (4)) means a witness other than those listed in the  
11 paragraph. Under Sections 5 and 6 anatomical gifts may be made or revoked. Under Section 7 a  
12 person may also make or revoke a refusal. In most circumstances these acts must be evidenced  
13 by a record. However, in limited circumstances they can be evidenced by oral statements to at  
14 least two witnesses. In those circumstances at least one of the witnesses must be a disinterested  
15 witness.

16  
17 “Document of gift” (paragraph (5)) includes a donor card or any other record. It also  
18 includes a donor registry (paragraph (7)), a driver’s license (paragraph (8)), and an identification  
19 card (paragraph (12)). While a donor card is a record, the reference to donor cards has been  
20 specifically retained because of the wide acceptance of that concept in our culture. Prior versions  
21 of this act also expressly referred to a will in the definition of a document of gift. The omission  
22 in this [act] of a will in the definition of a document of gift does not mean a will is not a  
23 document of gift. Rather, the “will” is subsumed in the word “record.” Where there is a need in  
24 this [act] to specially treat wills as documents of gift, the will is singled out from other  
25 documents of gift.

26  
27 A statement or symbol on a driver’s license or donor registry is a document of gift; it is  
28 not merely an expression of intent to make a gift. Therefore, where there is such a statement or  
29 symbol, no other document of gift is necessary to evidence the making of an anatomical gift.  
30 Potential donors utilizing records other than a driver’s license or a donor registry to make an  
31 anatomical gift should be strongly encouraged to make their gifts on a driver’s license or donor  
32 registry, as gifts on a license or registry are more likely to be discovered when the donor is dead  
33 or near death.

34  
35 Under Section 5(b) an anatomical gift can be made by a donor authorizing the person  
36 who maintains a donor registry to include on the registry a statement or symbol that the donor  
37 has made an anatomical gift. By adding a “donor registry” as a device for making an anatomical  
38 gift, this [act] recognizes the increasing use of donor registries to make anatomical gifts. The use  
39 of donor registries was not contemplated when the previous versions of this act were adopted.  
40 Today, however, they have assumed increased importance and in time may come to dominate  
41 how anatomical gifts are made. While the format of donor registries differ, generally they allow  
42 for the making of an anatomical gift of one or more parts and permit that gift to be made over the  
43 internet. No known registry provides for a refusal to make an anatomical gift, and this [act] does  
44 not require that they do so. The person who maintains a registry may, if it chooses, follow up an  
45 electronic registration by sending the donor a card to sign. However, that is not legally required

1 by this [act] to make an effective gift.  
2

3 “Donor” (paragraph (6)) means the individual whose body or part is the subject of an  
4 anatomical gift. Thus, an individual who signs a donor card or authorizes a symbol to be placed  
5 on a driver’s license evidencing an anatomical gift is a donor even though the part donated will  
6 not be removed from the donor until the donor dies. Likewise, if the family of a decedent who  
7 did not make an anatomical gift during life donates a part of the decedent, that decedent is a  
8 donor. Thus “donor” may in some cases refer to a living individual who made an anatomical gift  
9 to take effect in the future or on whose behalf an anatomical gift was made, or a decedent whose  
10 body or part is the subject of an anatomical gift. Anatomical gifts by a donor, as well as  
11 amendments, revocations, and refusals, may preclude the ability of others to make or revoke  
12 anatomical gifts on behalf of the donor. See Section 8.  
13

14 “Donor registry” (paragraph (7)) means a database containing records of anatomical gifts.  
15 The concept of the registry is new to this version of the anatomical gift act. Many states now  
16 have donor registries. Most of them are operated by private organizations, such as a procurement  
17 organization (paragraph (18)) while some are operated by the state. Section 20 of this [act]  
18 authorizes states to either establish or contract for the establishment of a donor registry. Donor  
19 registries, like drivers’ licenses, are very effective devices to record the making of an anatomical  
20 gift. The making of an anatomical gift by these devices assures that the evidence of the gift  
21 always is available, unlike the traditional donor card which can often be lost. Furthermore, they  
22 are easily accessible by procurement organizations following a donor’s death.  
23

24 “Driver’s license” (paragraph(8)) includes both driver’s licenses for which persons age  
25 18 years or older qualify, as well as licenses or permits issued to persons under the age of 18  
26 whether denoted “temporary permit”, “permit”, or “learner’s permit”, or something else. State  
27 laws vary widely on how young an individual under the age of 18 can be to obtain a driver’s  
28 license. For example, it is not uncommon for a learner’s permit to be issued to a 16-year-old  
29 individual. And, in some states licenses or permits can be issued to persons age 14 for the  
30 purpose of driving only certain types of motorized vehicles, such as farm equipment. The  
31 definition of “driver’s license” is broad enough to include all of these.  
32

33 Furthermore, under the definition, a condition, such as that the holder must be  
34 accompanied by an adult or the holder can drive only certain types of vehicles, does not prevent  
35 the license or permit from being considered a “driver’s license” under this [act].  
36

37 Under Section 4 if an individual would be entitled to obtain a driver’s license (even  
38 though under the age of 18), the individual can make an anatomical gift even though the  
39 individual does not actually apply for a license. Thus, the individual under age 18 who could  
40 apply for a permit could make an anatomical gift by another means, such as a donor card or  
41 donor registry. Furthermore, if an individual under 18 acquires a license on which the individual  
42 has made an anatomical gift, that individual would not have to re-apply for a driver’s license  
43 when attaining age 18 for the gift to be effective.  
44

45 This [act], however, does not require that licenses provide space for a notation that the



1 holder is a donor. That mandate, if it exists, is left to other law.

2  
3 “Guardian” (paragraph (10)) means any person judicially appointed to make decisions for  
4 the support, care, education, health, and welfare of the ward. The intent is to exclude guardians  
5 at litem or temporary guardians who would not have an expected long-term relationship to the  
6 ward.

7  
8 “Identification card” (paragraph (12)) means an identification card issued by the [state  
9 department of motor vehicles]. Some individuals desire an identification card rather than a  
10 driver’s license. These individuals could make an anatomical gift by authorizing a statement or  
11 symbol to be put on the card. While this [act] does not require that space be provided on the card  
12 for that purpose, it is anticipated that states will design these cards in ways to permit the making  
13 of an anatomical gift.

14  
15 “Know” (paragraph (13)) means actual knowledge. Thus, it does not mean imputed  
16 knowledge.

17  
18 “Part” (paragraph (15)) means organ, eye, or tissue. While this definition is shorter than  
19 the definition in the ‘87 Act it is functionally the same as all parts of the human body, including  
20 bones, and fluids, are encompassed within the definition. The definition excludes the whole  
21 body.

22  
23 “Prospective donor” (paragraph (19)) means an individual who is dead or near death and  
24 has been determined to have one or more parts medically suitable for transplantation, therapy,  
25 research, or education. Many individuals who are not donors die under circumstances where they  
26 could be donors if their families made an anatomical gift of their parts. A common example  
27 would be an individual who suffers trauma in an automobile accident.

28  
29 “Reasonably available” (paragraph (20)) is defined in a manner similar to that in the  
30 Uniform Health-Care Decisions Act. A decision to make an anatomical gift, particularly of an  
31 organ, is extremely time sensitive. Life-saving organs may be forfeited if persons with a priority  
32 to make an anatomical gift under Section 9 cannot be located to make a decision. Physical  
33 presence, however, is not required to be “reasonably available.” An individual is “reasonably  
34 available” if the individual can be contacted without undue effort. Also, the concept assumes that  
35 an individual is willing to act in a timely manner to permit the successful recovery of organs. An  
36 individual who is unwilling to make a decision to either donate or refuse to donate in a timely  
37 manner is not considered to be “reasonably available.”

38  
39 “Tissue” (paragraph (27)) is defined to exclude blood unless donated for research or  
40 education. Blood is not obtained from deceased persons for purposes of transplantation and  
41 therapy. Furthermore, blood banks are not treated as tissue banks under other law. Accordingly,  
42 it is appropriate to exclude blood from the operation of this [act] except when donated for  
43 purposes of research or education.

1            **SECTION 3. APPLICABILITY.** This [act] applies to a document of gift or  
2 amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

3            **SECTION 4. WHO MAY MAKE ANATOMICAL GIFT BEFORE DONOR'S**  
4 **DEATH.** Subject to Section 8, an anatomical gift of a donor's body or part may be made during  
5 the life of the donor for transplantation, therapy, research, or education in the manner provided in  
6 Section 5 by:

7            (1) the donor, if the donor is at least [18] years of age or is under [18] years of age and is:

8                    (A) an emancipated minor; or

9                    (B) authorized under state law to apply for a driver's license because the donor is  
10 at least [insert the youngest age at which an individual may apply for any type of driver's  
11 license] years of age;

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

14            (3) a parent of the donor, if the donor is under [18] years of age and not emancipated; or

15            (4) the donor's guardian.

16    **Comment**

17            Structurally, this [act] includes within Sections 4 through 8 provisions that were included  
18 in Section 2 of the '87 act. Section 4 relates to who may make an anatomical gift before a donor  
19 dies, Section 5 to the manner in which an anatomical gift may be made, Section 6 to the  
20 amending and revoking of an anatomical gift, Section 7 to the refusal to make an anatomical gift,  
21 and Section 8 to the effect of gifts, amendments, revocations, and refusals on the ability of others  
22 to make an anatomical gift.

23  
24            Like the predecessor acts, this [act] provides that an individual may make an anatomical  
25 gift of the individual's body or part if the individual is at least [18] years of age. This [act],  
26 however, expands upon prior law in a number of ways.

