

D R A F T

FOR DISCUSSION ONLY

REVISED
UNIFORM ANATOMICAL GIFT ACT (200)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

November 2005 Meeting

Changes Shown in Strike and Score

WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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REVISED UNIFORM ANATOMICAL GIFT ACT

TABLE OF CONTENTS

SECTION 1. SHORT TITLE	7
SECTION 2. DEFINITIONS.....	7
SECTION 3. APPLICABILITY	12
SECTION 34 . MAKING ANATOMICAL GIFTS WHO MAY MAKE AN ANATOMICAL GIFT BEFORE DECEDENT'S DEATH	12
SECTION 5. MANNER OF MAKING ANATOMICAL GIFT BEFORE DECEDENT'S DEATH.....	14
SECTION 46 . AMENDING OR REVOKING ANATOMICAL GIFTS BEFORE THE DECEDENT'S DEATH	20
SECTION 57 . REFUSAL TO MAKE ANATOMICAL GIFT	22
SECTION 68 . PRECLUSIVE EFFECT OF <u>GIFT</u> , AMENDMENT, REVOCATION, OR REFUSAL.....	24
SECTION 79 . <u>WHO MAY MAKE AN ANATOMICAL GIFT AFTER THE DECEDENT'S DEATH</u>	27
SECTION 10. MANNER OF MAKING OR REVOKING ANATOMICAL GIFT AFTER DECEDENT'S DEATH	30
SECTION 8 <u>11</u> . COOPERATION BETWEEN [CORONER][MEDICAL EXAMINER] AND PROCUREMENT ORGANIZATIONS AND DONEES.....	33
SECTION 9 <u>12</u> . SEARCH AND NOTIFICATION	37
SECTION 10 <u>13</u> . PERSONS WHO MAY BECOME DONEES	38
SECTION 11 <u>14</u> . DELIVERY OF DOCUMENT OF GIFT	43
SECTION 12 <u>15</u> . RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATIONS AND DONEES.....	43
SECTION 13 <u>16</u> . COORDINATION OF PROCUREMENT AND USE	45
SECTION 14 <u>17</u> . SALE OR PURCHASE OF PARTS PROHIBITED	45
SECTION 15 <u>18</u> . NONLIABILITY	46
SECTION 16 <u>19</u> . CHOICE OF LAW AS TO EXECUTION OF DOCUMENT OF GIFT.....	47
SECTION 17 - 19. TRANSITIONAL PROVISIONS.....	47
SECTION 18 <u>20</u> . UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	48
SECTION 19 <u>21</u> . RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT	48
SECTION 20 <u>22</u> . REPEALS	48
SECTION 23 SEVERABILITY	48
SECTION 24 <u>24</u> . EFFECTIVE DATE.....	48

REVISED UNIFORM ANATOMICAL GIFT ACT (200_)

Prefatory Note

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 60s 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.”

Then, shortly following Dr. Christian Barnard’s successful transplant of a heart in November 1967, this Conference adopted the first Uniform Anatomical Gift Act and it did it with only one reading in the summer of 1968. In short order, the 1967 Act was uniformly adopted by every jurisdiction. The most significant contribution of the ‘68 Act was to create a right to donate organs. This right was not legally recognized at common law because of reluctance to find property rights in human bodies or human remains. By creating the right to make an anatomical gift, individuals became empowered to donate their organs or their loved one’s organs to save the lives of others.

The last event, occurring in 1972, was the development of immunosuppressive drugs which 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. However, only twenty-six (26) jurisdictions enacted the 1987 revision. Consequently, there is significant non-uniformity between states with the 1968 Act and those with the 1987 revisions. Further, current state acts do not always comport with changes in federal law adopted subsequent to the 1987 Act relating to the role of hospitals and organ procurement organizations in securing organs for transplantation.

Both the two previous anatomical gift acts as well as this [act] adhere to the so-called “opt in” principle as its default rule. Thus, an individual becomes an organ 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 that adopted in many other

developed countries, primarily in Europe. In many European countries every individual is deemed to be an organ donor unless that individual, or another person acting for that individual, “opts out.” This other system is known as “presumed consent.” While the Commissioners do not believe that many states would currently be interested in enacting a presumed consent system, many of them believe that in time the concept of presumed consent could receive a favorable reception in this country.

Comment: Should we include information from polls. Transcript: Commissioner Langbein would encourage us to develop some bracketed language for states interested in adopting a “presumed consent” system.

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], as distinct and difficult legal issues are raised by living donations. Furthermore, and in common with the prior acts, this [act] is largely focused on the procurement of organs as federal law controls the allocation of procured organs. Provisions in this [act] relating to the procurement of organs are intended to dovetail with federal law and policies.

A majority of potential donors are candidates for donation of eye or tissue but only a small percentage of potential donors die under circumstances that permit organ donation. To procure organs, eyes, and tissue for transplantation, a donor or potential donor must be declared dead (see Uniform Determination of Death Act), and generally the donor’s body must be kept on a respirator and life support until the organs are procured. Pursuant to federal law, when death is imminent or death occurs, the appropriate organ procurement organization is notified of a potential donor or donor, and it begins to develop a medical and family history to determine whether the dying or deceased person is a suitable donor. If the dying or deceased person is a suitable donor, these organizations check for evidence of donation and seek, when necessary, consent to donation from authorized persons. If a donation can be secured for organs, the organ procurement organization will ascertain from the organ procurement and transplant network whether there is a match for the organs on the national waiting list; arrange teams of surgeons at both the donor and recipient hospitals; and arrange transport; and effect the transplantation. If eyes and tissue are donated, the appropriate procurement organization procures the eye or portions of human eyes and/or other tissues and undertakes steps to begin the screening, testing, processing, storage, or distribution of the eye or portions of human eyes and/or other tissues as required for each type of anatomical gift for transplantation. All must be done expeditiously.

As of August 15, 2005), there are 89,094 individuals on the waiting list for organs of which 62,685 need a kidney and 17,457 a liver, with the remaining individuals waiting for a pancreas, kidney and pancreas, heart, lung or intestine. There are in excess of 25,000 eye and tissue donors annually and in excess of 1,000,000 tissue and eye transplants annually. While donations of eye and tissue are presently nearly adequate, the need for eye and tissue transplants increases every year.

Comment: Update

Recent technological innovations have increased the types of organs that can be transplanted and the range of individuals that 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 has also increased. While the Commissioners are under no illusion that any anatomical gift act can fully supply the need for organs, they do believe that any change that could increase the supply of organs and thus saves lives is an improvement. This is all the more true because in recent years the shortage in the supply has been partially made up by the significant increase in the number of living donors who have donated organs for transplantation. While organs from living donors are laudable and often medically desirable from the recipient's perspective, obtaining organs from living donors places those donors at risk.

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 both harmonize state law with federal policy as well as to increase the manner in which anatomical gifts can be made and respected. The following summary highlights how this [act] attempts to accomplish these goals.

Section 2 incorporates new definitions of organ procurement organizations, eye banks and tissue banks to harmonize with federal law as necessary.

Section 4 expands the number of persons who can 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 and mature minors who are capable of making health-care decisions for themselves be empowered to make anatomical gifts.

Section 5 recognizes that since the adoption of the prior anatomical gift acts 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. The section also permits anatomical gifts by notation in a donor's medical records.

Section 6 permits anatomical gifts to be amended or revoked by the execution of a later-dated record or by inconsistent documents of gifts. It also permits revocation by destruction of a document of gift.

Section 7 permits an individual to refuse to make an anatomical gift by a signed record, a notation on a driver's license or registry if permitted by the state motor vehicle department or operator of the donor registry, or by a statement or symbol in the donor's medical records. This [act] does not require that a driver's license or a donor registry allow

Comment: Should we include comment regarding the differences between this [act] and the '87 version, or at least information as to what of the earlier act was preserved.

for individuals to register their refusal to be a donor. By permitting refusals, the [act] recognizes the autonomy interest of an individual either to be or not to be an organ donor.

Section 8 is intended to substantially strengthen the respect due a decision to make or refuse to make an anatomical gift. While prior laws provided that a donor's anatomical gift was irrevocable, it had been until quite recently a common practice for procurement organizations to seek affirmation of that gift from a donor's family. This could result in unnecessary delays in the harvesting of organs as well as a reversal of a donor's donation decision. This [act] effectively 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 a donor's family as they have no ability to give it legally. 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 9 expands the list of persons who can make an anatomical gift following a decedent's death where the decedent was neither a donor nor had signed a record refusing to be a donor. The expanded list includes persons acting as agents at the decedent's death, grandchildren, and close friends.

Section 10 makes no significant changes from prior law.

Section 11 represents a complete revision of the relationship of the coroner to the organ donation process. Prior law 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][medical examiner]'s actions were deemed to violate the property rights of surviving family members, see, e.g., *Brotherton v. Cleveland*, 923 F.2d 477 (6th Cir. 1991), the Commissioners decided to delete the provision. In lieu thereof, a series of new provisions have been included relating to the relationship between the [coroner][medical examiner] and the 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 4 or Section 9 of this [act] .

Section 12 permits the search of the personal effects of an individual who has died or is near death by an emergency responder in order to determine if that individual has made or has refused to make an anatomical gift. It also requires persons with access to the motor vehicle registry to make a similar search and requires hospitals to search donor registries.

Section 13 has been revised, in part, to harmonize with federal law, particularly with respect to organs. Under federal law, organs are allocated under the auspices of the Organ

Procurement and Transplant Network which presently subcontracts with United Network Organ Sharing operating largely through its member organ procurement organizations. When an organ donor dies, the donor's organs, barring the rare instance of a donation to a named individual, are donated to the organ procurement organization for the service area in which the donor dies, to be allocated by it either locally, regionally, or nationally in accordance with federal policies. Thus, that organ procurement organization for the overwhelming number of organ donations is the donee. For eyes, tissue and whole body donations, donees can be the appropriate procurement organization, or a hospital, accredited medical or dental school, college, university or other person participating in education or research. In the case of organ, tissue and eye donation, therefore, the donee is an organization, not the recipient into whom the part is transplanted.

Prior law did not specifically deal with who the donee of a part was when the document of gift merely expressed a "general intent" to be an "organ donor." This type of designation is common on driver's licenses and many donor cards. Section 13 provides that for such general statements of intent, first, the parts may only be used for transplantation or therapy and second, that the donee is the appropriate organization procurement organization for each part. Thus, organs are donated to the organ procurement organization, eyes to the eye bank, and tissue to the tissue bank.

Comment: Should we limit this just to transplantation? The issue has been raised whether therapy is broader and may not be consistent with what donors would expect would happen with their organs.

A general statement of intent to be an organ donor does not result in the making of an anatomical gift for research or education. More specific language is required to make such a gift.

The [act] provides that custody of a decedent's body if there is no donee or of decedent's parts not used by a donee for transplantation, therapy, research or education 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 13(g) prohibits any donee from accepting an anatomical gift if the donee knows that the gift was not validly made. For this purpose, however, if the donee ascertained there was a document of gift from a donor registry or from the donor's medical records, the donee is also deemed to know of a refusal to make a gift if the refusal is on the same donor registry or in the donor's medical records for the same health care provider in whose records the donation had been recorded. Again, nothing in the [act] requires a donor registry to have a section to record refusals, but if a donor registry elected to do so, then the donee should be required to search the entire registry.

Lastly, Section 13(h) makes the obvious explicit. Nothing in this [act] affects the allocation of parts by any person acting under federal laws relating to the allocation of parts for transplantation.