27  
28            In many states a minor, under limited circumstances, can apply for a driver's license. The  
29 minor might wish to be a donor. As a policy matter, if the minor is old enough to drive a vehicle

1 the minor should be old enough to make an anatomical gift. On the other hand, if the minor  
2 donor dies under the age of 18, it seems appropriate that the minor's parents should be able to  
3 revoke the gift. See Section 8(g). Because the minor's parents cannot revoke the anatomical gift  
4 if the minor donor later dies over the age of 18, there is no necessity under this [act] for the  
5 minor donor to confirm that anatomical gift after reaching 18.  
6

7 An individual under the age of 18 who could obtain a driver's license is empowered to  
8 make an anatomical gift. The individual can make the gift on a driver's license. Additionally,  
9 the minor could make the gift by any other means provided in Section 5.  
10

11 Section 4 expands prior law in other important respects. It permits anatomical gifts by an  
12 emancipated minor and it expressly empowers an anatomical gift to be made on behalf of an  
13 individual by that individual's agent or by a parent, if that individual is under the age of 18 and  
14 not emancipated, or a guardian.  
15

16 An anatomical gift by an agent, parent, or guardian remains in effect until such time as  
17 amended or revoked by an agent, parent, or guardian, or the donor on whose behalf the gift was  
18 made. For example, if a parent makes an anatomical gift for a minor and the parent does not  
19 revoke that gift before the minor reaches age 18 or becomes emancipated, the anatomical gift  
20 remains in effect until such time as it is altered by the donor or by the donor's agent or guardian.  
21 While agents, parents, and guardians can make an anatomical gift, they can not sign a refusal on  
22 their principal's or ward's behalf. A refusal can only be made by that individual whose part or  
23 body might otherwise have been the subject of an anatomical gift.  
24

25 As noted in the comments to the definitions, an agent acting under a power of attorney  
26 for health care is authorized merely by that designation to make an anatomical gift on the  
27 principal's behalf. If the principal does not wish to authorize the agent to make that decision, the  
28 health-care power must include language to expressly negate that authority. See Section 4(2).  
29 Conversely, if the agent is acting under another record, such as a financial power of attorney, the  
30 agent would be empowered to make an anatomical gift only if that authority was expressly  
31 conferred in the record. See Section 2(1)(B).  
32

## 33 **SECTION 5. MANNER OF MAKING ANATOMICAL GIFT BEFORE DONOR'S**

### 34 **DEATH.**

35 (a) A donor may make an anatomical gift:

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

38 (2) in a will; or

1                   (3) during a terminal illness or injury of the donor, by any form of communication  
2 addressed to at least two other individuals who are at least [18] years of age, one of whom is a  
3 disinterested witness.

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

10                   (1) be witnessed by at least two other individuals who are at least [18] years of  
11 age, one of whom is a disinterested witness who have signed at the request of the donor or the  
12 other person; and

13                   (2) state that it has been signed and witnessed as provided in paragraph (1).

14                   (c) Revocation, suspension, expiration, or cancellation of the driver's license or  
15 identification card issued to a donor does not invalidate an anatomical gift.

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

18                   (e) The following forms may, but need not, be used to make an anatomical gift. The other  
19 provisions of this [act] govern the effect of these forms or any other record used to make, amend,  
20 or revoke an anatomical gift.

21

22

23

1  
2  
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11

DONOR CARD

I wish to donate my organs, eyes, and tissue. I give:

Any needed organs, eyes, and tissue       ONLY the following organs, eyes, and tissue

\_\_\_\_\_

Date: \_\_\_\_\_

Donor's Signature \_\_\_\_\_

DONOR CARD

I wish to donate my organs, eyes, and tissue. I wish to give (complete Section A, B or C):

Subject of Gift:

Purpose of Gift:  
Transplantation  
and  
therapy

Research and  
Education

Both

Section A  
ALL of my  
organs, eyes, and  
tissue

Yes

No

Section B  
My Organs  
My Eyes  
My Tissue

Section C

Special Instructions (If none of the above apply): I wish to give ONLY:

\_\_\_\_\_

Date: \_\_\_\_\_

Donor's Signature: \_\_\_\_\_

12  
13

1 DONOR CARD

2 I hereby give, upon my death, the following gifts for the purpose of (choose whichever  
3 applies): [ ] only transplantation and therapy, [ ] only research and education, [ ]  
4 transplantation, therapy, research or education

5 For the purposes specified above, I give:

6 [ ] ALL needed organs, tissues and eyes; or

7 (If you checked the box immediately above, you should not check specific boxes below).

8 [ ] Organs [ ] Tissues [ ] Eyes

9 If none of the above applies, I wish only to give ONLY:

10 The following organs and tissues: \_\_\_\_\_

11 Date: \_\_\_\_\_ Donor's Signature: \_\_\_\_\_

12  
13  
14  
15 **Comment**

16  
17 The execution formalities associated with the making of an anatomical gift generally  
18 remain the same as under the '87 act. However, in addition to the making of an anatomical gift  
19 by a donor card, will, or state-issued driver's license, an anatomical gift can also be made on a  
20 state-issued identification card or a donor registry.

21  
22 Section 5(a) provides that a donor can make an anatomical gift by authorizing a statement  
23 or symbol to be imprinted on the donor's driver's license, in the donor's will, or during a  
24 terminal illness or injury, orally to at least two witnesses, one of whom is disinterested. Only a  
25 donor can make a gift under Section 5(a). A Section 5(a) gift cannot be made by an agent, parent,  
26 or guardian.

27  
28 Under Section 5(a)(2) an anatomical gift can be made in a donor's will. The section is  
29 silent regarding who must sign the will. Statutes of Wills require wills to be signed by the  
30 testator, and under certain circumstances, by another individual acting at the testator's request  
31 and often in the testator's presence. See Uniform Probate Code § 2-502. A signing by a third  
32 party acting at the testator's request is treated as a signing by the testator. Thus, an anatomical  
33 gift can be made by the will of a donor whether the will is signed by a donor or third party acting  
34 at the donor's request.

35  
36 Typically an anatomical gift of a part for transplantation or therapy is not made by a will.

1 In fact, donors are ill-advised to make an anatomical gift by will as the terms of the will may not  
2 be known in sufficient time to allow for successful recovery of the gifted parts. Individuals who  
3 make an anatomical gift of their parts in a will for transplantation or therapy should make their  
4 wishes known by other means as well. On the other hand, some individuals donate their bodies  
5 to medical science for research or education, and they may do so by a will. Subsection (d)  
6 provides that, if an anatomical gift is made by will, it takes effect at the donor's death. The gift is  
7 valid even though the will is not probated or is declared invalid. See subsection (d).

8  
9 Subsection (a)(3) permits an oral gift by a terminally ill or injured donor if the donor's  
10 communication is addressed to at least two witnesses, one of whom is a disinterested witness.  
11 This subsection is new to anatomical gift acts. Thus, the ability to make an oral gift parallels the  
12 ability to make oral revocations and refusals.

13  
14 Section 5(b) permits an anatomical gift by a signed donor card or other record. The card  
15 or record can be signed by any person authorized to make an anatomical gift under Section 4. If  
16 the person making the gift is physically unable to sign the card or record, the record can be  
17 signed by another individual acting at the direction of the donor or other person making the gift.  
18 In this case, the record must be witnessed by at least two witnesses over the age of 18 and one of  
19 whom is disinterested. Furthermore, the record must state that it was signed and witnessed at the  
20 request of the donor or other person. A disinterested witness is witness other than the spouse,  
21 child, parent, sibling, grandchild, grandparent, or guardian, of the individual who makes,  
22 amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special  
23 care and concern for the individual. The individual making the gift is either the donor or the  
24 other person listed in Section 4.

25  
26 Section 5(b) also permits any person (donor, agent, parent, or guardian) authorized to  
27 make an anatomical gift under Section 4 to make that gift by authorizing that a statement or  
28 symbol indicating that the donor has made a gift be included on a donor registry. Donor  
29 registries were not contemplated by the prior versions of this [act]. Since the promulgation of  
30 those versions, numerous donor registries have been created under the auspices of the state or  
31 private organizations. The Commissioners believe that over time, donor registries will be the  
32 primary devise by which anatomical gift are made by donors. See Section 20 (creation of donor  
33 registry).

34  
35 A decision was made in drafting this [act] not to include a specific form in the statute for  
36 the making of an anatomical gift. Rather, the drafting committee concluded that a suggested  
37 form consistent with this [act] be included in these comments. Three such forms follow:  
38  
39  
40  
41  
42

1  
2  
3  
4  
5  
6  
7  
8  
9

DONOR CARD

I wish to donate my organs, eyes, and tissue. I give:

Any needed organs, eyes, and tissue                       ONLY the following organs, eyes, and tissue

---

Date: \_\_\_\_\_ Donor's Signature \_\_\_\_\_

DONOR CARD

I wish to donate my organs, eyes, and tissue. I wish to give (complete Section A, B or C):

Subject of Gift:	Purpose of Gift:				Both
	Yes	No	Transplantation and Therapy	Research and Education	
Section A ALL of my organs, eyes, and tissue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Section B					
My Organs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My Eyes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My Tissue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section C  
Special Instructions (If none of the above apply): I wish to give ONLY:

---

Date: \_\_\_\_\_ Donor's Signature: \_\_\_\_\_



1 DONOR CARD

2 I hereby give, upon my death, the following gifts for the purpose of (choose whichever  
3 applies): [ ] only transplantation and therapy, [ ] only research and education, [ ]  
4 transplantation, therapy, research or education

5 For the purposes specified above, I give:

6 [ ] ALL needed organs, tissues and eyes; or

7 (If you checked the box immediately above, you should not check specific boxes below).

8 [ ] Organs [ ] Tissues [ ] Eyes

9 If none of the above applies, I wish only to give ONLY:

10 The following organs and tissues: \_\_\_\_\_

11  
12  
13 Date: \_\_\_\_\_

Donor's Signature: \_\_\_\_\_

14  
15  
16 **SECTION 6. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE**  
17 **DONOR'S DEATH.**

18 (a) Subject to Section 8, a donor or other person authorized to make an anatomical gift  
19 under Section 4 may amend or revoke an anatomical gift by:

20 (1) a record signed by:

21 (A) the donor;

22 (B) the other person; or

23 (C) subject to subsection (b), another individual acting at the direction of  
24 the donor or the other person if the donor or other person is physically unable to sign; or

25 (2) a later-executed document of gift that amends or revokes a previous

1 anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

2 (b) A record signed pursuant to subsection (a)(1)(C) must:

3 (1) be witnessed by at least two other individuals who are at least [18] years of  
4 age, one of whom is a disinterested witness who have signed at the request of the donor or the  
5 other person; and

6 (2) state that it has been signed and witnessed as provided in paragraph (1).

7 (c) Subject to Section 8, a donor or other person authorized to make an anatomical gift  
8 under Section 4 may revoke the gift by the destruction or cancellation of the document of gift, or  
9 a portion of the document of gift used to make the gift, with the intent to revoke the gift.

10 (d) A donor may amend or revoke an anatomical gift that was not made in a will by any  
11 form of communication during a terminal illness or injury addressed to at least two other  
12 individuals who are at least [18] years of age, one of whom is a disinterested witness.

13 (e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the  
14 manner provided for amendment or revocation of wills or as provided in subsection (a).

15 **Comment**

16 Section 6 largely mirrors the provisions in the prior acts. It applies to the amendment or  
17 revocation of an anatomical gift whether made by a donor or by another person on behalf of the  
18 donor.

19  
20 Under Section 6(a)(1), an anatomical gift can be revoked or amended by a record signed  
21 by the donor or the other person authorized to make an anatomical gift under Section 4. If the  
22 donor or other person is physically unable to sign a record amending or revoking an anatomical  
23 gift, the record may be signed by another individual acting at the direction of the donor or other  
24 person so long as the record is witnessed by at least two witnesses who are at least [18] years of  
25 age, at least one of whom is disinterested. In this case, the record must state that it was signed  
26 and witnessed at the request of the donor or other person.

27  
28 Subsection (a)(2), borrowing from statutes dealing with the revocation of wills,  
29 contemplates revocations or amendments made by a later-executed document of gift either  
30 expressly or by inconsistency. For example, suppose a donor executes a will bequeathing her

1 entire body to Medical School A for research and education. Later, the donor signs a document  
2 of gift donating a kidney for transplantation. Since the later-executed document of gift is only  
3 inconsistent with the prior document of gift to the extent of the donated kidney, the donor's  
4 kidney would, if medically suitable, pass to the appropriate procurement organization and the  
5 donor's remaining body would pass to Medical School A. (See Section 11).

6  
7 There is no requirement under this [act] that documents of gift be dated. A "dating  
8 requirement" was purposely omitted to avoid invalidating documents of gift written without the  
9 advice of counsel that may not have included a date. That purposeful omission could result in  
10 some proof issues if a question arises whether one document of gift revokes another by  
11 inconsistency. There is little evidence to suggest that this would be a problem, but, should it  
12 arise, the matter would have to be resolved by resort to any competent evidence. If the evidence  
13 is not available, a presumption should arise that the document of gift with the most  
14 comprehensive gift controls given the policy of this [act] to favor the making of anatomical gifts.

15  
16 Under Section 6(c) an anatomical gift made by a document of gift also can be revoked by  
17 destruction of the document of gift if the destruction is done with the intent to revoke that gift.  
18 As a practical matter revocation by destruction will not be possible for anatomical gifts made on  
19 a donor registry. A donor wishing to revoke anatomical gifts made on a registry should revise the  
20 registry. If an anatomical gift was evidenced by a written document that was destroyed  
21 inadvertently and cannot be found, there may be no effective Section 4 anatomical gift because  
22 no one may know of the anatomical gift. Inadvertent destruction of donor cards is common. A  
23 card may be lost when the donor decides to clean out a wallet or purse. Thus, donors are well  
24 advised to make their wishes known on documents of gift with greater permanency, such as a  
25 driver's licenses or a donor registry in order to reduce the risk of inadvertent destruction.

26  
27 The ability to make or revoke an anatomical gift is subject to the limitations in Section 8.  
28 For example, if a donor makes an anatomical gift of a kidney, all other persons are precluded  
29 from making a later anatomical gift of that kidney or revoking that anatomical gift. Therefore,  
30 the donor's later-appointed guardian would not be empowered to amend or revoke that  
31 anatomical gift.

32  
33 Under Section 6(d) an anatomical gift may also be revoked or amended by a donor with a  
34 terminal illness or injury by any form of communication that is addressed to at least two  
35 individuals over the age of [18]. At least one of the witnesses must be disinterested. If the donor  
36 cannot communicate orally, acceptable forms of communication, in addition to a record, could  
37 include a movement of the head or eye in response to specific questions.

## 38 39 **SECTION 7. REFUSAL TO MAKE ANATOMICAL GIFT.**

40 (a) An individual may refuse to make an anatomical gift of the individual's body or part  
41 by:

1 (1) a record signed by:  
2 (A) the individual; or  
3 (B) subject to subsection (b), another individual acting at the direction of  
4 the individual if the individual is physically unable to sign;  
5 (2) the individual's will whether or not the will is admitted to probate or  
6 invalidated after the individual's death; or  
7 (3) any form of communication made by the individual during the individual's  
8 terminal illness or injury addressed to at least two other individuals who are at least [18] years of  
9 age, one of whom is a disinterested witness.

10 (b) A record signed pursuant to subsection (a)(1)(B) must:

11 (1) be witnessed by at least two other individuals who are at least [18] years of  
12 age, one of whom is a disinterested witness who have signed at the request of the individual; and  
13 (2) state that it has been signed and witnessed as provided in paragraph (1).

14 (c) An individual may amend or revoke a refusal:

15 (1) in the manner provided in subsection (a) for making a refusal;  
16 (2) by subsequently making an anatomical gift pursuant to Section 5 that is  
17 inconsistent with the refusal; or  
18 (3) by the destruction or cancellation of the record evidencing the refusal, or the  
19 portion of the record used to make the refusal, with the intent to revoke the refusal.

20 **Comment**

21  
22 Section 7 honors the autonomy of the individual whose body or part might otherwise be  
23 the subject of an anatomical gift by empowering the individual to make a refusal. There is no  
24 age limitation for an individual to sign a refusal. Thus, an individual of any age can do so.  
25 (However, if a minor has made a refusal and dies under the age of 18, the refusal can be revoked  
26 by the individual's parents. See Section 8(h)).

1  
2 A refusal can only be made by the individual whose parts are the subject of the refusal.  
3 Thus, an individual's agent, parent, or guardian cannot make a refusal for the individual under  
4 Section 7 even though the agent, parent, or guardian could have made a gift for the individual  
5 under Section 4.  
6

7 Refusals typically are made by a signed record. If the individual who wants to sign a  
8 refusal cannot physically do so, the refusal can be signed by another individual acting at the  
9 request of the individual. If the refusal is signed by another individual acting at the request of the  
10 individual making the refusal, the refusal must be witnessed by at least two other individuals all  
11 of whom are 18 years or over and one of whom is a disinterested witness. In this case the record  
12 must state that it was signed and witnessed at the request of the individual.  
13

14 A refusal can also be made by the individual's will whether or not the will is admitted to  
15 probate or is later invalidated. Additionally, a refusal can be made by any form of  
16 communication by a terminally ill or injured individual addressed to at least two other  
17 individuals who are at least 18 years old, one of whom is a disinterested witness. See Section  
18 7(a).  
19

20 Subsection (c) provides for the amendment or revocation of a refusal. A refusal may be  
21 revoked by a signed record. For example, suppose an individual signs a refusal to be an organ  
22 donor under Section 7. Later that individual signs a record stating only "I revoke the refusal." At  
23 this point that individual is neither a donor nor a refuser and upon the individual's death, an  
24 anatomical gift could be made by the person or persons listed in Section 9. On the other hand,  
25 suppose the individual who had signed a refusal later executed a document of gift donating "my  
26 eyes." Here there is an anatomical gift of the eyes and a refusal to be a donor of any other part.  
27 This would bar any person from revoking the anatomical gift of the eyes or making an  
28 anatomical gift of any other part. Similarly, suppose the individual had signed a refusal and later  
29 obtained a driver's license stating that the individual wanted to be an "organ donor." The  
30 driver's license would revoke the refusal to the extent inconsistent with the refusal, and there  
31 would be an anatomical gift of the donor's organs, eyes, and tissue. See Section 11.  
32

33 A simple form of refusal under this [act] could provide:  
34

35 I, \_\_\_\_\_, hereby refuse to make any anatomical gift of my body or any  
36 part.  
37

38  
39 \_\_\_\_\_  
40 Date Signed

\_\_\_\_\_  
Signature of Declarant

1           **SECTION 8. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT,**  
2 **REVOCAION, OR REFUSAL.**

3           (a) Except as otherwise provided in subsection (g), in the absence of an express, contrary  
4 indication by the donor, a person other than the donor is barred from making, amending, or  
5 revoking an anatomical gift of a donor's body or a part if the donor made an anatomical gift of  
6 the donor's body or the part under Section 5 or an amendment to an anatomical gift of the  
7 donor's body or the part under Section 6.

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

11           (c) Except as otherwise provided in subsections (h), in the absence of an express,  
12 contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to  
13 make an anatomical gift of the individual's body or a part under Section 7 bars all other persons  
14 from making an anatomical gift of the individual's body or the part.

15           (d) If a person other than the donor makes an unrevoked anatomical gift of the donor's  
16 body or a part under Section 5 or an amendment to an anatomical gift of the donor's body or a  
17 part under Section 6, another person may not make, amend, or revoke the gift of the donor's  
18 body or part under Section 10.

19           (e) A revocation of an anatomical gift of the donor's body or a part under Section 6 by a  
20 person other than the donor does not bar another person from making an anatomical gift of the  
21 body or a part under Section 5 or 10.

22           (f) In the absence of an express, contrary indication by the donor or other person  
23 authorized to make an anatomical gift under Section 4, an anatomical gift of a part is neither a

1 refusal to give another part nor a limitation on the making of an anatomical gift of another part at  
2 a later time by the donor or another person.

3 (g) If a donor who is an unemancipated minor dies under [18] years of age, a parent of  
4 the donor who is reasonably available may revoke or amend an anatomical gift of the donor's  
5 body or part.

6 (h) If an unemancipated minor who signed a refusal dies under [18] years of age, a parent  
7 of the individual who is reasonably available may revoke the individual's refusal.

8 **Comment**

9 Section 2(h) of the '87 act provided that "an anatomical gift that is not revoked by the  
10 donor before death is irrevocable and does not require the consent or concurrence of any person  
11 after the donor's death." The intent of that section was to assure donation finality for anatomical  
12 gifts made by donors prior to death. For many years it was the practice, albeit now changing, for  
13 procurement organizations to seek permission from donor families to allow parts to be retrieved  
14 from decedents who were donors. This practice, however, is inconsistent both with the '87 act  
15 and, more importantly, the respect due to donors who have made anatomical gifts during their  
16 lives. Furthermore, that practice could result in unnecessary delays in the recovery of organs.

17  
18 Section 8 is designed to bolster the rule that a donor's autonomous decisions regarding  
19 the making or refusing to make an anatomical gift are honored and not subject to change by  
20 others. Section 8 continues the policy of making lifetime donations irrevocable while also taking  
21 away from families the ability to consent to, amend, or revoke donations made by donors during  
22 their lifetimes. It also prevents families from making donations on behalf of decedents who,  
23 while living, had signed a refusal to make an anatomical gift unless there is evidence that the  
24 individual signing the refusal did not intend to have that refusal bind others after death. For  
25 example, a refusal could bar other persons from making an anatomical gift during the  
26 individual's life under Section 5 but not bar family members from making an anatomical gift  
27 after the individual dies under Section 10.