Section 15 also has been redrafted to accord with federal law and particularly the federal rules relating to referrals by hospitals to organ procurement organizations to determine whether a person dead or near death is a potential donor. See 42 CFR § 482.45 (Condition of participation: Organ, tissue, and eye procurement). The right of the procurement organization to inspect a patient's medical records does not violate HIPAA as a result of an express exemption in the applicable federal regulations. 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.")

Subsection (e) tracts prior law and is designed to assure that no conflict of interest exists for a patient's treating physician where that physician is also treating another individual whom 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 in this country, this section was included to address some public misperceptions by making clear that it should not be able to happen legally.

Section 17: To be provided.

Section 19 was included in this [act] to facilitate interstate recognition of documents of gifts.

1 **REVISED UNIFORM ANATOMICAL GIFT ACT**

2
3
4 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Revised Uniform
5 Anatomical Gift Act (~~200~~).

6 **SECTION 2. DEFINITIONS.** ~~As used in~~ In this [act]:

7 (1) "Agent" means an individual authorized by:

8 (A) a health-care power of attorney to make health-care decisions on
9 behalf of the principal; or,

10 (B) ~~an individual authorized by~~ any other record to make an anatomical
11 gift on behalf of the principal.

12 (2) "Anatomical gift" means a the donation of all or part of a human body to
13 take effect ~~upon or~~ after the donor's death.

14 (3) "Decedent" means a deceased individual whose body or part is the source
15 of an anatomical gift for the purposes of transplantation, therapy, research, or educational
16 purposes. ~~The term includes a stillborn infant or fetus.~~

17 (4) "Document of gift" means a [donor] card or other record used to make an
18 anatomical gift. The term includes a will and a statement or symbol attached to or imprinted
19 on a license to operate a vehicle, or identification card issued by a state, ~~or~~ a donor registry, or
20 the donor's medical records.

21 (5) "Donee" means a person to ~~whom~~ which an anatomical gift has been made
22 under Section 13.

23 (6) "Donor" means an individual ~~making~~ who made an anatomical gift of the

Comment: Do we need to say that the power is valid under state law.

Comment: Would "upon" be the better word here? See 5(e) as a comparison. The '87 act said "upon or after death"

Comment: Deletion made at suggestion of floor comments. The comments was one that I would interpret goes to enactability. Does committee agree with this deletion?

Comment: This insert ties in with changes in sections 4 and 6 relating to making and refusing to make anatomical gifts.

1 individual's part or body. The term includes a decedent.

2 (7) "Donor registry" means a registry that provides for the making, ~~amending~~
3 amendment, or ~~revoking~~ revocation of an anatomical gift or the refusal to make an anatomical
4 gift.

5 (8) "Enucleator" means an individual who is qualified and trained by an
6 organization that is [licensed] [accredited] [regulated] [under federal or state law] to remove
7 or process eyes or parts of eyes.

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

12 (10) "Health-care provider" means an individual licensed, certified, or
13 otherwise authorized or permitted by law to provide health care in the ordinary course of
14 business or practice of a profession. The term includes a physician.

15 ~~(40)~~(11) "Hospital" means a facility licensed, accredited, or approved as a
16 hospital under the law of any state or a facility operated as a hospital |by the United States
17 government, a state, or a subdivision of a state.

18 (12) "Know" means to have actual knowledge.

19 ~~(44)~~(13) "Organ procurement organization" means a person designated by the
20 Secretary of Health and Human Services pursuant to the laws of the United States as an organ
21 procurement organization.

22 ~~(42)~~(14) "Part" means an organ, eye, or tissue of a human being.

Comment: Style would add "who made such a gift" following the word "decedent." I disagree. First, decedent is defined above. So it can not include all persons who die as suggested in the style draft in fn 10. Second, the word "donor" is intended to include decedent on whose behalf donations were made under Section 9. Thus, they would not have been decedents who made the gift.

Comment: Transcript: Commissioner Lisman raised question of whether we want to include provisions regarding donor registries. Transcript has my response. I'm sticking with them.

Comment: Revised in light of Commissioner Winkelman's comments. Similarly definition of "tissue bank" revised.

Comment: Can we constitutionally do this?

1 (13)(15) “Person” means an individual, corporation, business trust, estate,
2 trust, partnership, limited liability company, association, joint venture, public corporation,
3 government, or governmental subdivision, agency or instrumentality, or any other legal or
4 commercial entity.

5 (14)(16) “Physician” means an individual authorized to practice medicine [or
6 osteopathy] under the law of any state.

7 (15)(17) “Procurement organization” means an eye bank, organ procurement
8 organization, or tissue bank.

9 (16)(18) “Reasonably available” means able to be contacted without undue
10 effort and willing and able to act in a timely manner consistent with existing medical criteria
11 necessary for the making of an anatomical gift.

12 (17)(18) “Recipient” means an individual into whom a decedent’s part has
13 been or is intended to be transplanted.

14 (18)(20) “Record” means information that is inscribed on a tangible medium
15 or that is stored in an electronic or other medium and is retrievable in perceivable form.

16 (19)(21) “Sign” means, with the present intent to authenticate a record:

17 (A) to execute or adopt a tangible symbol ~~with the present intent to~~
18 ~~authenticate a record~~; or

19 (B) to attach or logically associate an electronic symbol, sound, or
20 process to or with a record ~~with the present intent to authenticate the record.~~

21 (20)(22) “State” means a state of the United States, the District of Columbia,
22 Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any

Comment: Should we be adding this? A commissioner inquired about this?

1 symbol on either a license to operate a vehicle or identification card issued by the state, a
2 donor registry (paragraph (7)), or a donor’s medical record. The prior versions of the act
3 referred to a motor vehicle operator’s or chauffeur’s license. Both of these continue to be
4 included within the phrase “license to operate a vehicle” but the phrase also encompasses
5 other licenses such as a state-issued motorcycle operator’s license. While a donor card is a
6 record, the reference to donor card has been specifically retained because of the wide
7 acceptance of that concept in our culture.
8

9 A statement or symbol on a license, card, registry, or medical record is the document
10 of gift; it is not merely an expression of intent to make a gift. Therefore, where there is such a
11 statement or symbol, no other document of gift is necessary to evidence the making of an
12 anatomical gift. Nonetheless, potential donors should be encouraged to make their gifts by
13 license or registry, as gifts on a license or registry are more likely to be discovered when the
14 donor is dead or near death.
15

Comment: The use of a medical record to make a gift is new to this draft. Does the committee approve?

16 Under Section 5(c) an anatomical gift can be made by a donor authorizing the person
17 maintaining a registry to include on the registry a statement or symbol that the donor has
18 made a gift. By adding a “donor registry” to as a device for making an anatomical gift, this
19 [act] recognizes the increasing use of donor registries to make anatomical gifts. The use of
20 donor registries was not contemplated at the time either the ‘68 or ‘87 versions of this act
21 were adopted. Today, however, they have assumed increased importance in the anatomical
22 gift world and in time may come to dominant how anatomical gifts are made. While the
23 format of donor registries differ, generally they allow for the making of an anatomical gift of
24 one or more parts and permit that gift to be made over the internet. No known registry
25 provides for a refusal to make an anatomical gift and this [act] does not require that they do
26 so. The operator of the registry may, if it chooses, follow up an electronic registration by
27 sending the donor a card to sign. However, that is not legally required by this [act] to make an
28 effective gift. To the extent that the donor registry complies with the laws relating to
29 electronic signatures the gift would also meet the requirements of Section 4(a) of a signed
30 record.
31

Comment: Relate this to a discussion of Section 4.

32 Although anatomical gifts can be made by or on behalf of an individual from whom
33 the donated part would be removed at death, only the individual from whom the part is or
34 would be removed is a “donor” (paragraph (6)). A decedent whose body or part is the subject
35 of an anatomical gift is also a donor even though someone other than decedent before or after
36 the decedent’s death signed the document of gift. Thus “donor” may in some cases refer to a
37 living individual who made an anatomical gift or on whose behalf an anatomical gift was
38 made, or a decedent whose body or part is the subject of an anatomical gift. Anatomical gifts
39 by a donor, as well as amendments, revocations, and refusals can trump the ability of others to
40 make or revoke anatomical gifts on behalf of the donor. See Section 8.
41

42 The definition of “part” (paragraph 14) while shorter than the definition in the ‘87 Act
43 is functionally the same as all parts of the human body, including bones and fluids, are
44 encompassed within the definition.

Comment: Is this correct?

1
2 The concept of “reasonably available” (paragraph (18)) is based upon a similar
3 concept in the Uniform Health-Care Decisions Act. A decision to make an anatomical gift,
4 particularly of an organ, by persons, other than the donor, is extremely time sensitive. Life-
5 saving organs may be forfeited if persons with a priority to make a post-death anatomical gift
6 cannot be located to make a decision. Physical presence, however, is not required in order to
7 be “reasonably available.” A person is “reasonably available” as long as the person can be
8 contacted without undue effort. Also, the concept assumes that a person is willing to act in a
9 timely manner to permit the successful recovery of organs. A person who is unwilling to
10 make a decision to either donate or refuse to donate in a timely manner is not considered to be
11 “reasonably available.” See Section 10(e).

12
13 **SECTION 3. APPLICABILITY.** This [act] applies to a document of gift, revocation,
14 or refusal to make an anatomical gift made before, on, or after [the effective date of this act]

15 **Comment**

16 Because this [act] applies to documents of gifts executed before the [act’s] effective
17 date, statements on a driver’s license which are deemed only to be evidence of an intent to be
18 a donor now constitute actual words of donation and the license is a document of gift.

19
20 **SECTION 3 4. MAKING ANATOMICAL GIFTS WHO MAY MAKE AN**
21 **ANATOMICAL GIFT BEFORE DECEDENT’S DEATH.** (a) Subject to Section 68, an

22 anatomical gift of an individual’s body or part for transplantation, therapy, research, or
23 education may be made during the life of the individual in the manner provided in Section 5

24 by:

25 (1) (a) the individual, if the individual is:

26 (1) at least [18] years of age;

27 (2) a minor otherwise authorized under state law to make personal
28 health-care decisions or apply for a motor vehicle license or permit.]

29 (3) an emancipated minor];

30 (2) (b) an agent of the individual unless the power of attorney to make health-

Comment: Commissioner English suggests that this be tied to any individual who under other law is entitled to apply for a driver's license. For example, this could read: "eligible to apply for a driver's license under the laws of this state." If we went that route, would we retain (a)(2).

Comment: Added in response to comment of Commissioner Steff and others.

1 As noted in the comments to the definitions, an agent acting under a health-care power
2 of attorney is authorized merely by that designation to make an anatomical gift on behalf of
3 the principal. If the principal does not wish to authorize the agent to make that decision, the
4 power would have to include language to expressly negate that authority. On the other hand,
5 if the agent is acting under another record, such as a financial power of attorney, the agent
6 would be empowered to make an anatomical gift only if that authority was expressly
7 conferred in the record.

8
9 **SECTION 5. MANNER OF MAKING ANATOMICAL GIFT BEFORE**

10 **DECEDENT'S DEATH.**

11 ~~(b)~~(a) An anatomical gift may be made by a [donor] card or other record
12 signed by the person making the gift. If the person making the gift cannot sign the [donor]
13 card or other record, the [donor] card or other record must be signed on the person's behalf by
14 an individual acting at the person's direction and by at least two witnesses, both of whom
15 have signed at the request of ~~that individual~~ the person, and the record must state that it has
16 been so signed.

17 (b) An anatomical gift may be made by authorizing the health care provider of
18 the donor to enter into the donor's medical records a statement or symbol indicating that an
19 anatomical gift has been made.