28  
29 Section 8 addresses the possible tension between a donor's autonomous decision to be a  
30 donor or not to be a donor with the interest of surviving family members to make that decision.  
31 It addresses this tension by favoring the decision of the donor over the desires of the family.  
32 Section 8(a) strips surviving family members of at least one stick in a bundle of property rights  
33 they might otherwise have under state law—the right to make, amend, or revoke an anatomical  
34 gift of a body or part if the donor made an anatomical gift or an amendment of the gift of the  
35 body or part. This section does not affect property rights families might otherwise have in a  
36 decedent's body under other law such as the right to dispose of a decedent's body after the  
37 anatomical gift has been made. In fact, language in Section 11(f) confirms the family's right to

1 dispose of the decedent's body after decedent's parts have been removed for transplantation,  
2 therapy, research, or education.

3  
4 Section 8(a) provides that if a donor has made an anatomical gift or has amended an  
5 anatomical gift, no other person can make, amend, or revoke that gift. For example, suppose a  
6 donor gifts the donor's organs for transplantation by an appropriate document of gift. By virtue  
7 of Section 8(a), no other person can amend or revoke that gift. In fact, because all other persons  
8 are barred from doing so, they have no legal authority or right to amend or revoke the anatomical  
9 gift. This section is subject to the subsection (g) exception allowing for the revocation of an  
10 anatomical gift by a donor who dies under the age of 18. In light of this section if a donor made  
11 an anatomical gift of an organ but the procurement organization rejected the gift because a  
12 surviving family member objected, both the procurement organization and family member would  
13 have acted wrongfully and could be subject to liability under Section 17 if any person was  
14 aggrieved because of their wrongful actions.

15  
16 Section 8(b) provides that the donor's revocation of an anatomical gift, as distinguished  
17 from a refusal, bars no one from making an anatomical gift of the donor's body or parts. The  
18 difference between Section 8(a) and Section 8(b) is that a revocation is an ambiguous act  
19 respecting the donor's intention to bind others. A donor might want to bind others, but it is just  
20 as likely that a donor was ambivalent and was more than willing to leave the decision to donate  
21 to others. Thus, suppose an individual who had donated a kidney by a donor card later destroys  
22 that card with the intent to revoke the anatomical gift. This revocation will not prevent another  
23 person acting under either Section 5 or 10 from making an anatomical gift. A donor who wishes  
24 both to revoke and bind others must sign a refusal.

25  
26 Section 8(c) provides that an individual's unrevoked refusal to make an anatomical gift  
27 of the individual's body or a part bars all others from later making an anatomical gift of the body  
28 or that part. Thus, suppose an individual signs an unrevoked Section 7 refusal. No other person  
29 before or after that individual's death could make an anatomical gift for that individual. This  
30 section also honors the autonomy of the individual to refuse to have his body or parts become the  
31 subject of an anatomical gift.

32  
33 An individual might sign a Section 7 refusal that is not intended to affect the ability of  
34 others to make an anatomical gift following the individual's death. If that intent is expressly  
35 indicated in the refusal, or if the refusal were later revoked, then other persons can make an  
36 anatomical gift under Section 10. For example, suppose an individual signs a Section 7 refusal  
37 barring the making of an anatomical gift of the individual's body and parts. If that person does  
38 not revoke the refusal, then neither that individual's agent or guardian nor any person listed in  
39 Section 9 can make an anatomical gift of the individual's body or parts. However, it is possible  
40 that an individual might wish to bar the individual's guardian from making an anatomical gift  
41 under Section 5 but not the individual's family from making a gift under Section 10. If that intent  
42 is expressed in the refusal, it will be honored. The intent to make only a limited refusal must be  
43 set forth expressly in the Section 7 refusal. Extrinsic evidence would not be admissible to  
44 establish intent to limit the refusal as subsection (c) provides that a contrary indication be  
45 expressly set forth in the refusal.



1  
2 An individual's refusal could be limited to a part. For example, an individual might sign  
3 a refusal to donate the individual's eyes. In the absence of an express, contrary indication, the  
4 refusal would not apply to the individual's other parts. Thus, following the individual's death,  
5 the persons listed in Section 9 could make an anatomical gift of the individual's other parts.  
6

7 Sections 8(d) and (e) apply to gifts, amendments, and revocations by persons other than  
8 the donor. Section 8(d) provides that a gift or an amendment of a gift by a person other than the  
9 donor under Section 5 or 6 bars other persons from making, amending, or revoking that gift  
10 under Section 10 only. For example, suppose the guardian of an adult makes a gift on the adult's  
11 behalf. At the adult's later death, the adult's surviving child could not amend or revoke that gift.  
12 On the other hand, suppose a donor's agent makes a gift during the donor's lifetime and later a  
13 guardian is appointed for the donor. The guardian would not be barred from amending that gift  
14 or revoking it. The difference is that the persons named in Section 4 are viewed as the donor's  
15 alter egos with power to control the donation decision up until the time of the donor's death.  
16

17 Under Section 8(e) if a person other than the donor revokes an anatomical gift under  
18 Section 6, that revocation does not bar another person from making a gift under either Section 5  
19 or Section 10. For example, suppose the donor's parent makes an anatomical gift. Twelve years  
20 later the donor's agent revokes that gift under Section 6. Five years later a guardian is appointed  
21 for the principal. The guardian could make an anatomical gift for the principal. Likewise, the  
22 revocation of an anatomical gift by an agent, parent, or guardian would not prevent the making  
23 of an anatomical gift under Section 10. For example, suppose an agent makes an anatomical gift  
24 for a donor which the agent revokes prior to the principal's death. The principal takes no further  
25 action to effectuate the anatomical gift and dies survived by a spouse. The spouse could make an  
26 anatomical gift because the agent's revocation of the anatomical gift does not prevent the spouse  
27 from making the anatomical gift.  
28

29 Section 8(f), consistent with prior law, provides that, absent express, contrary indications  
30 by the person making an anatomical gift, the gift of a part is neither a refusal to give other parts  
31 nor a limitation on the making of gifts of other parts. Thus, if a donor makes an anatomical gift  
32 of the donor's kidney, this gift does not bar the donor's family after the donor's death from  
33 making a gift of the donor's heart.  
34

35 Section 8(g) permits either parent of a child who dies under the age of 18 and who was a  
36 donor to revoke that gift. This subsection applies only if the minor dies under the age of [18]. It  
37 does not empower the parent of a living minor to revoke that minor's anatomical gift while the  
38 minor is living. In fact, Section 8(a) would actually preclude the parent from revoking the minor  
39 child's anatomical gift. A parent who does not wish the parent's minor child to make an  
40 anatomical gift should communicate the parent's desires to that child. Once the minor donor  
41 becomes an adult, the neither parent has the right to revoke the gift.  
42

43 Under Section 8(h) a minor's refusal can also be revoked by the minor's parent if the  
44 minor dies under the age of 18. Like Section 8(g), a minor's refusal cannot be revoked by the  
45 minor's parent while the minor is alive.

1  
2 Both Section 8(g) and 8(h) require the parent to be reasonably available to either revoke a  
3 gift or a refusal. If both parents are reasonably available, either one can revoke the gift or the  
4 refusal.  
5

6 **SECTION 9. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY**  
7 **OR PART.**

8 (a) Subject to subsections (b) and (c) and unless barred by subsection (d), an anatomical  
9 gift of a decedent's body or part for purposes of transplantation, therapy, research, or education  
10 may be made, in the order of priority listed, by any member of the following classes of persons  
11 who is reasonably available:

12 (1) an agent of the decedent at the time of death who could have made an  
13 anatomical gift under Section 4(2) immediately before the decedent's death;

14 (2) the spouse of the decedent;

15 (3) adult children of the decedent;

16 (4) parents of the decedent;

17 (5) adult siblings of the decedent;

18 (6) adult grandchildren of the decedent;

19 (7) grandparents of the decedent;

20 (8) an adult who exhibited special care and concern for the decedent;

21 (9) the persons who were acting as the [guardian] of the person of the decedent at  
22 the time of death; and

23 (10) any other person having the authority to dispose of the decedent's body.

24 (b) If there is more than one member of a class listed in subsection (a)(1), (3), (4), (5),  
25 (6), (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member

1 of the class unless that member or a person to which the gift can pass under Section 11 knows of  
2 an objection by another member of the class. If an objection is known, the gift may be made only  
3 by a majority of the members of the class who are reasonably available.

4 (c) No person may make an anatomical gift if, at the time of the decedent’s death, a  
5 person in a prior class under subsection (a) is reasonably available to make or to object to the  
6 making of an anatomical gift.

7 (d) An anatomical gift may not be made if doing so is barred by Section 7 or 8.

8 **Comment**

9 Section 9 empowers the persons listed in the section to make an anatomical gift of a  
10 decedent’s body or parts unless they are otherwise barred from doing so under Section 7 or  
11 Section 8. See Section 9(d). Persons who can make an anatomical gift under Section 9 often will  
12 be consulted whether they would be willing to make a gift when the prospective donor is near  
13 death.

14  
15 The list of persons who can make an anatomical gift on behalf of a decedent is slightly  
16 expanded from prior law. This list now includes that individual who at the time of the decedent’s  
17 death was acting as an agent of the decedent, adult grandchildren of the decedent, and a close  
18 friend of the decedent.

19  
20 This [act] does not extend the agency relationship beyond a principal’s death. Under  
21 other law, an agent’s power under a health-care power or any power terminates when the  
22 principal dies. This [act], however, gives the person who had been acting as an agent at the time  
23 of the principal’s death (even though death terminated the agency relationship) the first priority  
24 to make an anatomical gift on behalf of the decedent so long as that person was not prohibited  
25 from making an anatomical gift under Section 4. Thus, if the agent acting under a power of  
26 attorney for health care did not have the authority to make an anatomical gift by express  
27 language in the power of attorney, that individual would not have a priority to do so under  
28 Section 9.