Comment: Do we need a definition here?

20 (c) A donor may make an anatomical gift by authorizing the [insert reference
21 to motor vehicle department] to imprint on the donor's license to operate a vehicle or ~~state-~~
22 ~~issued~~ identification card issued by a state a statement or symbol indicating that the donor has
23 made an anatomical gift. Revocation, suspension, expiration, or cancellation of the donor's
24 license or card does not invalidate the anatomical gift.

25 (d) A donor may make an anatomical gift by authorizing any person ~~who~~ that
26 maintains a donor registry to include on the donor registry a statement or symbol that the

1 donor has made an anatomical gift.

2 (e) A donor may make an anatomical gift by ~~the donor's~~ a will. An
3 anatomical gift made by ~~a donor's will~~ takes effect upon the donor's death whether or not the
4 will is probated. ~~If the~~ The invalidation of the will is invalidated after the donor's death does
5 not invalidate the anatomical gift. ~~is not invalidated.~~

Comment: Style would delete as "superfluous" Do we agree?

6 **Comment**

7 The execution formalities associated with the making of an anatomical gift generally
8 remain the same as under the '87 act. However, in addition to the making of a gift by a
9 [donor] card, will, or state-issued driver's license, an anatomical gift can also be made on a
10 state-issued identification card or upon a donor registry or on the donor's medical records.
11 The '87 act required an anatomical gift imprinted on a license to be signed by the donor. This
12 [act] does not expressly require a signature on a license, a donor registry, or the donor's
13 medical records, although one or more of these may actually have a signature to the extent
14 they comply with the laws relating to electronic signatures.

15
16 Donor registries were not contemplated by the prior versions of this [act]. Since the
17 promulgation of those acts, numerous donor registries have been created under the auspices of
18 the state or private organizations. Nothing in this [act] either requires the creation of a donor
19 registry or mandates the content of a donor registry. For example, the typical donor registry
20 allows for the making of donations but not the refusal to be an organ donor. This [act] does
21 not require that a registry provide an opportunity to refuse to be an organ donor.

22
23 Section 5(a) permits an anatomical gift by a signed donor card or other record.
24 Typically the person making an anatomical gift will be able sign the record. In those cases
25 where the person making the gift is unable to sign the record, the signature can be made by an
26 individual acting at the request of the person making the donation. This signature, however,
27 must be witnessed by two witnesses acting at the request of the person making the donation.
28 Thus, if a donor cannot sign a record, it can be signed by X if X and the two witnesses act at
29 the donor's request. In addition, the record must state that it was signed and witnessed at the
30 person's request. Section 5(a) is not limited to anatomical gifts by a donor. For example, if a
31 guardian for an adult makes a gift but cannot sign the record, then the record can be signed by
32 another and witnessed by two witnesses, all of whom act at the guardian's request.

33
34 Section 5(b) is new to the anatomical gift laws. It permits an anatomical gift to be
35 made by a statement or symbol in the donor's medical records without the necessity of the
36 donor, or other person making the gift, signing the record. The medical record becomes the
37 document of gift. See Section 2 (paragraph (4)). This section recognizes that this particular
38 document of gift needn't be signed by the donor or other person making the gift. Frequently,

1 the decision to be an organ donor is made as a result of conversations with the donor's
2 physician or other health care provider. Making the gift effective by an entry in the medical
3 records facilitates the gift when the decision is made under those circumstances. Because
4 other laws exist to assure the integrity of medical records, no reason exists to require a
5 signature by the person making the gift. Of course, a person signing a donor card could
6 request a health care provider to include the card in the donor's medical records in much the
7 same way as individuals have health care powers inserted into their medical records.
8 Although this [act] would permit the making of an anatomical gift by a statement or symbol in
9 a donor's medical records, doctors are neither required nor even encouraged to discuss organ
10 donation with their patients. The decision to become an organ donor is highly personal and
11 not all encounters between physicians and patients give rise to an appropriate occasion to
12 consider organ donation. For example, while it could be appropriate for a doctor to discuss
13 with organ donation with a patient in the context of a routine annual physical, it might not be
14 advisable to do so as a patient is being wheeled in for surgery. Additionally, donors making
15 gifts through their medical records should also be encouraged to also make the gift by way of
16 a driver's license or donor registry.

17
18 Section 5(a) applies to all persons making an anatomical gift under Section 4. On the
19 other hand, subsections (c), (d) and (e) apply only to donors. For donors there is, to some
20 extent, an overlap between the four sections as a record includes licenses, identification cards,
21 donor registries, and wills.

22
23 Typically an anatomical gift of a part for transplantation or therapy is not made by a
24 will. In fact, donors would be ill-advised to make a gift by will as the terms of the will may
25 not be known in sufficient time to allow a successful recovery of organs. Clients who make an
26 anatomical gift of their parts by a will should be strongly encouraged to make their wishes
27 known by other means as well. On the other hand, some people donate their bodies to
28 medical science for research or education and they may do so by a will. Subsection (d)
29 provides that, if an anatomical gift is made by will, the gift takes effect at the donor's death
30 and is valid even though the will is not probated or is declared invalid.

31
32 While subsection (e) does not expressly contemplate a will being signed for a donor
33 by another, most statutes of wills authorize a will to be signed on behalf of a testator under
34 certain conditions. See Uniform Probate Code § 2-502. Wills meeting those execution
35 formalities can also make an effective anatomical gift.

36
37 A decision was made in drafting this [act] not to include specific forms for the making
38 of an anatomical gift. Rather, the drafting committee concluded that suggested forms
39 consistent with this [act] be included in these comments. These forms follow:

40
41
42
43
44

1
2 ANATOMICAL GIFT DONOR CARD
3

4 Pursuant to the Anatomical Gift Act, upon my death, I hereby give (check all boxes
5 applicable):
6

- 7 1. Any needed parts (organs, tissues, or eyes);
8 (a) Transplant or therapy only
9 (b) Transplant, therapy, research, or education
10 2. Only the following parts (organs, tissues, or eyes):
11 _____;
12 (a) Transplant or therapy only
13 (b) Transplant, therapy, research, or education
14 3. My body for research and education;
15 4. My body for the following purposes:
16 _____
17

18 _____
19 Date of Birth

Signature of Donor or Other Person Making the Gift

20
21 **INSTRUCTIONS**
22

23 *Check box 1 if the gift of any organ, tissue or eyes is unrestricted and box 1(a) or 1(b)*
24 *depending upon whether the gift is for transplant or therapy only (a) or transplant, therapy,*
25 *research, or education (b).*
26

27 *Complete box 2 if the gift of a part is restricted. For example, if the gift is restricted to*
28 *specific organ(s), tissue(s), or part(s) only, e.g., heart, cornea, etc., check box 2 and write in the*
29 *organ or tissue to be given. Then check either box 2(a) or 2(b) depending upon whether the gift is*
30 *for transplant or therapy only (a) or transplant, therapy, research, or education (b).*
31

32 *If a gift is made only of the entire body for research and education check box 3.*
33

34 *Complete box 4 if there are more specific instructions regarding your anatomical gift.*
35

36 *While this form allows for the making of a gift of the body for research or education, it is*
37 *often advisable that the person making the anatomical gift and the intended donee have reached*
38 *an agreement concerning this gift before the gift is made. Typically, if a gift of the entire body is*
39 *made without specifically naming a donee, the donee will be that research or educational*
40 *organization selected by the organ procurement organization following your death. With respect*
41 *to your organs, tissue or eyes, the donee is the appropriate procurement organization that deals*
42 *with organ, eye or tissue donation.*
43
44

ANATOMICAL GIFT STATE-ISSUED LICENSE OR CARD

1
2
3
4
5 _____
6 Print or Type Name of Donor

- 7 1. Any needed parts (organs, tissues, or eyes);
8 (a) Transplant and therapy only
9 (b) Transplant, therapy, research, or education
10 2. Only the following parts (organs, tissues, or eyes):
11 _____;
12 (a) Transplant and therapy only
13 (b) Transplant, therapy, research, or education
14 3. My body for research and education;
15 4 My body for the following purposes:
16 _____
17

18
19 A state might also provide for the making of an anatomical gift by a statement or symbol on a
20 license using a checkmark in a box labeled “organ donor.” In that case, because the check marked
21 statement reflects only a general intent to be an “organ donor,” only the donor’s parts would be the
22 subject of the anatomical gift. See Section 13(d).

1
2
3
4
5
6
7
8

ANATOMICAL GIFT OF PARTS-DONOR REGISTRY

Anatomical Gifts

Please select the items you wish to donate: *(click an item name for more detailed information about that item or items)*

<input type="checkbox"/> All Organs, Eyes, and Tissues	<input type="checkbox"/> Hepatocytes (<i>Liver Cells</i>)
<input type="checkbox"/> Heart	<input type="checkbox"/> Eyes (whole globe)
<input type="checkbox"/> Liver/Iliac Vessels	<input type="checkbox"/> Corneas
<input type="checkbox"/> Small Intestine	<input type="checkbox"/> Bone and Soft Tissues (i.e. tendons, ligaments, fascia)
<input type="checkbox"/> Pancreas Islet Cells	<input type="checkbox"/> Bone/Tissue Upper Arm
<input type="checkbox"/> Lungs	<input type="checkbox"/> Bone/Tissue Lower Arm
<input type="checkbox"/> Pancreas/Spleen/Iliac Vessels	<input type="checkbox"/> Skin
<input type="checkbox"/> Carotid Arteries	<input type="checkbox"/> Saphenous Veins
<input type="checkbox"/> Kidneys	<input type="checkbox"/> Brain Tissue (research only)
<input type="checkbox"/> Heart for Valves, Conduits, Vessels, Pericardium	

9
10
11
12

I offer the donation of the above checked organs/tissue/eyes for the following purposes:

<input type="checkbox"/> Transplant Only	<input type="checkbox"/> Research Only
<input type="checkbox"/> Both Transplant and Research	

13

1 ANATOMICAL GIFT OF BODY-DONOR REGISTRY

2
3 **Anatomical Gifts**

4
5 **Whole Body Donation**
6 **for Research and Education**

7
8
9 **Please place a checkmark in the box below for whole body donation**

10 Whole Body Donation

11
12 **I offer the donation of the above for the following purposes:**

13 Research Only Education Only
14 Both Research and Education

15
16 **SECTION 4-6. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE**
17 **THE DECEDENT’S DEATH.**

18 (a) Subject to Section 6-8, a donor or other person authorized to make an
19 anatomical gift under Section 3-4 may amend or revoke an anatomical gift, whether or not made
20 by will, by:

21 (1) a ~~signed~~ record signed by:

22 (A) the donor;

23 (B) another person which made the anatomical gift on behalf of the

24 donor; or

25 (C) another individual acting at the direction of the donor or the

26 other person; or

Comment: If have used the word person, not individual because I assume there are some states where an institution can be a "guardian" If only an individual can be a guardian this could read: "another individual who ..."

Comment: Should this be "individual?"

1 (2) a later-dated document of gift that amends or revokes ~~or amends~~ a
2 previous anatomical gift or a portion of a gift, either expressly or by inconsistency.

3 (b) Subject to Section 8, a donor or other person authorized to make an
4 anatomical gift under Section 4 may revoke an anatomical gift by the destruction of the
5 document of gift with the intent to revoke the gift.

Comment: This is new

6 ~~(b)~~(c) A donor may also amend or revoke an anatomical gift, that was not made
7 by will; by any form of communication during a terminal illness or injury addressed to at least
8 two other individuals who are at least [18] years of age.