29  
30 Absent a donation by the decedent or the decedent’s former agent, other persons or  
31 classes of person are empowered to make an anatomical gift in the following order: spouse of the  
32 decedent; adult children of the decedent; parents of the decedent, adult siblings of the decedent;  
33 adult grandchildren of the decedent; grandparents of the decedent; an adult who exhibited  
34 “special care and concern for the decedent” and the person who was acting as guardian of the  
35 decedent at the time of the decedent’s death. Lastly, “any other person having the authority to  
36 dispose of the decedent’s body” can make the decision if no other persons are reasonably  
37 available. In those states that recognize domestic partners, the addition of the domestic partner to

1 Section 9(a)(2) would be warranted. In states that do not recognize domestic partners,  
2 individuals who wish to be donors should make an anatomical gift before death or designate  
3 their domestic partners as agents to give them the first priority under this section.  
4

5 To the extent that an individual is concerned that the persons named in Section 9 may  
6 not take adequate account of their personal preferences regarding anatomical gifts, the onus is on  
7 them to either make or bar the making of an anatomical gift.  
8

9 Some concerns have been raised that allowing the person listed in Section 9 to make an  
10 anatomical gift could result in a gift that is inconsistent with the decedent's religious beliefs. In  
11 *Organ and Tissue Donation: A Reference Guide for Clergy, 4th ed., 2000. Cooper ML, Taylor*  
12 *GJ, eds* and reprinted at <http://www.organtransplants.org/understanding/religion>, an analysis was  
13 done of the positions of various religions regarding organ donation. While not exhaustive of all  
14 religious traditions (it included only the following: African Methodist Episcopal, Amish,  
15 Assembly of God, Baptist, Brethren, Buddhism, Catholicism, Disciples of Christ, Christian  
16 Science, Episcopal, Greek Orthodox, Hinduism, Independent Conservative Evangelical, Islam,  
17 Jehovah's Witnesses, Judaism, Lutheran, Mennonite, Moravian, Church of Jesus Christ of  
18 Latter-Day Saints, Pentecostal, Presbyterian, Seventh-Day Adventists, Shinto, Society of  
19 Friends, Unitarian Universalist, United Church of Christ, and United Methodist), the authors  
20 found no religious objection to organ donation. It did find in many religious traditions  
21 enthusiastic support; in many others the view that the decision is solely for the individual or  
22 family. Notably, Pope John Paul II stated: "The Catholic Church would promote the fact that  
23 there is a need for organ donors and that Christians should accept this as a 'challenge to their  
24 generosity and fraternal love' so long as ethical principles are followed." *Id.* For individuals  
25 with an actual religious objection to donation, the opportunity to sign a refusal barring any other  
26 person from donating their organs is an important safeguard in this [act].  
27

28 Under subsection (b), if a member of a class empowered to make an anatomical gift is  
29 reasonably available and knows of no objection to the making of the gift by another member of  
30 the class and the person to which the gift could pass under Section 11 knows of no objection, the  
31 class member can make the anatomical gift. Likewise, if a class member knows of any objection  
32 by another class member but that other class member is not reasonable available, the class  
33 member who is reasonably available can make the gift notwithstanding the known objection of  
34 the unavailable member of the class.  
35

36 If, on the other hand, the person making the gift, or the person to whom the gift could  
37 pass under Section 11, knows of an objection by another member of the same class and there are  
38 other members of the class who are reasonably available (including the objector, if reasonably  
39 available), then a gift can be made only if a majority of the members of the class who are  
40 reasonably available make the gift. To illustrate, suppose the decedent is survived by three  
41 children. The eldest, who is unaware of the desires of the others, can make an anatomical gift. If  
42 the eldest knows that one of the other siblings objects and that sibling is reasonably available,  
43 then only a majority of the siblings who are reasonably available can make the gift. If all three  
44 are available, two would be required to make the gift; if two are reasonably available, then they  
45 must agree; if only one is reasonably available that one can make the gift.

1  
2           The objection of a class member who is not reasonably available should not be allowed to  
3 override the informed decision of class members who are reasonably available because that  
4 absent class member could not have been afforded the opportunity to change his or her mind in  
5 light of current circumstances.  
6

7           The rule of subsection (b) does not apply to adults who exhibited special care and  
8 concern for the decedent. If there is more than one such person, any one of them can make an  
9 anatomical gift.  
10

11           A person cannot make an anatomical gift if, at the time of the decedent's death, a person  
12 in a prior class is reasonably available to either make or object to the making of an anatomical  
13 gift. Section 9(c). The assumption here is that a person in a prior class is reasonably available but  
14 has not yet been contacted by a procurement organization. For example, suppose decedent dies  
15 but only his grandchildren are physically present at the hospital. Decedent's children are able to  
16 be contacted and therefore are reasonably available. In such case, the grandchildren have no  
17 power to make an anatomical gift.  
18

19           While a person in a subsequent class is barred from making an anatomical gift if a person  
20 in a prior class is reasonably available, no such bar occurs if the person in the subsequent class  
21 only knows that a person in a prior class who is not reasonably available objects to the making of  
22 an anatomical gift. This is purposeful. The policy choice here is essentially that only persons  
23 who are reasonably available can make or object to the making of an anatomical gift. That is  
24 because the objection of the person in a prior class may be based upon faulty information about  
25 the effects of a gift or other concerns that could have been ameliorated had the person in the  
26 prior class been reasonably available to discuss the matters with a procurement organization.  
27

28           Reasonably available is not synonymous with physically present. The phrase (defined in  
29 Section 2 (paragraph (20))) means able to be contacted without "undue effort and willing to act  
30 in a timely manner consistent with existing medical criteria necessary for the making of an  
31 anatomical gift." Thus, a sibling who can be easily contacted by telephone is reasonably  
32 available. Section 14(g) imposes on procurement organizations an obligation to make a  
33 reasonable search for persons with a priority to make an anatomical gift.  
34

35           The concept and definition of "reasonably available" is drawn from lessons learned in the  
36 drafting of the Uniform Health-Care Decisions Act and borrows from the language in Section  
37 1(14) of that act. The making of an anatomical gift following a decedent's death is extremely  
38 time sensitive, and a decision to donate must be made within a relatively short period of time  
39 following death if the organs are to remain viable and human lives are to be saved. In practice,  
40 when an anatomical gift of a decedent's organs was not made prior to death, conversations with  
41 family members to consider donation often occur before death but that is not always possible. In  
42 accident cases, for example, it can take considerable time to locate all family members. When a  
43 decision to donate on behalf of a dying person can be made in advance, the procurement  
44 organizations generally will have no difficulty in contacting persons with the priority to make an  
45 anatomical gift.

1  
2           In other cases, locating persons with the priority under Section 9 to make a gift may not  
3 be as easy or even possible (although this should be less so in this highly electronic age). For  
4 example, a person may be dying as the result of an automobile accident. The procurement  
5 organization may have easily contacted the dying person’s adult siblings, but their parents are  
6 hiking in the Alaskan interior and cannot be contacted by any means. This [act] would allow the  
7 siblings to decide if the parents could not be contacted to consider whether to make or refuse to  
8 make a donation.  
9

10           An individual with a higher priority may be unwilling to make a decision, preferring it be  
11 made by others. For example, a decedent’s spouse may be unwilling to make a decision to  
12 donate the decedent’s organs, preferring that any decision be made by the decedent’s children.  
13 Under this [act] the spouse, being unwilling to make a decision, is not reasonably available.  
14 There is some concern that an unwillingness to make a decision is equivalent to an objection and  
15 should have been treated as such under this [act]. But, this [act] reflects a judgment that the  
16 potential savings in human life justifies the position that the inability to express a decision is  
17 tantamount to not being available to make a decision. This policy choice was supported by the  
18 fact that procurement organizations are well-trained to work with family members when seeking  
19 an anatomical gift to distinguish between an objection and a true unwillingness to make a  
20 decision.  
21

## 22           **SECTION 10. MANNER OF MAKING, AMENDING, OR REVOKING**

### 23           **ANATOMICAL GIFT OF DECEDENT’S BODY OR PART.**

24           (a) A person authorized to make an anatomical gift under Section 9 may make an  
25 anatomical gift by a document of gift signed by the person making the gift or that person’s oral  
26 communication that is electronically recorded or is contemporaneously reduced to a record and  
27 signed by the individual receiving the oral communication.

28           (b) Subject to subsection (c), an anatomical gift by a person authorized under Section 9  
29 may be amended or revoked orally or in a record by any member of a prior class who is  
30 reasonably available. If more than one member of the prior class is reasonably available, the gift  
31 may be amended or revoked only if a majority of the reasonably available members object to the  
32 amending or revoking of the gift or they are equally divided as to whether to amend or revoke an  
33 anatomical gift.

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

### 5 **Comment**

6 Section 10(a) provides that an anatomical gift by a person authorized to make the gift  
7 under Section 9 can be made by a document of gift that is signed by the person making the gift.  
8 The document of gift could be an e-mail. This might be a common form of a document of gift  
9 where the gift is made by a person named in Section 9 who is reasonably available but not  
10 physically present at the hospital where the donor died. The person also may make the gift  
11 orally. The oral gift must be recorded or reduced to a record that is signed by the individual  
12 receiving the oral communication. For example, the decedent's spouse might consent to a gift  
13 over the telephone at the request of a procurement organization. The individual to whom the gift  
14 was communicated should then note that gift in a signed record.

15  
16 In common with prior law, if a person makes an anatomical gift but there is a member of  
17 a prior class who becomes reasonably available, that member may revoke the gift. Section 10(b).  
18 However, unlike prior law, subsection (b) provides that if the prior class has more than one  
19 member who becomes reasonably available, then the gift can be revoked only if the majority of  
20 the members of the prior class revoke the gift or if they are equally divided. For example,  
21 suppose an anatomical gift of a kidney is made by a parent of the decedent because none of the  
22 decedent's children are reasonably available. But, before an incision is made to remove the  
23 kidney from the donor or invasive procedures have begun to prepare the recipient, a child of the  
24 decedent who was not initially present to make or refuse to make a gift purports to revoke the  
25 gift. If this child is decedent's only reasonably available child, the gift is revoked. But, if there  
26 are three children who become reasonably available before that time, the gift is not revoked  
27 unless two of them agree to revoke the gift.  
28

### 29 **SECTION 11. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT.**

30 (a) An anatomical gift of a body or part may be made to the following named persons:

31 (1) a hospital, accredited medical or dental school, college, university, organ  
32 procurement organization, or other appropriate person for research or education;

33 (2) an individual designated by the person making the anatomical gift if the  
34 individual is the recipient of the part; or

1 (3) an eye bank or tissue bank.

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

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

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

9 (3) If the part is an organ and the gift is for the purpose of transplantation or  
10 therapy, the gift passes to the appropriate organ procurement organization as custodian of the  
11 organ to be allocated in accordance with subsection (h).

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

14 (c) If a document of gift specifies only a general intent to make an anatomical gift by  
15 words such as “donor”, “organ donor”, or “body donor”, or by a symbol or statement of similar  
16 import, the decedent’s parts may be used for transplantation, therapy, research, or education. In  
17 this case, the following rules apply:

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

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

20 (3) If the part is an organ, the gift passes to the appropriate organ procurement  
21 organization as custodian of the organ to be allocated in accordance with subsection (h).

22 (d) For purposes of subsection (b) and (c), if the purpose of an anatomical gift of a part is  
23 not expressly set forth in the document of gift or the purposes are not set forth in any priority in



1 the document of gift, the gift must first be used for transplantation or therapy and, if the gift  
2 cannot be used for transplantation or therapy, the gift must be used for research or education.

3 (e) An anatomical gift of an organ for transplantation or therapy, other than an  
4 anatomical gift under subsection (a)(2), passes to the organ procurement organization or  
5 transplant hospital as custodian of the organ to be allocated in accordance with subsection (h).

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

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

15 (h) If an organ passes to an organ procurement organization or transplant hospital for  
16 transplantation or therapy, the organ must be allocated in accordance with the contractual  
17 obligations between the organ procurement organization or transplant hospital and the Organ  
18 Procurement Transplantation Network established by the National Organ Transplant Act, 42  
19 U.S.C. Section 243 et. seq.

20 **Comment**

21 Section 11 sets forth various rules to identify the person to which a part can pass as the  
22 result of an anatomical gift. While subsection (a) addresses the anatomical gift to a named  
23 recipient, in practice such gifts are rare with the exception of whole body gifts for research or  
24 education.

1 Most gifts made by donors before death are made by a driver’s license or entry on a  
2 donor registry. If a donor’s gift does not specify the purpose of the gift, as would occur if the  
3 driver’s license indicating only that the donor was an “organ donor,” the gift must first be used  
4 for transplantation or therapy and if it cannot be used for that purpose, then for research and  
5 education. See Section 11(c) & (d).  
6

7 On the other hand, if the document of gift indicates the parts that are the subject of the  
8 gift or are gifts of all parts and specifies the purpose of the gift that intent will be respected. In  
9 some cases a donor must specify that a gift can be used for transplantation, therapy, research, or  
10 education but these purposes are not set forth in the document of gift in any priority. Under  
11 Section 11(b) the gift must first be used for transplantation or therapy and if it cannot be used for  
12 that purpose, then for research and education.  
13

14 Federal law does not control the allocation of donated eyes and tissue. The same is not  
15 true for organs. Under Section 274 of the National Organ Transplant Act in 1984, Congress  
16 created the OPTN. See also, 42 CFR §§ 121 *et. seq.* which, among other things, oversees the  
17 nationwide allocation of organs for transplantation. Currently, that OPTN contracts with United  
18 Network Organ Sharing (“UNOS”), a non-profit corporation, to administer the nation-wide  
19 allocation of organs for transplantation. UNOS, in turn, has agreements with numerous organ  
20 procurement organizations that have specific designated service areas. The organ procurement  
21 organizations have primary responsibility to evaluate the medical suitability of organs for  
22 transplantation, seek anatomical gifts under Section 9 when the decedent was not a donor at or  
23 near death, arrange for the procurement of organs from donors, and cause organs to be allocated  
24 and transferred to recipients in accordance with their contractual obligations with the OPTN.  
25

26 To assist in the evaluation of potential donors Federal law also requires hospitals  
27 receiving Medicare and Medicaid funding to refer all deaths or near deaths to organ procurement  
28 organizations or a third party designated by the organ procurement organization for possible  
29 organ, eye, and tissue donation. See 42 CFR § 482.45 (Medicare and Medicaid Programs:  
30 Conditions of Participation: Identification of Potential Organ, Tissue, and Eye Donors and  
31 Transplant Hospitals’ Provision of Transplant-Related Data). These referral requirements have  
32 made the provisions of Section 5 of the 1987 Anatomical Gift Act obsolete and, accordingly,  
33 those provisions have been deleted from this [act].  
34

35 While this [act] permits donations to a named individual, such donations are exceedingly  
36 rare for at least two reasons. Only in rare circumstances would a donor, during the donor’s life,  
37 know of an individual who would need an organ, eye, or tissue that would be the subject of an  
38 anatomical gift and similarly decedent’s families are generally not likely to know of the identity  
39 of such individuals.  
40

41 An anatomical gift of a body for research or education can be made to a named  
42 organization. These gifts typically occur as the result of a whole body donation to a particular  
43 institution in the donor’s will or as the result of a prior arrangement between a donor and a  
44 particular research or educational institution. In the case of a Section 10 anatomical gift of the  
45 entire body, or the portion of the body made after a gift of organs, tissue, and eye, the donee may

1 either be selected by the individual making the gift or by the procurement organization.  
2

3 It is common practice, particularly with respect to gifts evidenced by a statement or  
4 symbol on the donor's license, for the donor to indicate nothing more than a general intent to be  
5 an organ donor. For example, the donor's driver's license may have an X in a box labeled "organ  
6 donor" or a heart icon on the license. Section 11(d) expressly provides that if a document of gift  
7 specifies only a general intent to be an organ or body donor, such as would occur in the prior  
8 example, (1) only the donor's parts (organs, eyes and tissue) are the subject of the gift. Gifts of  
9 eye and tissue pass to the appropriate eye bank or tissue bank. Gifts of organs are distributed to  
10 the organ procurement organization as a custodian to be allocated in accordance with subsection  
11 (h). Because there is a gift only of parts, individuals wishing to donate their entire body for  
12 research or education would have to do more than merely authorize a statement or symbol, such  
13 as an "X" in a box labeled "organ donor" or a heart icon to be placed on a driver's license.  
14

15 Under Section 11(e), parts passing to the eye bank, tissue banks, and organ procurement  
16 organizations under Section 11(d) are first used for transplantation and therapy and, if not usable  
17 for those purposes, for research and education.  
18

19 Under Section 11(d), and contrary to the existing laws of some states, a statement on a  
20 driver's license that the licensee is an "organ donor" is an anatomical gift and not merely  
21 evidence of intention to want to be a donor. Thus, parts can be recovered from the donor without  
22 the need of a Section 10 gift. Likewise, as an anatomical gift, under Section 8 surviving family  
23 members would be barred from revoking the gift.  
24

25 Section 11(f) provides that, if there parts do not pass under the preceding provisions of  
26 the [act] or are not used for transplantation, therapy, and research, or education, custody of the  
27 decedent's body or parts vests in the person under obligation to dispose of them. For example, if  
28 an individual signs a donor card donating a kidney for transplantation only and the kidney is not  
29 medically suitable for that purpose, custody of the part would vest in the person under obligation  
30 to dispose of the body. Presumably that would be the donor's family. This individual's body  
31 would then pass, presumably to the family, for burial. Section 11(f) also provides that if there is  
32 a donee or custodian but it is later determined that the body or parts cannot be used for  
33 transplantation, therapy, research, or education, custody of the body or parts vests in the person  
34 obligated to dispose of the body or part. For example, suppose a donor's tissue passes to a tissue  
35 bank as donee. Later it is determined that the tissue cannot be used for transplantation, therapy,  
36 research, or education. Custody of this tissue would pass to the person obligated to dispose of the  
37 tissue. This person might actually be the tissue bank under federal policies relating to the  
38 disposal of tissue.  
39

40 Under the common law, a gift is effectuated by intent, delivery, and acceptance. (But see  
41 Section 13(a) regarding delivery). In common with general principles of gift law, an express  
42 acceptance of an anatomical gift is not required. However, Section 11(g) provides certain bars on  
43 the acceptance of an anatomical gift by a person that would trump the "acceptance presumption."  
44 A person may not accept an anatomical gift if the person knows of a Section 7 refusal. A person  
45 may not accept an anatomical gift if the person knows that a gift once made had been revoked or

1 that a gift under Section 10 was not properly made. For example, suppose decedent's children  
2 wish to donate organs that under Section 11 would pass to an organ procurement organization  
3 but that organization knows that the decedent's spouse is reasonably available and willing to  
4 make or refuse to make a gift. The organ procurement organization may not accept the purported  
5 gift from the children.  
6

7 Similarly, suppose an organ procurement organization knows of an anatomical gift from  
8 a donor's document of gift in its possession. Because of the imputed knowledge requirement in  
9 the last sentence of subsection (g), it may not accept that gift if on the same document of gift  
10 there is evidence that the gift was revoked.  
11

## 12 **SECTION 12. SEARCH AND NOTIFICATION.**

13 (a) The following persons shall make a reasonable search of an individual who the  
14 searcher reasonably believes is dead or near death for a document of gift or other information  
15 identifying the individual as a donor or as an individual who made a refusal:

16 (1) a law enforcement officer, firefighter, paramedic, or other emergency rescuer  
17 finding the individual; and

18 (2) if no other source of the information is immediately available, a hospital, as  
19 soon as practical after the individual's arrival at the hospital.

20 (b) If a document of gift or a refusal to make an anatomical gift is located by the search  
21 required by subsection (a) and the individual or deceased individual to whom it relates is taken  
22 to a hospital, the person responsible for conducting the search shall send the document of gift or  
23 refusal to the hospital.

24 (c) A person is not subject to criminal or civil liability for failing to discharge the duties  
25 imposed by this section but may be subject to administrative sanctions.

### 26 **Comment**

27  
28 This section is essentially the same as prior law.  
29



1 department of motor vehicles] that it knows exist for the geographical area in which the  
2 individual resides to ascertain whether the individual has made an anatomical gift.

3 (b) A procurement organization must be allowed reasonable access to information in the  
4 records of the [state department of motor vehicles] to ascertain whether an individual at or near  
5 death is a donor.

6 (c) When a hospital refers an individual at or near death to a procurement organization,  
7 the organization may conduct any reasonable examination necessary to ensure the medical  
8 suitability of a part that is or could be the subject of an anatomical gift for transplantation,  
9 therapy, research, or education from a donor or a prospective donor.