Comment: The prior act provided: "any form of communication during a terminal illness or injury addressed to a physician or surgeon". This section is more expansive. Is it too expansive? Should we require at least one of the witnesses to be disinterested? Note that subsection (a) permits revocation by an oral communication to a doctor if that revocation is recorded in the medical records.

9 ~~(e)~~(d) A donor who makes an anatomical gift by will may also amend or revoke
10 the gift in the manner provided for amendment or revocation of wills or the manner provided in
11 subsection (a).

12 **Comment**

13 Section 6, relating to the amendment and revocations of anatomical gifts, largely mirrors
14 the provisions in the prior acts. The section applies to the amendment or revocation of an
15 anatomical gift whether made by a donor or by another person on behalf of the individual whose
16 body or parts are the subject of the anatomical gift. Subsection (a)(2), borrowing from statutes
17 dealing with the revocation of wills, contemplates revocations or amendments made either
18 expressly or by inconsistency with the later document of gift in time controlling. For example,
19 suppose a donor executes a will bequeathing her entire body to Medical School A for research
20 and education. Later, the donor signs a document of gift donating a kidney for transplantation.
21 Since the latter document of gift is only inconsistent with the prior document of gift to the extent
22 of the donated kidney, the donor's kidney would, if medically suitable, pass to the appropriate
23 procurement organization (See Section 13) and the donor's remaining body would pass to
24 Medical School A.

25 An anatomical gift can be revoked by a record signed by the donor or the other person
26 who made the gift on the donor's behalf pursuant to Section 4. Additionally, it can be signed by
27 another individual acting at the direction of the donor or other person. For example, suppose a
28 minor's parent signs a document of gift donating the minor's organs. The donor may later
29 revoke that gift by a signed record. Under Section 6(a)(2), the donor may also amend or revoke
30 the gift by a later-dated document of gift that is inconsistent with the earlier document of gift
31 signed by the parent.
32

1
2 Suppose a donor signed a donor card to donate a kidney and later advised her physician
3 that she no longer wanted to be a kidney donor. In this case, an entry in the patient’s medical
4 records would revoke the early gift because the medical record would be a record signed by the
5 physician at the donor’s direction. Because the medical record does not purport to make an
6 anatomical gift, it cannot be a document of gift.

7
8 In light of the broad definition of a document of gift, use of any of the specific devises
9 described in Section 5 to make a gift for the purpose of amending or revoking a gift would be
10 sufficient under this section. For example, suppose a donor advised his physician that he wanted
11 to be a kidney donor and later advised his physician he wanted to be a heart donor and both of
12 these decisions are recorded in the donor’s medical records. The donor would be both a kidney
13 and heart donor.

14
15 An anatomical gift made by a document of gift can also be revoked by destruction if the
16 destruction is done with the intent to revoke the gift. As a practical matter revocation by
17 destruction will not be possible for gifts made on a donor registry. Donor wishing to revoke gifts
18 made on a registry should revise the registry. If an anatomical gift was evidenced by a written
19 document which was destroyed inadvertently and cannot be found, there may be no effective
20 Section 4 anatomical gift because no one may know of the gift. Inadvertent destruction of donor
21 cards are common. For example, a card may be lost when the donor decides to clean out a wallet
22 or purse. Thus, donors are well advised to make their wishes known on documents of gift with
23 greater permanency, such as a licenses, registries, or medical records, in order to reduce the risk
24 of inadvertent destruction.

25
26 The ability to make or revoke an anatomical gift is subject to the limitations in Section 8
27 of this [act]. For example, if a donor makes an anatomical gift of a kidney, all other persons are
28 precluded from making a later gift of that kidney or revoking that gift. Therefore, the donor’s
29 later-appointed guardian would not be empowered to amend or revoke that gift.

30
31 An anatomical gift may also be revoked or amended by a donor with a terminal illness or
32 injury by any form of communication that is addressed to at least two individuals over the age of
33 [18]. If the donor cannot communicate orally, acceptable communication, in addition to a record,
34 could include a movement of the head or eye in response to specific questions.

35
36 **SECTION 57. REFUSAL TO MAKE ANATOMICAL GIFT.**

37 (a) An individual may refuse to make an anatomical gift of the individual’s body
38 or any part by:

- 39 (1) a ~~signed~~ record signed by the individual or by the individual’s will
40 whether or not the will is admitted to probate or invalidated after the individual’s death;

1 Section 7. Later that individual signs a record stating only “I revoke the refusal.” At this point
2 that individual is neither a donor nor a refuser and upon the individual’s death, an anatomical gift
3 could be made by the person or persons listed in Section 9. On the other hand, suppose the
4 individual who had signed a refusal later executed a document of gift donating “my kidney
5 only.” Here there is a gift of the kidney and a refusal to be a donor of any other part. This would
6 preclude any person from revoking the gift of the kidney or making a gift of any other part.
7 Similarly, if the individual had signed a refusal and then later obtained a driver’s license stating
8 that the individual wanted to be an “organ donor.” The driver’s license would revoke the refusal
9 to the extent inconsistent with the refusal.

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

11 Pursuant to the Anatomical Gift Act, I hereby refuse to make any anatomical gift.

12
13
14
15
16
17 _____
Date of Birth

Signature of Declarant

18
19 **SECTION 6-8. ~~PRECLUSIVE EFFECT OF GIFT, AMENDMENT,~~**
20 **REVOCA~~TION,~~ OR REFUSAL.**

21 (a) ~~A donor’s anatomical gift or amendment of an anatomical or an individual’s~~
22 ~~refusal to make an anatomical gift of the individual’s body or a part precludes any other person~~
23 ~~from making, amending, or revoking an anatomical gift of the body or that part. In the absence~~
24 ~~of contrary indications by the donor, no person, other than a donor, may make, amend, or revoke~~
25 an anatomical gift of the donor’s body or part if the donor made an anatomical gift or an
26 amendment of an anatomical gift of the donor’s body or that part under Section 4 or Section 6.

27 (b) A donor’s revocation of an anatomical gift of the donor’s body or any part
28 under Section 4 ~~6~~ does not preclude any other person from making an anatomical gift of the body
29 or any part under Section 4 or Section 9 of this [act].

30 (c) If an individual refuses to make an anatomical gift of the individual’s body or
31 a part under Section 7, no other person may make an anatomical gift of the body or that part in

1 the absence of contrary indications by that individual.

2 ~~(e)(d)~~ If a person other than the donor makes ~~A~~ an anatomical gift or an
3 amendment ~~or revocation~~ of an anatomical gift of all or any part of the donor's body under
4 Section 4 or Section 6 by a person other than the donor precludes all other persons from no other
5 person may making, amending, or revoking make, amend, or revoke the an anatomical gift of the
6 body or that part at a later time under Section 79.

Comment: This had been inadvertently included in the prior draft and its bad consequences highlighted by Commissioner 's Pepe's floor comments.

7 (e) A revocation of an anatomical gift of all or any part of the donor's body under
8 Section 6 by a person other than the donor does not preclude any other person from making an
9 anatomical gift of the body or any part under Section 4 or Section 8.

Comment: Is "bar" a better word?

10 ~~(d)~~(f) In the absence of contrary indications by the donor or other person
11 authorized to make an anatomical gift under Section ~~3-4~~:

12 ~~(1)~~ an anatomical gift of a part is neither a refusal to give other parts nor a
13 limitation on the making of an anatomical gift of other parts under Section 7 9, ~~and~~

14 ~~(2) a revocation or amendment of an anatomical gift is not a refusal to~~
15 ~~make an anatomical gift at a later time.~~

Comment: (2) is redundant of 7(b) and 7(e).

16 **Comment**

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

25
26 Section 8 is designed to bolster the rule that a donor's autonomous decisions regarding
27 the making or refusing to make an anatomical gift are honored and not subject to change by
28 others. Section 8 continues the policy of making lifetime donations irrevocable while also taking

1 away from families the ability to consent to, amend, or revoke donations made by donors during
2 their lifetimes. It also prevents families from making donations on behalf of decedents who,
3 while living, had signed a refusal to make an anatomical gift under Section 6 unless there is
4 evidence that the individual signing the refusal did not intend to have that refusal bind others
5 after death.

6
7 Section 8(a) provides that if a donor has made an anatomical gift or has amended an
8 anatomical gift, no other person can make, amend, or revoke that gift. For example, suppose a
9 donor gifts the donor's organs for transplantation by an appropriate document of gift. By virtue
10 of Section 8(a), no other person, whether purporting to act under Section 4 or Section 9, can alter
11 or revoke that gift. In fact, because they are by this [act] precluded from doing so, they have no
12 legal authority or right to alter or revoke the gift.

13
14 Section 8(b) provides that the donor's revocation of an anatomical gift, as distinguished
15 from a refusal, precludes no one from making an anatomical gift of the donor's body or parts.
16 The difference between the sections is that a revocation is an ambiguous act respecting the
17 donor's intention to bind others. A donor might want to bind others but it is just as likely that a
18 donor was ambivalent and was more than willing to leave the decision to donate to others. For
19 example, suppose a donor, who had donated a kidney by a donor card, later destroys that card
20 with the intent to revoke the gift. This revocation will not prevent another acting under either
21 Section 4 or 9 from making an anatomical gift. A donor who wishes both to revoke and bind
22 others must sign a refusal.

23
24 Section 8(c) provides that an individual's refusal to make an anatomical gift of the
25 individual's body or a part precludes all others from later making a gift of the body or that part
26 absent contrary indications by that individual. Thus, if an individual signs a Section 7 refusal, no
27 person following that individual's death has the power to make an anatomical gift for that
28 individual. Of course, such persons are precluded only if they know of the refusal. See Section
29 9(b). This section also honors the autonomy of the individual to refuse to have his body or parts
30 the subject of an anatomical gift. While this [act], as well as the prior acts, reflects the policy of
31 encouraging anatomical gifts, it also is important to respect the autonomous decisions of
32 individuals not to be organ donors.

33
34 An individual might sign a Section 7 refusal that is not intended to affect the ability of
35 others to make an anatomical gift following the individual's death. If that intent is reflected in
36 the refusal, or under Section 7(b) if the refusal is later revoked, then other persons can make an
37 anatomical gift under Section 9. For example, suppose an individual signs a Section 7 refusal
38 barring the making of an anatomical gift of the individual's body and parts. If that person does
39 not revoke the refusal, then neither that individual's agent or guardian nor any person listed in
40 Section 9 can make an anatomical gift of the individual's body or part. However, it is possible
41 that an individual might wish to bar the individual's guardian from making an anatomical gift
42 under Section 4 but not the individual's family from making a gift under Section 9. If that intent
43 is made clear in the refusal, that intent will be honored.

1 A revocation is not a refusal, however, Therefore a donor's revocation of a previously
2 made anatomical gift of a part does not preclude an agent or guardian acting under Section 4 or
3 any person listed in Section 9 from making a later gift of the donor's body or part. The only way
4 a donor can bar another from making a gift is by the execution of a Section 7 refusal. This policy
5 is consistent with prior law. Therefore, donors wishing to bar others from making an anatomical
6 gift must sign a refusal.