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

13 (e) Unless prohibited by law other than this [act], an examination under subsection (c) or  
14 (d) may include an examination of all medical records of the donor or prospective donor.

15 (f) If a donor, at the time of death, is under [18] years of age and is an unemancipated  
16 minor, a procurement organization shall conduct a reasonable search for the parents of the donor  
17 and provide them with an opportunity to revoke or amend the anatomical gift or revoke a refusal.

18 (g) A procurement organization shall make a reasonable search for any person listed in  
19 Section 9 having priority to make an anatomical gift on behalf of a prospective donor.

20 (h) If a procurement organization receives information that an anatomical gift to any  
21 other person was made, amended, or revoked, it shall promptly advise the other person of all  
22 relevant information.

23 (i) Subject to Sections 11(h) and 23, the rights of the person to which a part passes under

1 Section 11 are superior to rights of all others with respect to the part. The person may accept or  
2 reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this  
3 [act], a person that accepts an anatomical gift of an entire body may allow embalming or  
4 cremation and use of remains in a funeral service. If the gift is of a part, the person to which the  
5 part passes under Section 11, upon the death of the donor and before embalming or cremation,  
6 shall cause the part to be removed without unnecessary mutilation.

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

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

12 **Comment**

13 When a hospital refers a patient at or near death to a procurement organization, Section  
14 14(a) requires the procurement organization to conduct a reasonable search of any donor registry  
15 or motor vehicle records it knows to exist for the geographical area in which that individual  
16 resides to determine if that individual is a donor. To assist in that effort, Section 14(b) requires a  
17 state department of motor vehicles to allow procurement organizations reasonable access to  
18 information in the department's records.

19  
20 Procurement organizations may conduct a reasonable examination to determine the  
21 medical suitability of a part. Likewise persons to whom the part passes after the donor's death  
22 may conduct a reasonable examination to ensure the medical suitability of the part. An  
23 examination includes an examination of the relevant medical records. Section 14(e). This section  
24 is not inconsistent with Section 164.512(h) of the HIPAA regulations permitting the disclosure  
25 without consent of protected health information "to organ procurement organizations or other  
26 entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or  
27 tissue for the purpose of facilitating organ, eye or tissue donation and transplantation."  
28

29 If a minor donor dies under age 18 the donor's parents are entitled to revoke the  
30 anatomical gift. Section 14(f) requires a procurement organization to make a reasonable search  
31 for the minor donor's parents to provide them with an opportunity to revoke the gift. A similar  
32 search requirement applies where a deceased minor has made a refusal as the minor's parents are  
33 entitled to revoke the refusal.

1  
2 Under Section 14(g), a procurement organization also is required to make a reasonable  
3 search for any person empowered to make a gift under Section 9. If the donor made an  
4 anatomical gift of all parts for transplantation, therapy, research, and education, there would be  
5 no one under Section 9 with a priority to make a gift because the persons listed in Section 9  
6 would be barred by Section 8 from making or revoking the gift.  
7

8 Section 14(h) requires a procurement organization that acquires knowledge that an  
9 anatomical gift has been made to another person to advise that person of the gift. For example,  
10 suppose a procurement organization discovers while searching a donor registry that an  
11 anatomical gift was made to another procurement organization. The procurement organization  
12 shall notify the other organization of that gift.  
13

14 Under Section 14(j) neither the physician who attends the decedent at death nor the  
15 physician who determines the time of death may participate in the procedures for removing or  
16 transplanting a part. This section is similar to provisions in prior law and is intended to bar what  
17 might otherwise be perceived as a conflict of interest should a physician attend both the donor  
18 and the recipient. The concept of “attends” is well-known in the medical profession and  
19 contemplates the attending physician who cared for the donor during his life.  
20

21 **SECTION 15. COORDINATION OF PROCUREMENT AND USE.** Each hospital  
22 in this state, after consultation with procurement organizations, shall establish agreements or  
23 affiliations for coordination of procurement and use of human bodies and parts.

24 **Comment**

25 42 CFR § 482.45 (Medicare and Medicaid Programs: Conditions of Participation:  
26 Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals’ Provision of  
27 Transplant-Related Data) sets forth criteria requiring hospitals and organ procurement  
28 organizations to have cooperative agreements to permit organ procurement organizations to  
29 determine the suitability of organs for transplant. Furthermore in the absence of alternative  
30 arrangements by a hospital, organ procurement organizations have the responsibility to  
31 determine the suitability of tissues and eyes using the definition of potential tissue and eye  
32 donors and the notification protocol developed in consultation with the tissue and eye banks  
33 identified by the hospital for this purpose. Hospitals are also required to (1) have an agreement  
34 with at least one tissue bank and one eye bank to cooperate in the retrieval, processing,  
35 preservation, storage and distribution of tissue and eyes and (2) ensure, working with organ  
36 procurement organizations, that families of potential donors are informed of the option of  
37 donations of eyes, tissue, and organs.  
38





1 of gift, it is deemed to know of any amendment or revocation of that gift or any refusal to make  
2 an anatomical gift on the same document.

3 (c) Any person that intentionally falsifies, forges, conceals, defaces, or obliterates a  
4 document of gift, an amendment or revocation of a document of gift, or a refusal in order to  
5 obtain a financial gain commits a [[felony] and upon conviction is subject to a fine not exceeding  
6 [\$50,000] or imprisonment not exceeding [five] years, or both] [class [ ] felony].

7 **Comment**

8 Subsection (a) imposes potential civil liability on persons who intentionally violate this  
9 [act] to other persons who are aggrieved by that violation. Alternatively or additionally, the  
10 person could be subject to administrative sanctions. For example, an organ procurement  
11 organization that allocates an organ to a recipient who would not have been entitled to that organ  
12 under the national allocation system could be liable civilly and administratively. Likewise if a  
13 donor’s autonomous decision to make an anatomical gift was dishonored because of an improper  
14 revocation of that gift after the donor’s death, there is potential liability to aggrieved persons  
15 under this section.

16  
17 Subsection (c) criminalizes the intentional falsification of a document of gift or refusal  
18 when done to obtain a financial gain. For example, suppose a person falsifies a document of gift  
19 in order to sell a decedent’s part to a research institution. The person who falsified the document  
20 of gift would be guilty of a felony.

21

22 **SECTION 18. IMMUNITY.**

23 (a) A person that acts in accordance with this [act] or with the applicable anatomical gift  
24 law of another state or attempts in good faith to do so is not liable for the act in a civil action,  
25 criminal prosecution, or administrative proceeding.

26 (b) Neither the person making an anatomical gift nor the donor’s estate is liable for any  
27 injury or damage that may result from the making or use of the gift.

28 (c) An individual who documents the making, amending, or revoking of an anatomical  
29 gift under this [act] may rely upon representations of the individuals listed in Section 9(a)(2), (3),

1 (4), (5), (6), (7), and (8) relating to their relationship to the donor or prospective donor unless the  
2 individual knows that the representation is untrue.

### 3 **Comment**

4 Subsection (a) has been in the Act since 1968 (See Subsection 7(c) of the 1968 Act). In  
5 the 1968 Act, “good faith” had the common-law meaning of honesty-in-fact. In short, it was  
6 meant to be a subjective standard involving determination of the intent or state of mind of the  
7 person concerned, namely the honesty of intent. As the official comment for Section 7 states:  
8 “The entire section 7 merits genuinely liberal interpretation to effectuate the purpose and intent  
9 of the Uniform Act, that is, to encourage and facilitate the important and ever increasing need for  
10 human tissue and organs for medical research, education and therapy, including transplantation.”  
11 Thus, immunity was intended to be extended to persons which generally and substantively act in  
12 accordance with the 1968 Act, with honesty of intent.

13  
14 If parties were held to an overly strict adherence to this [act] when transplants must be  
15 made shortly after the decedent’s death, it might well have a chilling effect on transplantation  
16 and therapy. This [act] retains the meaning of the term of “good faith” in the 1968 Act in order to  
17 encourage and facilitate transplantation.

18  
19 In order to encourage donations Section 18(b) immunizes the person making an  
20 anatomical gift and the donor’s estate from any liability for damages resulting from the making  
21 or using of an anatomical gift. Persons who make anatomical gifts and donors have little or no  
22 ability to determine the medical suitability or risks associated with transplantation and therapy of  
23 donated parts. Risk assessment is appropriately left to the medical community, broadly  
24 conceived.

25  
26 Under Section 9 an anatomical gift can be made by the persons listed in that section if the  
27 individual at or near death is not a donor. Section 18(c) provides that procurement organizations  
28 can rely on the representations of the individuals listed in Section 9(a)(2)-(8) as to their  
29 relationship to the donor or prospective donor. This immunity does not apply if the individual  
30 who documents a gift knows the relationship does not exist.

31  
32 The purpose of subsection (c) is to relieve procurement organizations of the burden of  
33 ascertaining the truthfulness of relationship claims because proof may be impracticable or time  
34 consuming in light of the need to act expeditiously to effectuate an anatomical gift. For example,  
35 if an individual claims to be the decedent’s spouse or child, the procurement organization can  
36 rely on that representation. This immunity does not run to persons claiming to be agents or  
37 guardians or persons who have authority to dispose of a decedent’s body. Agents or guardians  
38 should have documentation of their relationship readily available, or their status will likely be  
39 reflected in the available medical records.



1 this state establishes, contracts for, or recognizes for the purpose of transferring to the donor  
2 registry all relevant information regarding a donor’s making, amendment to, or revocation of an  
3 anatomical gift.

4 (c) A donor registry must:

5 (1) provide a database that allows a donor or other person authorized under  
6 Section 4 to include on the donor registry a statement or symbol that the donor has made,  
7 amended, or revoked an anatomical gift;

8 (2) be accessible to a procurement organization to allow it to obtain relevant  
9 information on the donor registry to determine, at or near death of the donor or a prospective  
10 donor, whether the donor or prospective donor has made, amended, or revoked an anatomical  
11 gift; and

12 (3) be accessible for purposes of paragraphs (1) and (2) seven days a week on a  
13 24-hour basis.

14 (d) Personally identifiable information on a donor registry about a donor may not be used  
15 or disclosed without the express consent of the donor or the person that made the anatomical gift  
16 for any purpose other than to determine, at or near death of the donor or a prospective donor,  
17 whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

18 (e) This section does not prohibit any person from creating or maintaining a donor  
19 registry that is not established by or under contract with the state. However, the registry must  
20 comply with subsections (c) and (d).

21 **Legislative Note:** *If the state has an existing donor registry statute, it should consider whether*  
22 *this section is necessary. It should also consider whether subsections (c) and (d), and Section*  
23 *14(h), should be incorporated into its existing statute. Subsection (b) may be deleted if the state*  
24 *department of motor vehicles is the agency specified in subsection (a).*

25

1 **Comment**

2  
3 A donor registry is one of many devices to facilitate the making of anatomical gifts. In  
4 time, it may prove to be the most effective way of making anatomical gifts, particularly when the  
5 records of the state department of motor vehicles and the donor registry can be coordinated to  
6 assure a unitary source of donor information. This section is intended primarily to encourage  
7 states to facilitate the creation of donor registries operated by the state or by another. This  
8 section should not be construed to prohibit otherwise valid anatomical gifts as provided for in  
9 Section 5.

10  
11 The section sets forth minimum requirements for a donor registry whether created by the  
12 state or not. These requirements are that the registry: (1) provide an electronic database that  
13 allows persons to make an anatomical gift by use of a statement or symbol; (2) be accessible at  
14 or near the time of death of a donor or prospective donor to determine whether the donor or  
15 prospective donor made a gift; and (3) be operational on a 24/7 basis.

16  
17 Under subsection (d), a donor’s personally identifiable information on a registry may not  
18 be used or disclosed without appropriate consent, other than a disclosure at or near death of a  
19 donor or prospective donor to determine whether the donor or prospective donor has made,  
20 amended, or revoked an anatomical gift.

21  
22 This section does not require states to create or contract for the creation of a donor  
23 registry. It merely gives them discretion to do so. Also, this section does not bar the creation of a  
24 private donor registry although it does require private registries to meet the requirements in  
25 subsections (c) and d).

26  
27 The definition of a “donor registry” in Section 2(7) does not conform to the Section 20  
28 requirements although every Section 20 donor registry would meet the definition of a donor  
29 registry. This was purposeful. A donor registry as a place to make an anatomical gift should be  
30 broadly defined to respect the wishes of donors who make an anatomical gift on a registry that  
31 should, but failed to, comply with this section.

32  
33 **SECTION 21. RESTRICTION ON WITHDRAWAL OF LIFE SUPPORT**

34 **SYSTEM.**

35 (a) In this section:

36 (1) “Advance health-care directive” means a record signed by a donor containing  
37 the donor’s direction concerning a health-care decision for the donor or a power of attorney for  
38 health care.

1 (2) “Declaration” means a record signed by a donor specifying the circumstances  
2 under which a life support system may be withheld or withdrawn.

3 (3) “Health-care decision” means any decision made regarding the health care of  
4 the donor or prospective donor.

5 (b) Unless the declaration or advance health-care directive of a donor or prospective  
6 donor expressly provides to the contrary, a life support system may not be withdrawn from a  
7 donor or prospective donor if its continued administration is necessary to assure the medical  
8 suitability of an organ that may be the subject of an anatomical gift for the purpose of  
9 transplantation or therapy.

10 **Comment**

11 When, as required by federal law, a patient is referred by a hospital to a procurement  
12 organization to determine the medical suitability of the patient as a donor, it typically is  
13 necessary for the patient to be connected to life support systems to assure the patient’s organs  
14 remain medically viable for transplantation. If that patient had previously signed a record  
15 directing that life support not be provided if the effect would be merely to prolong the patient’s  
16 life, that direction would conflict with the need to keep the patient on life support systems to  
17 preserve the organs for possible transplantation. The tension between preserving the organs for  
18 possible organ donation and the patient’s direction is resolved by this section in favor of the  
19 preserving the organs for donation unless the patient’s declaration or health-care directive  
20 expressly provides otherwise.  
21

22 **SECTION 22. COOPERATION BETWEEN [CORONER][MEDICAL**  
23 **EXAMINER] AND PROCUREMENT ORGANIZATION.**

24 (a) A [coroner] [medical examiner] and a procurement organization shall cooperate to  
25 maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy,  
26 research, or education.

27 (b) If a [coroner] [medical examiner] receives notice from a procurement organization  
28 that an anatomical gift might be available or was made with respect to a decedent whose body is

1 under the jurisdiction of the [coroner][medical examiner] and a post-mortem examination is  
2 going to be performed, unless the [coroner][medical examiner] denies recovery in accordance  
3 with Section 23, the [coroner][medical examiner] or designee shall conduct a post-mortem  
4 examination of the body or the part in a manner and within a time period compatible with its  
5 preservation for the purposes of the gift.

6 (c) A part may not be removed from the body of a decedent under the jurisdiction of a  
7 [coroner] [medical examiner] for transplantation, therapy, research, or education unless the part  
8 is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the  
9 [coroner] [medical examiner] may not be delivered to a person for research or education unless  
10 the body is the subject of an anatomical gift.

11 **Comment**

12 This section includes a number of provisions designed to allow for the cooperation of  
13 procurement organizations and [coroners] [medical examiners] in obtaining bodies and parts that  
14 otherwise are the subject of an anatomical gift. Unlike prior law, this section does not empower  
15 [coroners] [medical examiners] to make anatomical gift of the body or parts of a decedent.  
16

17 **SECTION 23. FACILITATION OF ANATOMICAL GIFT FROM DECEDENT**  
18 **WHOSE BODY IS UNDER JURISDICTION OF [CORONER][MEDICAL EXAMINER].**

19 (a) Upon request of a procurement organization, a [coroner][medical examiner] shall  
20 release to the procurement organization the name, contact information, and available medical  
21 and social history of a decedent whose body is under the jurisdiction of the [coroner][medical  
22 examiner]. If the decedent's body or part is medically suitable for transplantation, therapy,  
23 research, or education, the [coroner] [medical examiner] shall release post-mortem examination  
24 results to the procurement organization. The procurement organization may make a subsequent  
25 disclosure of the post-mortem examination results or other information received from the



1 [corner][medical examiner] only if relevant to transplantation or therapy.

2 (b) The [coroner][medical examiner] may conduct a medicolegal examination by  
3 reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other  
4 information that any person possesses about a prospective donor or a donor whose body is under  
5 the jurisdiction of the [coroner][medical examiner] which the [coroner] [medical examiner]  
6 determines may be relevant to the investigation.

7 (c) A person that has any information requested by a [coroner] [medical examiner]  
8 pursuant to subsection (b) shall provide that information as expeditiously as possible to allow the  
9 [coroner] [medical examiner] to conduct the medicolegal investigation within a period  
10 compatible with the preservation of parts for purposes of transplantation, therapy, research, or  
11 education.

12 (d) If an anatomical gift has been or might be made of a part of a decedent whose body is  
13 under the jurisdiction of the [coroner][medical examiner] and a post-mortem examination is not  
14 required, or the [coroner] [medical examiner] determines that a post-mortem examination is  
15 required but that the recovery of the part that is the subject of an anatomical gift will not interfere  
16 with the examination, the [coroner] [medical examiner] and procurement organization shall  
17 cooperate in the timely removal of the part from the decedent for purposes of transplantation,  
18 therapy, research, or education.

19 (e) If an anatomical gift of a part from the decedent under the jurisdiction of the  
20 [coroner][medical examiner] has been or might be made, but the [coroner] [medical examiner]  
21 initially believes that the recovery of the part could interfere with the post-mortem investigation  
22 into the decedent's cause or manner of death, the [coroner] [medical examiner] shall consult with  
23 the procurement organization or physician or technician designated by the procurement

1 organization about the proposed recovery. After consultation, the [coroner][medical examiner]  
2 may allow recovery.

3 (f) Following the consultation under subsection (e), in the absence of mutually agreed  
4 upon protocols to resolve conflict between the [coroner] [medical examiner] and the  
5 procurement organization, if the [coroner] [medical examiner] intends to deny recovery, the  
6 [coroner] [medical examiner] or designee, at the request of the procurement organization, shall  
7 attend the removal procedure for the part before making a final determination not to allow the  
8 procurement organization to recover the part. During the removal procedure, the [coroner]  
9 [medical examiner] or designee may allow recovery by the procurement organization to proceed,  
10 or, if the [coroner][medical examiner] or designee reasonably believes that the part may be  
11 involved in determining the decedent's cause or manner of death, deny recovery by the  
12 procurement organization.

13 (g) If the [coroner] [medical examiner] or designee denies recovery under subsection (f),  
14 the [coroner][medical examiner] or designee shall:

15 (1) explain in a record the specific reasons for not allowing recovery of the part;

16 (2) include the specific reasons in the records of the [coroner] [medical  
17 examiner]; and

18 (3) provide a record with the specific reasons to the procurement organization.

19 (h) If the [coroner][medical examiner] or designee allows recovery of a part under  
20 subsection (d), (e), or (f), upon request the procurement organization shall cause the physician or  
21 technician who removes the part to provide the [coroner][medical examiner] with a record  
22 describing the condition of the part, a biopsy, photograph, and any other information and  
23 observations that would assist in the post-mortem examination.

1 (i) If a [coroner] [medical examiner] or designee is required to be present at a removal  
2 procedure under paragraph (f), upon request the procurement organization requesting the  
3 recovery of the part shall reimburse the [coroner][medical examiner] or designee for the  
4 additional costs incurred in complying with paragraph (f).

5 *Legislative Note: Section 23 could be incorporated into the provisions of the state's code where*  
6 *the provisions relating to a [coroner][medical examiner] are codified rather than included in*  
7 *this [act]. If codified in that manner, the definitions in Section 2 of "anatomical gift", "donor",*  
8 *"eye bank", "organ procurement organization", "part", "procurement organization",*  
9 *"prospective donor"(first sentence only), "tissue", and "tissue bank" also should be included.*  
10

11 **SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
12 applying and construing this uniform act, consideration must be given to the need to promote  
13 uniformity of the law with respect to its subject matter among states that enact it.

14 **SECTION 25. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
15 **NATIONAL COMMERCE ACT.** This act modifies, limits, and supersedes the Electronic  
16 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et. seq., but does not  
17 modify, limit, or supersede Section 101(a) of that act, 15 U.S. C. Section 7001, or authorize  
18 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.  
19 Section 7003(b).

20 **SECTION 26. REPEALS.** The following acts and parts of acts are repealed:

21 (1) [Uniform Anatomical Gift Act];

22 (2)

23 (3)

24 **SECTION 27. EFFECTIVE DATE.** This [act] takes effect \_\_\_\_.