7
8 Sections 8(d) and (e) apply to gifts, amendments and revocations by persons other than a
9 donor under either Section 4 or 6 of this [act]. These persons cannot make a Section 7 refusal.
10 Generally, the rules here parallel the rules applicable to donors in Section 8 (a) and (b). For
11 example, suppose the guardian of an individual makes a donation of that individual's kidney by
12 signing a document of gift. Later the individual dies. The only individual who could revoke that
13 gift would be the person acting as the individual's guardian at the individual's death since all of
14 the other persons listed in Section 9 would be precluded from revoking the gift. The guardian's
15 decision would not affect the ability of the donor, the donor's agent, or the donor's guardian
16 from later making, amending, or revoking a gift or the individual whose body or part was
17 donated from later signing a Section 6 refusal. However, the revocation of an anatomical gift by
18 a agent, parent or guardian would not prevent the making of an anatomical gift under Section 9.
19 For example, suppose a minor makes an anatomical gift by a notation on a driver's license which
20 the parent revokes prior to the minor attaining age 18. The minor takes no further action to
21 effectuate the gift and dies at age 19 survived by a spouse. The spouse could make an anatomical
22 gift because the parent's revocation of the minor's anatomical gift does not prevent the spouse
23 from making the gift.

24
25 Section 8(f) consistent with prior law provides that absent contrary indications by the
26 person making an anatomical gift, the gift of a part is neither a refusal to give other parts nor a
27 limitation on the making of gifts of other parts. Thus, donor makes a gift of the donor's kidney.
28 This gift is not construed as a refusal to the donor's family later making a gift of the donor's
29 heart.

30
31 **~~SECTION 7.9. MAKING, REVOKING, AND OBJECTING TO ANATOMICAL~~**
32 **~~GIFTS BY OTHERS~~ WHO MAY MAKE AN ANATOMICAL GIFT AFTER THE**
33 **DECEDENT'S DEATH.**

34 (a) Subject to subsection (e) (b) and Section 10(b), an anatomical gift of all or
35 any part of a decedent's body for purposes of transplantation, therapy, research, or education
36 may be made ~~and except as otherwise provided in Section 6,~~ in the order of priority listed, by
37 any member of the following classes of persons who is reasonably available: ~~or, if there is more~~

1 ~~than one member of a class listed in subsections paragraphs (1), (3), (4), (5), (6), (7) or (8), a~~
2 ~~majority of the members of the class who are reasonably available, may make an anatomical gift~~
3 ~~of all or any part of a decedent's body for transplantation, therapy, research, or education:~~

4 (1) ~~an~~ the individual who was acting as the agent of the decedent at the
5 time of death and who could have made an anatomical gift under section 4(b) of this [act]
6 immediately before the decedent's death;

7 (2) the spouse of the decedent;

8 (3) adult children of the decedent;

9 (4) parents of the decedent;

10 (5) adult siblings of the decedent;

11 (6) adult grandchildren of the decedent;

12 (7) grandparents of the decedent;

13 (8) ~~a~~ the persons who were acting as the [guardian] of the person of the
14 decedent at the time of death;

15 (9) an adult who exhibited special care and concern for the decedent and
16 was familiar with the decedent's personal values, and who is reasonably available to make an
17 anatomical gift on behalf of the decedent; and

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

20 (b) If there is more than one member of a class listed in paragraphs (1), (3), (4),
21 (5), (6), (7), (8), or (10), an anatomical gift may be made by a majority of the members of the
22 class who are reasonably available.

Comment: I assume children are defined by other law. Someone asks about step-children. Should they be added to the list?

Comment: If guardians limited to individuals, this could read, individuals who were

Comment: Under this language a coroner could make a gift of the body organs of a person with no family. Is that the right result? Will the coroner's object?

1 **Comment**

2 Section 9 allows for the making of anatomical gifts following an individual’s death by
3 the persons listed in Section 9 who are not otherwise precluded from doing so under either
4 Section 8 or Section 10. The list of persons who can make an anatomical gift on behalf of a
5 decedent is slightly expanded from prior law. This list now includes that individual who at the
6 time of the decedent’s death was acting as an agent of the decedent, adult grandchildren of the
7 decedent, and a close friend of the decedent.
8

9 This act does not extend the agency relationship beyond a principal’s death. Under other
10 law, an agent’s power under a health-care power or any power terminates when the principal
11 dies. This [act], however, gives the person who had been acting as an agent at the time of the
12 principal’s death (even though death terminated the agency relationship) a personal right to have
13 the first priority to make an anatomical gift on behalf of the decedent so long as that person was
14 empowered immediately before the decedent’s death to have made an anatomical gift under
15 Section 4. Thus, if the agent acting under a health care power did not have the authority to make
16 an anatomical gift by express language in the health care power of attorney, that individual
17 would not have a priority to do so under Section 9.
18

19 Absent a donation by the decedent or the decedent’s former agent, other persons or
20 classes of person are empowered to make an anatomical gift in the following order: spouse of the
21 decedent, adult children of the decedent; parents of the decedent, adult siblings of the decedent;
22 adult grandchildren of the decedent; grandparents of the decedent; and the person who was
23 acting as guardian of the decedent at the time of the decedent’s death. In the absence of those
24 person a decision can be made by any other adult exhibiting “special care and concern for the
25 decedent who was familiar with the decedent’s personal values.” This concept parallels language
26 in Section 5(c) of the Uniform Health-Care Decisions Act. Lastly, “any other person having the
27 authority to dispose of the decedent’s body can make the decision if no other persons are
28 reasonably available.
29

30 This [act], in common with the prior acts, does not require, except in the case of a “close
31 friend,” that the person making the anatomical gift be familiar with the decedent’s personal
32 values. The difference assumes that the other persons empowered to make an anatomical gift
33 would, by virtue or their relationship to the decedent, be aware of decedent’s values and to
34 expressly require it might result in unnecessary disputes. To the extent that an individual is
35 concerned that the persons named in Section 9 may not take adequate account of their personal
36 preferences regarding anatomical gifts, the onus is on them to either make or preclude the
37 making of an anatomical gift.
38

39 A commonly raised concern regarding whether an anatomical gift might be
40 inconsistent with a decedent’s personal beliefs centers around religion. In *Organ and Tissue*
41 *Donation: A Reference Guide for Clergy, 4th ed., 2000. Cooper ML, Taylor GJ, eds* and
42 reprinted at <http://www.organtransplants.org/understanding/religion> an analysis was done of the
43 positions and statements of various religions regarding organ donation. While not exhaustive of

Comment: Commissioner Ossen raised an issue regarding religious objections. There was extended discussion. Should we be doing more?

1 all religious traditions (it included only the following: African Methodist Episcopal, Amish,
2 Assembly of God, Baptist, Bretheren, Buddhism, Catholicism, Disciples of Christ, Christian
3 Science, Episcopal, Greek Orthodox, Hinduism, Independent Conservative Evangelical, Islam,
4 Jehovah’s Witnesses, Judaism, Lutheran, Mennonite, Moravian, Church of Jesus Christ of
5 Latter-Day Saints, Pentecostal, Presbyterian, Seventh-Day Adventists, and Shinto, Society of
6 Friends, Unitarian Universalist, United Church of Christ and United Methodist), the authors
7 found no religious objection to organ donation. It did find in many traditions enthusiastic
8 support; in many others the view that the decision is solely for the individual or family. Notably,
9 Pope John Paul II has stated: “The Catholic Church would promote the fact that there is a need
10 for organ donors and that Christians should accept this as a ‘challenge to their generosity and
11 fraternal love’ so long as ethical principles are followed.” *Id.* For individuals with a religious
12 objection to donation, the opportunity to refuse a donation and preclude any other person from
13 donating their organs is an important safeguard in this [act].
14

15 Because of subsection (b) and unlike the ’87 act, if a class empowered to make a gift has
16 multiple members and a majority of the members of the class who are reasonably available make
17 the gift, the gift is valid notwithstanding the objection of one or more members of the class. This
18 rule, however, is inapplicable to the “close friend” category. While the decedent may have had
19 more than one “close friend” under this [act] any of them is empowered to make an anatomical
20 gift.
21

22 The concept and definition of “reasonably available” is new in this [act]. It is drawn from
23 lessons learned in the drafting of the Uniform Health-Care Decisions Act and borrows from the
24 language in Section 1(14) of that act. The making of an anatomical gift following a decedent’s
25 death is extremely time sensitive, and a decision to donate must be made within a relatively short
26 period of time following death if the organs are to remain viable and human lives are to be saved.
27 In practice, where an anatomical gift of a decedent’s organs was not made prior to death,
28 conversations with family members to consider donation often occur before death but that is not
29 always possible. In accident cases, for example, it can take time to locate all family members.
30 Where a decision to donate on behalf of a dying person can be made in advance, the procurement
31 organizations generally will have no difficulty in contacting persons with the priority to make an
32 anatomical gift. However, in other cases locating persons with a higher priority may not be as
33 easy or even possible (although this should be less so in this highly electronic age). For example,
34 a person may be dying as the result of an automobile accident. The procurement organization
35 may have easily contacted the dying person’s adult siblings but their parents are on a cruise. This
36 [act] would allow the siblings to act assuming the parents could not be contacted to consider
37 whether to make or refuse to make a donation.
38

39 **SECTION 10. MANNER OF MAKING OR REVOKING ANATOMICAL GIFT**

40 **AFTER DECEDENT’S DEATH .**

41 ~~(b)~~(a) An anatomical gift under ~~subsection (a)~~ Section 9 may ~~only~~ be made only

1 by a document of gift signed by the person making the gift or that person's telegraphic, recorded
2 telephonic, or other recorded message or by another form of oral communication that is
3 contemporaneously reduced to a record and signed by the donee.

Comment: Can we come up with better language here?

4 (e)(b) A person or class of persons listed in subsection (a) of Section 9 may not
5 make an anatomical gift if:

6 (1) the person or class of persons knows that the right to make an
7 anatomical gift was precluded by Section 8;

Comment: Would "barred" be a better word?

8 (2) the person or class of persons knows of any objection to the making of
9 an anatomical gift by any member of a prior class who is not reasonably available, or, if there is
10 more than one member of the prior class who is not reasonably available, the person knows of
11 an objection by a majority of them or knows that they are equally divided whether to make an
12 anatomical gift; or,

13 (3) a person in a prior class is reasonably available at the time of the
14 decedent's death to make an anatomical gift but has not been given a reasonable opportunity to
15 make or refuse to object to the making of to make an anatomical gift.

Comment: While I don't like this language I wanted to not use the word refuse so as to limit the use of the word refuse to acts by a donor. Help?

16 (d)(c) Subject to subsection (e-d), an anatomical gift by a person authorized
17 under subsection (a) Section 9 of this [act] may be revoked orally or in a record by any member
18 of a prior class who is reasonably available. If there is more than one member of the prior class
19 who is reasonably available, the gift is revoked only if a majority of them members of the class
20 object to the making of the anatomical gift or they members are equally divided whether to make
21 an anatomical gift.

22 (e)(d) A revocation under subsection (d c) is effective only if, before procedures

1 ~~have begun to remove a part from the decedent's body or surgically prepare the recipient, the~~
2 donee or the physician, technician, or enucleator removing the part or preparing the recipient
3 actually knows of the revocation before procedures have begun to remove a part from the
4 decedent's body or to surgically prepare the recipient.

Comment: Should a revocation under this section be evidenced by a signed record?

5 ~~(f)(e)~~ For purposes of this section, if a person having priority to make, to object
6 to the making of, or to revoke ~~refuse to make~~ an anatomical gift is unwilling to make a decision
7 in a reasonably timely manner, the person is deemed not to be reasonably available.

Comment: See comment above where a similar change was made.

8 **Comment**

Comment: Commissioner Pepe raised concerns here. He worries that an unwillingness to make a decision is really an objection. See transcript for Ring and Katz response. Are we satisfied? He also suggested that if a person is unwilling to make a decision that they must be advised that that unwillingness will allow someone lower down on the list to make the decision. He also suggested that the act require Section 8 decision makers to honor a "known religious objection."

9 Section 10(a) provides that an anatomical gift under Section 9 must be made by a
10 document of gift that is signed by the person making the gift. The person may also make the gift
11 orally but evidence of that oral gift must be reduced to a record signed by the donee determined
12 under Section 13. For example, the decedent's spouse might consent to a gift over the telephone.
13 The organ procurement organization, as donee, would then note that consent in a record and sign
14 that record.

15
16 No person may make an anatomical gift if the person knows that the right to make an
17 anatomical gift was precluded under Section 8. For purposes of this [act] "knows" is defined to
18 mean actual knowledge. See Section 2(paragraph 12). This places an onus on individuals
19 wishing to preclude an anatomical gift of their parts following their deaths to do so by a record
20 that is easily discoverable or to communicate to their loved ones their wishes. These individuals,
21 for example, might want to have their refusal (or their donations) included in their medical
22 records.

23
24 No person may make an anatomical gift if the person knows of any objection to the
25 making of an anatomical gift by any member of a prior class who is not reasonably available.
26 See Section 10(b)(2). For example, if the decedent's spouse is not reasonably available, a child
27 of the decedent cannot make an anatomical gift if the child knows that the decedent's spouse
28 objects to the making of an anatomical gift. But, if there are multiple members of a class who
29 are not reasonably available, a person in a more remote class can make an anatomical gift unless
30 the person knows either that a majority of the prior class object to the making of the gift or that
31 the unavailable members of the group are equally divided. This majority/equally divided rule
32 means that a known objection by only one member of a class of more than two persons does not
33 bar a person in a more remote class from making an anatomical gift. For example, suppose
34 decedent's relatives include six adult siblings who are not reasonably available and an adult
35 grandchild. The grandchild, although in a more remote class, can make the anatomical gift so
36 long as the grandchild has no knowledge that four adult siblings object or that the siblings are

1 equally divided. (Under prior law a person was barred from making an anatomical gift if the
2 person knew of an objection by any member of the person’s class or prior class. Section 3(b)(3)).
3 Suppose it turns out that one of the siblings becomes reasonably available before procedures had
4 begun to either remove the part from the donor or to surgically prepare the recipient. See
5 subsection (d). That sibling could revoke the grandchild’s gift under subsection (c).
6

7 Of course, if the siblings, or any one of them, were reasonably available to make a
8 decision initially but had not been given the opportunity to do so, then the grandchild would not
9 be empowered to make the gift under Section 9. See Section 10(b)(3). On the other hand, if the
10 siblings were reasonably available but unwilling to make a decision in a reasonably timely
11 manner, Section 10(e) treats them as unavailable.
12

13 In common with the prior law, if a member of a class, or the majority of the members of a
14 class, make an anatomical gift but there is a member of a prior class who is reasonably available,
15 that member may revoke the gift. Section 10(c). However, unlike prior law, subsection (c)
16 provides that if the prior class has more than one member who is reasonably available, then the
17 gift can be revoked only if the majority of the members of the prior class revoke the gift or they
18 are equally divided. For example, suppose an anatomical gift of a kidney is made by a parent of
19 the decedent. Prior to either the removal of the kidney from the decedent or the surgical
20 preparation of the recipient, a child of the decedent who was not initially present to make or
21 refuse to make a gift purports to revoke the gift. If this child is decedent’s only reasonably
22 available child, the gift is revoked. But, if there are three children who are reasonably available,
23 the gift is not revoked unless two of them agree to revoke the gift.
24

25 This act, unlike prior law, defines “reasonably available.” (Section 2 (paragraph 18)).
26 Section 10(e) also provides that, if a person with a priority to make, to object to the making of, or
27 to revoke a gift, is “unwilling” to make a decision, that person is deemed *not* to be reasonably
28 available. For example, an individual with a higher priority (spouse) may be unwilling to make a
29 decision preferring it be made by others (children). In this case the spouse, being unwilling to
30 make a decision, is not reasonably available. There is some concern that an unwillingness to
31 make a decision is the equivalent of an objection, or that in treating it as an objection, there is the
32 potential for inappropriate pressure being placed on a grieving relative to make a decision. This
33 concern relates to a potential tension between the goal of anatomical acts to increase the supply
34 of transplantable organs and the general societal goal of respecting individual autonomy. This
35 [act] reflects a judgment that in the context of organ donation, the potential savings in human life
36 justifies the position that the inability to express a decision is tantamount to not being available
37 to make a decision. This policy choice was supported by the fact that procurement organizations
38 are well-trained to work with family members when seeking an anatomical gift to distinguish
39 between an objection and a true unwillingness to make a decision.
40

41
42 **SECTION § 11. COOPERATION BETWEEN [CORONER][MEDICAL**
43 **EXAMINER] AND PROCUREMENT ORGANIZATIONS AND DONEES.**

1 (a) A [coroner] [medical examiner] and a procurement organization shall
2 collaborate to maximize the opportunity to recover ~~parts~~ anatomical gifts for the purposes of
3 transplantation, therapy, research, and education.

4 (b) Upon request of a procurement organization, a [coroner] [medical examiner]
5 shall release the name, contact information, available medical and social history, and autopsy
6 results relating to the death of a deceased individual in the [coroner's] [medical examiner's]
7 jurisdiction if the release will not interfere with an [examination or investigation][autopsy].

Comment: Style would have me use "decedent" but cannot do that here as decedent is a defined term that won't necessarily work here.

8 (c) If a [coroner] [medical examiner] receives notice from a procurement
9 organization that an anatomical gift might be available with respect to a deceased individual
10 whose body is in the jurisdiction of the [coroner][medical examiner] or receives notice from a
11 donee of an anatomical gift of any part from a decedent in the jurisdiction of the
12 [coroner][medical examiner], the [coroner][medical examiner] shall conduct an examination,
13 autopsy, or analysis of those parts in a manner and within a time period compatible with their
14 preservation for the purposes of the anatomical gift.

Comment: Eye bank has raised question about charges.

15 (d) If the body of a deceased individual is in the jurisdiction of the
16 [coroner][medical examiner], the [coroner][medical examiner] may review all necessary
17 information, including medical records, laboratory test results, x-rays, and other diagnostic
18 results, and other information in the possession of any person about the deceased individual
19 which are in the possession of any person which the [coroner] [medical examiner] determines
20 may be relevant to an examination, autopsy, or analysis of the body and parts of a body within
21 the jurisdiction of the [coroner] [medical examiner] .

Comment: Is this responsive to Commissioner LeBrun's comments? He is concerned that a coroner could get to the medical records of a relative if relevant . . .

22 (e) A person that has any information ~~Any information~~ requested by a

1 [coroner] [medical examiner] pursuant to subsection (d) shall provide ~~must be provided by the~~
2 ~~person having~~ that information as expeditiously as possible to allow the [coroner] [medical
3 examiner] to conduct the investigation into the cause of death and to complete the examination,
4 autopsy, or analysis of the body and parts within a time period compatible with the preservation
5 of parts for purposes of transplantation, therapy, research, or education.

6 ~~(e)~~(f) If an anatomical gift has been made of an organ from a decedent whose
7 body is within the jurisdiction of a [coroner] [medical examiner] and ~~no~~ an autopsy is not
8 required, or the [coroner] [medical examiner] determines that an autopsy is required but that the
9 recovery of the organ will not interfere with the autopsy, the [coroner] [medical examiner] and
10 ~~the~~ organ procurement organization shall collaborate in the timely removal of the organ from a
11 decedent for purposes of transplantation or therapy.

12 ~~(f)~~(g) If an anatomical gift of an organ from a deceased individual whose body is
13 within the jurisdiction of a [coroner] [medical examiner] has been or might be made but the
14 [coroner] [medical examiner] initially believes that the recovery of the organ by the organ
15 procurement organization could interfere with the investigation into that individual's cause of
16 death, ~~then~~ the [coroner] [medical examiner] or its designee shall attend the removal procedure
17 for that organ before making a final determination not to allow the organ procurement
18 organization to recover the organ for transplantation, therapy, research, or education. At the
19 removal procedure, the [coroner] [medical examiner] may allow recovery by the organ
20 procurement organization to proceed, request a biopsy, or deny recovery by the organ
21 procurement organization if, in the judgment of the [coroner] [medical examiner] , the organ may
22 be involved in determining the individual's cause of death. The [coroner] [medical examiner]

1 shall explain in a record the reasons for not allowing the organ procurement organization to
2 recover the organ and shall include those reasons in the records of the [coroner] [medical
3 examiner] and provide a copy of the reasons to the organ procurement ~~agency~~ organization.

4 ~~(g)~~(h) If, ~~pursuant to subsection (fg)~~, a [coroner] [medical examiner] is required
5 to be present at an autopsy under subsection (g), the organ procurement organization requesting
6 the recovery of the organ shall reimburse the [coroner] [medical examiner] , upon request, for the
7 ~~actual~~ direct costs incurred in ~~performing the duty specified in complying with~~ subdivision (fg).

8 ~~(h)~~ A [coroner] [medical examiner] ~~shall release, upon request of a procurement~~
9 ~~organization, the name, contact information, available medical and social history, and autopsy~~
10 ~~results relating to the death of a deceased individual in the [coroner's] [medical examiner's]~~
11 ~~jurisdiction if the release will not interfere with an [examination or investigation][autopsy].~~

12 (i) If an anatomical gift of eyes or tissue has been made, a [coroner] [medical
13 examiner] shall permit the timely removal of eyes and tissue from a decedent for purposes of
14 transplantation or therapy by a procurement organization.

15 (j) This section does not authorize ~~the making of~~ any person to make an
16 anatomical gift ~~by any person~~. No parts may be removed from the body of a deceased individual
17 in the jurisdiction of a [coroner] [medical examiner] for transplantation, therapy, research, or
18 education unless that part or body is the subject of an anatomical gift. The body of a deceased
19 individual within the jurisdiction of the [coroner] [medical examiner] may not be delivered to a
20 donee of the body for research or education unless the body is the subject of an anatomical gift.

21 **Comment**

22 Under subsection (a) collaboration should include the development and implementation
23 of a death notification protocol to procurement organizations.

Comment: This was the subject of some discussion from Commissioner Hilliard. He thought "reasonable costs." I think "direct" is more precise. A issue is the relationship between this and Medicare reimbursement. We will need some education from our observers.

Comment: Eye bank has raised question about charges.

Comment: Do we need to make this provision subject to the same qualifications as in subsection (g)? See letter from Eye Bank Ass'n of 6/15/05

1
2
3 **SECTION 9 12. SEARCH AND NOTIFICATION.**

4 (a) The following persons shall make a reasonable search of an individual's
5 personal effects available on or near the individual for a document of gift or other information
6 identifying ~~an~~ that individual as an individual who has made or refused to make an anatomical
7 gift or on whose behalf an anatomical gift has been made:

8 (1) a law enforcement officer, ~~fireman~~ firefighter, paramedic, or other
9 emergency rescuer finding an individual who the searcher reasonably believes is dead or near
10 death; and

11 (2) a hospital, upon the admission of ~~the~~ that individual at or near the time
12 of death, if no other source of the information ~~there is not~~ immediately available ~~any other source~~
13 ~~of that information.~~

14 (b) If a law enforcement officer or any other person with access to motor vehicle
15 records finds an individual who the law enforcement officer or other person reasonably believes
16 is dead or near death, the law enforcement officer or other person shall make a reasonable search
17 of the motor vehicle records to ascertain whether the individual has made or refused to make an
18 anatomical gift.

19 (c) A organ procurement organization, upon admission of an individual at or near
20 the time of death, shall make a reasonable search of any donor registry serving the geographical
21 area in which the hospital is located to ascertain whether the individual has made or refused to
22 make an anatomical gift.

23 ~~(b)~~(d) If a document of gift or a record evidencing a ~~evidence of~~ refusal to make

Comment: See concern expressed by Commissioner Klemin with response by Commissioners Nixon and McKay. Have we more to do here? Should we return to prior language so that if a person is found in a living room there can be a search of the bedroom, given that the search must be "reasonable" and limited in scope.

Comment: Responding to concerns of many commissioners. Is retaining this likely to raise too much of a fuss and does suggested new (b) below a better solution. But, this has been the law for years and there is no evidence of a fuss.

Comment: Should we impose a specific duty on coroner's to check registries and motor vehicle records as well?

Comment: In light of the hospital's duty to make a referral, is this section necessary?

1 an anatomical gift is located by the search required by subsection (a) or (b), and the individual or
2 deceased individual to whom it is related is taken to a hospital, the document of gift or record
3 ~~other evidence~~ must be sent to the hospital by the person who located the document of gift or
4 record evidence.

5 (e)(e) A person ~~who~~ that fails to discharge the duties imposed by this section is
6 not subject to criminal or civil liability but is [may be] subject to administrative sanctions as
7 otherwise provided by law.

8 **Comment**

9 The '87 Act did not limit a reasonable search to the individual's personal effects. Rather
10 it appeared to authorize broader searches to discover a document of gift. While there are no
11 known cases suggesting an overzealousness of searches under the authority of the prior law, the
12 language was deemed possibly too intrusive and susceptible to an interpretation allowing for
13 broader searches than was intended. The intent here is to limit reasonable searches to personal
14 effects. This limitation recognizes that the prototypical evidence of a donation by a donor during
15 life is the donor's driver's license. Admittedly, emergency rescuers may also find dying or
16 deceased individuals in their homes where they are unlikely to have a driver's license on their
17 persons. While subsection (a) does not authorize a reasonable search of their homes, subsection
18 (b) requires any responder with access to the motor vehicle records to search those records for
19 evidence of an anatomical gift.
20

Comment: Commissioner Kings asks whether this is appropriate in this act. Perhaps, he suggests it should just be in a comment.

21 **SECTION ~~10~~ 13. PERSONS WHO MAY BECOME DONEES.**

22 (a) ~~For purposes of~~ In this section, "appropriate procurement organization"
23 ~~means a procurement organization for the part to be used for transplantation or therapy which~~
24 ~~serves the geographical area in which the decedent died.:~~

25 (1) in the case of a donation of an organ, the organ procurement
26 organization for the service area in which the decedent died; and

27 (2) in the case of a donation of eye or tissue, a procurement organization
28 for the part to be used for transplantation or therapy. ~~which serves the geographical area~~

Comment: Since OPO is defined in section 2 as one designated by HHS, wouldn't such an organization have to abide by federal allocation policies/? If not, what if we added to end of (1) "acting in accordance with federal organ allocation policies."

1 in which the decedent died.

2 (b) The following persons may be designated as donees of anatomical gifts:

3 (1) an appropriate procurement organization; an individual designated by
4 the person making the anatomical gift if the anatomical gift is of a part for transplantation or
5 therapy needed by the individual;

6 (2) ~~an appropriate procurement organization selected by the donor; and~~

7 (3)(2) a hospital, accredited medical or dental school, college, or
8 university for education, or research or any other person participating in education or research
9 involving the use of human bodies or parts; ~~and or~~

10 (3) an named individual designated by the person making the anatomical
11 gift if the anatomical gift is of a part for transplantation or therapy needed by the named
12 individual;

13 (c) If an anatomical gift is made under Section 3 4 of one or more parts in a
14 document of gift that does not designate a donee, the donee is the appropriate procurement
15 organization for each part.

16 (d) If a document of gift made pursuant to Section 3 4 specifies only a general
17 intent to make an anatomical gift by ~~such~~ phrases such as “organ donor” or “body donor,” the
18 decedent’s parts may ~~only~~ be used only for transplantation or therapy. For this purpose the donee
19 is the appropriate procurement organization for each part.

20 (e) ~~If a donee determined under subsections (b) through (d) is not available to~~
21 ~~accept an anatomical gift or rejects the anatomical gift, the donee of the anatomical gift is any~~
22 ~~appropriate procurement organization or hospital, accredited medical or dental school, college,~~

Comment: Commissioner Kneedler asks, suppose a sign a donor card specifically naming the organ procurement organization in Virginia as the donee but he died in Pittsburg. Does the organ go to the OPO serving Pittsburg or the one serving Virginia? SFK thinks it goes to the Pittsburg one as the provisions in (3) below do not apply. Is this consistent with policy?

Comment: Does this sufficiently respond to Commissioner Ramasastry's concern about registries for the trading of organs?

1 or university for education or research or any other person participating in education or research
2 involving the use of human bodies or parts.

3 ~~(f)~~(e) Custody of a decedent's body if if there is no donee or of decedent's parts
4 not used by the donee for transplantation, therapy, research, or education custody of the
5 decedent's body vests in the person under obligation to dispose of the body.

6 ~~(g)~~(f) If the a donee actually knows that there was a of the refusal to make an
7 anatomical gift under Section ~~5 7~~ or that there was a revocation of an anatomical gift or that an
8 anatomical gift was not effectively made under Section ~~7 9~~, the donee may not accept the
9 anatomical gift. For purposes of this subsection, if the donee knows that:

10 (1) a document of gift is on a particular donor registry, the donee is
11 deemed to ~~have actual acknowledge~~ know of any amendment or revocation of that document of
12 gift or any refusal to make an anatomical gift that is on the same donor registry; or,

13 (2) a decision to make a anatomical gift was evidenced by the donor's
14 medical records maintained by a particular health-care provider, the donee is deemed to know of
15 any amendment or revocation of that gift or any refusal to make an anatomical gift that is on the
16 donor's medical records of that particular health care provider.

17 ~~(h)~~(g) This [act] does not affect the allocation of parts by any person acting under
18 the authority of federal law relating to the allocation of parts for transplantation.

19 Comment

20 Who may be a donee of organs, eyes, and tissue, differs under this [act] because of
21 differing federal policies and regulations. For eyes and tissue, the appropriate procurement
22 organization is a procurement organization for the eye or tissue. Eye and tissue banks do not
23 have a defined service area. Furthermore, eyes and tissue need not be transplanted in a short
24 period of time following their retrieval from a donor. They can be stored for future use.
25

Comment: Given that a general intent to be an organ limits the use of organs to transplantation and therapy, how can be provide that if the donee rejects the gift that the organ can go to a medical school for research or education? Furthermore, unavailability would be very unlikely and if an organ is rejected for transplantation when the donee is the OPO, is it likely there will be anyone to accept it. Presumably if a doctor in the service area of OPO –A rejects, the OPO, as donee, will offer it up to another.

Comment: Suppose an organ is sent from Iowa to California where it is then rejected. Whose law determines who has "obligation to dispose of the body?"

Comment: Style has a recommended change here that I do not understand.

1 On the other hand, organs, once retrieved from a donor, generally must be used within a
2 relatively short period of time. Furthermore, there is a level of medical suitability between a
3 donor and a recipient regarding a transplantable organ that does not exist for eyes and tissue.
4 Since the promulgation of the prior anatomical gift acts there have been significant changes in
5 the how organs, in particular, are procured and allocated for purposes of transplantation. The
6 changes in this [act] take into account the differences between organs, eyes, and tissue.
7

8 By Section 274 of the National Organ Transplant Act in 1984, Congress created the
9 Organ Procurement and Transplant Network. See also, 42 CFR §§ 121 *et. seq.* That Network, in
10 turn, contracts with United Network Organ Sharing (“UNOS), a non-profit corporation, to
11 administer the nation-wide allocation of organs for transplantation. UNOS, in turn, has
12 agreements with numerous organ procurement organizations with specified service areas. The
13 OPOs have primary responsibility to evaluate the medical suitability of organs for
14 transplantation, secure gifts under Section 9 where the decedent was not a donor at the time of
15 death, arrange for the procurement of organs from donors, and cause organs to be allocated and
16 transferred to recipients in accordance federal regulations and policies adopted by UNOS
17 pursuant to federal regulation. Generally, the OPO which oversees the procurement and transfer
18 of organs is the organ procurement organization for the service area in which the donor dies.
19

20 To assist in the evaluation of potential donors Federal law also requires hospitals
21 receiving Medicare funding to refer all deaths or near deaths to organ procurement organizations
22 for the evaluation of the decedents as possible organ donors. See 42 CFR § 482.45 (Conditions
23 of Participation: Organ, tissue, and eye procurement). These referral requirements have made the
24 provisions of Section 5 of the 1987 Anatomical Gift Act obsolete and, accordingly, those
25 provisions have been deleted from this [act].
26

27 While this [act] permits donations to a named individual, such donations are exceedingly
28 rare for at least two reasons. First, only in rare circumstances would a donor, during the donor’s
29 life, know of an individual who would need an organ that would be the subject of an anatomical
30 gift and similarly decedent’s families are generally not likely to know of the identity of such
31 individuals. Secondly, as a result of the national allocation policies, anatomical gifts to named
32 individuals are very rare because the donee, in such case, may not have a priority to the organ on
33 the national list. If the donee lacks a priority, no hospital receiving Medicare funding (about ___%
34 of all hospitals in the United States) would be permitted to allow its facilities to be used for the
35 transplant procedure.
36

Comment: Do I have this right?

37 An anatomical gift of a body for research or education can be made to a designated
38 organization. These typically occur as the result of a body donation to a particular institution in
39 the donor’s will or as the result of a prior arrangement between a donor and a particular research
40 or educational institution. In the case of a Section 9 anatomical gift of the entire body, or the
41 portion of the body made after a gift of organs, tissue, and eye, the donee may either be selected
42 by the individual making the gift or by the procurement organization.
43

44 It is common practice, particularly with respect to gifts evidenced by a statement or

1 symbol on the driver’s license of the donor, for the donor to indicate nothing more than a general
2 intent to be an organ donor. For example, the driver’s license of a donor may have an X in a box
3 labeled “organ donor.” Prior law did not specific who would be the donee of the organs in such
4 cases. Section 13(d) of this [act] expressly provides that if a document of gift specifies only a
5 general intent to be an organ or body donor, such as would incur in the prior example, (1) only
6 the donor’s parts (organs, eyes and tissue) are the subject of the gift and (2) the donee is the
7 appropriate procurement organization for that part. Individuals wishing to donate their entire
8 body for research or education, therefore, would have to do more than merely making a donation
9 on a driver’s license evidenced by nothing more than a general intent to be an “organ donor.”
10 See Comments to Section 5 relating to model donor cards and licenses. On the other hand, and
11 contrary to the existing laws of some states, a statement on a driver’s license that the licensee is
12 an “organ donor” is an anatomical gift and not merely evidence of intention to want to be a
13 donor and as such organs can be procured without the need of a Section 9 gift. Likewise, as an
14 anatomical gift, under Section 8 surviving family members would be precluded from revoking
15 the gift.

16
17 Section 13(f) provides that custody of the parts of the decedent not used for
18 transplantation, therapy, research or education or the decedent’s body if there is no donee vests
19 in the person having the obligation to dispose of the decedent’s body. That person is typically
20 determined by other law or pursuant to agreement between the donor or person making the
21 Section 9 gift and the donee.

22
23 Under the common law, a gift is effectuated by intent, delivery, and acceptance. (But see
24 Section 14(a) regarding delivery). In common with general principles of gift law, an express
25 acceptance of an anatomical gift is not required. However, Section 13(g) provides certain bars on
26 the acceptance of an anatomical gift by a donee that would trump the “acceptance presumption.”
27 A donee may not accept an anatomical gift if the donee knows of a Section 7 refusal. A donee
28 may not accept an anatomical gift if the donee knows that a gift once made had been revoked or
29 that a gift under Section 9 was not properly made. For example, suppose the intended donee of a
30 gift from children knows that the decedent’s spouse is available and willing to make or refuse to
31 make a gift. The donee may not accept the purported gift from the children. The knowledge
32 requirement is subject to an imputed knowledge exception in the last sentence of Section 13(g).
33 If the donee has knowledge of an anatomical gift made on a particular donor registry, the donee
34 is deemed to have knowledge of any revocation of that gift or later refusal to make a gift on the
35 same donor registry as well. The obvious intent here is to preclude donees from searching a
36 particular registry to find a gift without searching the same registry to see if the gift has been
37 revoked or precluded. Again, nothing in this [act] requires a registry to have a refusal section
38

39 As noted above, federal laws and policies control the allocation of organs among needy
40 recipients. These laws preempt contrary state laws. Thus, it is appropriate that Section 13(h)
41 provides that nothing in the [act] shall be construed to affect the allocation of organs for
42 transplantation.
43

1 necessary to ~~assure~~ ensure the medical suitability of a part that is the subject of a prospective
2 anatomical gift for transplantation or therapy after a referral from a hospital.

3 (b) The donee of an anatomical gift may conduct any reasonable examination
4 necessary to ~~assure~~ ensure the medical or other suitability of the body or part for its intended
5 purposes at any time after the decedent's death.

6 (c) An examination under subsection (a) or (b) may include an examination of
7 all medical records of the individual whose body or part is the subject of an anatomical gift or a
8 prospective anatomical gift.

9 (d) Subject to Section § 11, rights of a donee of an anatomical gift are superior to
10 rights of others. A donee may accept or reject an anatomical gift in whole or in part. If a donee
11 rejects a part for purposes of transplantation or therapy, the part may be used for research or
12 education if expressly permitted by the terms of the document of gift. If a donee accepts an
13 anatomical gift of an entire body, the donee, subject to the terms of the gift or to this [act], may
14 allow embalming and use of the body in funeral services. If the gift is of a part, the donee, upon
15 the death of the decedent and before embalming, shall cause the part to be removed without
16 unnecessary mutilation.

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

20 (f) If there has been an anatomical gift, a technician may remove any donated
21 parts the technician is qualified and trained to remove and an enucleator may remove any
22 donated eyes or parts of eyes from the decedent.

Comment: Commissioner Pepe asks what a "prospective gift" is. Is my comment below sufficient?

Comment: How are we to deal, if at all with the possible tension between a donor who does not wish to be on life support and the need when the donor is "near death" to be on life support?

Comment: Should this apply to all health care providers? If so, we might need to deal specially with hospitals as death often occur in same hospital where removal or transplant will occur. Commissioner Pepe thinks there should be some exception here where no other physician ... [1]

Comment: Response to suggestion of Commissioner Stieff. I could as he suggested include enucleator in the definition of technician and they eliminate its use in the act but it both a nice wo ... [2]

1 **Comment**

2 Under Section 14(a) procurement organizations may conduct a reasonable examination to
3 determine the medical suitability of a part that is the subject of a prospective anatomical gift.
4 This provision will work in tandem with federal routine request policies under which hospitals
5 refer prospective donors to an organ procurement organization to determine medical suitability.
6 If there is a known donee, that donee also is authorized to make a reasonable examination to
7 determine the medical or other suitability of the body or the part for its intended purposes.
8 (Section 14(b)). The permitted examination includes an examination of all medical records of
9 the donor or the prospective donor. This section is not inconsistent with Section 164.512(h) of
10 the HIPAA regulations permitting the disclosure without consent of protected health information
11 “to organ procurement organizations or other entities engaged in the procurement, banking, or
12 transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or
13 tissue donation and transplantation.”
14

15 **SECTION 13 16. COORDINATION OF PROCUREMENT AND USE.** Each

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

19 **Comment**

20 42 CFR § 482.45 sets forth criteria requiring hospitals and organ procurement
21 organizations to have cooperative agreements to permit organ procurement organizations to
22 determine the medical suitability of organs for transplant. Furthermore in the absence of
23 alternative arrangements by a hospital, the organ procurement organizations have responsibility
24 to determine the medical suitability of tissues and eyes. Hospitals are also required to (1) have
25 an agreement with at least one tissue bank and one eye bank to cooperate in the retrieval,
26 processing, preservation, storage and distribution of eyes and tissue and (2) ensure, working with
27 organ procurement organizations, that families of potential donors are informed of the option of
28 donations of eyes, tissue, and organs.
29

30 **SECTION 14 17. SALE OR PURCHASE OF PARTS PROHIBITED.**

31 (a) Except as otherwise provided in subsection (b), if removal of a part from a
32 decedent is intended to occur after the decedent’s death, a person may not knowingly, for
33 valuable consideration, purchase or sell a part for transplantation or therapy.

Comment: S
ould I
expand on
this as there is
more under
the COP?

Comment: T
here was
much
comment
about this
section.
Points
included (1)
should it be
here at all; (2)
is it
appropriate to
have criminal
penalties in
the act; (3)
why limited to
transplantatio
n and therapy.
Also, check
NOTA
language.
Here is the
exact
language of
42 USC
274(e):

(a) Prohibition

It shall be
unlawful for
any person to
knowingly
acquire,
receive, or
otherwise
transfer any
human organ
for valuable
consideration
for use in
human ... [3]

Comment: C
ommissioner
Stieff
recommended
some wording
changes here.
But it is
verbatim from
the prior act.
Should we
play with it to:
add what he
calls a
“culpability
standard.” He
also has some
further
suggestions.

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

3 (c) A person who violates ~~this section~~ subsection (a) is guilty of a [felony] and
4 upon conviction is subject to a fine not exceeding [\$50,000] or imprisonment not exceeding
5 [five] years, or both.

6 **Comment**

7 This section, prohibiting the sale or purchase of organs intended to be removed from a
8 decedent after death, applies only to anatomical gifts. The National Organ Transplant Act, 42
9 U.S.C. § 274(e) contains a broader prohibition on sales applying to both anatomical gifts
10 intended to result in the removal of an organ from a donor during the donor's life and following
11 the donor's death.

12
13 The committee was urged to delete this section in the event that the federal prohibition
14 was later repealed or modified as some organizations, such as the AMA, have urged. The
15 argument is that if this section remains in the [act] but federal law is repealed, sales could not
16 occur in states enacting this section. The committee's view was the policy against
17 _____

Comment: How is this to be completed?

18
19 **SECTION 1518. NONLIABILITY.**

Comment: Should there be any liability for knowingly making a donation when you know you or your loved one had HIV; hepatitis; etc.

20 (a) Subject to subsection (c), a person who acts in accordance with this [act] or
21 with the applicable anatomical gift law of another state [or a foreign country] or attempts in good
22 faith to do so is not liable for the act in a civil action or criminal proceeding or subject to
23 discipline for unprofessional conduct.

Comment: What if the sale of an organ is permissible under foreign law. Are they exempt under Section 16?

24 (b) Neither the person making an anatomical gift nor the decedent's estate is
25 liable for any injury or damage that may result from the making or the use of an anatomical gift.

26 (c) Subsection (a) does not apply to a donee to which a document of gift has been
27 delivered if the donee ~~has actual knowledge~~ knows that the anatomical gift has been revoked or
28 amended or that a refusal to make an anatomical gift was made pursuant to Section 5 7 and the

Comment: Do we need to define good faith?

1 donee’s actions are inconsistent with the revocation, amendment, or refusal. For this purpose, if
2 the donee ~~actually~~ knows that a document of gift is on a particular donor registry, the donee is
3 deemed to ~~have actual knowledge~~ know of any amendment or revocation of that document of
4 gift or any refusal to make an anatomical gift that is on the same donor registry.

5 **SECTION ~~16~~ 19. CHOICE OF LAW AS TO EXECUTION OF DOCUMENT OF**
6 **GIFT.**

Comment: S
ould be
responsive to
Commissioner
Pepe.

7 (a) A document of gift is valid if executed in accordance with:
8 (1) this [act]
9 (2) the laws of the place where it was executed; or
10 (3) the laws of the place ~~that~~ where the person making the anatomical gift
11 was domiciled, has a place of residence, or was a national at the time the document of gift was
12 executed.

Comment: S
omeone
suggested
national
should be
citizen but it is
“national” in
the UPC.

13 (b) A person may assume that a document of gift is valid unless that person ~~has~~
14 ~~actual knowledge~~ knows that it was not validly executed or was revoked.

15 **Comment**

16 Section 19 is new to the anatomical gift act. It is designed to accomplish two things.
17 First, it assures that a document of gift valid either in the place where executed, the place where
18 the person making the gift was domiciled, had a residence or was a national would be valid in
19 the state adopting this section. This section tracts like provisions for will, such as Section 2-506
20 of the Uniform Probate Code.

21
22 More importantly, Section 19(b) provides that a person can presume a document of gift to
23 be valid unless the person has actual knowledge that it was not validly executed or was revoked.
24 For example, if the person knows that the donor had signed a Section 6 refusal but the document
25 of gift was signed by the decedent’s spouse following the decedent’s death, the person knows
26 that the document of gift was not validly executed.
27

28 **SECTION ~~17~~ 19. TRANSITIONAL PROVISIONS.** This [act] applies to a document

1 of gift, revocation, or refusal to make an anatomical gift made before, on, or after [the effective
2 date of this [act]].

3 **SECTION 18 20. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
4 applying and construing this uniform act, consideration must be given to the need to promote
5 uniformity of the law with respect to its subject matter among states that enact it.

6 **SECTION 19 21. ~~ELECTRONIC RECORDS AND SIGNATURES RELATION~~**
7 **TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**

8 This act modifies, limits, and supersedes the Electronic Signatures in Global and National
9 Commerce Act (15 U.S.C. Section 7001 et. seq.) but does not modify, limit, or supersede Section
10 101(a) of that act (15 U.S. C. Section 7001) or authorize electronic delivery of any of the notices
11 described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

12 **SECTION 20 22. REPEALS.** The following acts and parts of acts are repealed:

13 (1)

14 (2)

15 (3)

16 **SECTION 23 SEVERABILITY.** If any provision of this [act] or its application to any
17 person or circumstance is held invalid, the invalidity does not affect other provisions or
18 applications of this [act] which can be given effect without the invalid provision or application,
19 and to this end the provisions of this [act] are severable.]

20 **SECTION 21 24. EFFECTIVE DATE.** This [act] takes effect _____.

Should this apply to all health care providers? If so, we might need to deal specially with hospitals as death often occur in same hospital where removal or transplant will occur. Commissioner Pepe thinks there should be some exception here where no other physician is available. This has been a long-standing provision and has provided no problems. Commissioner Guillot seems to have raised the same issue

Response to suggestion of Commissioner Stieff. I could as he suggested include enucleator in the definition of technician and they eliminate its use in the act but it both a nice word and one particular to the eye community that it would be nice to retain it.

There was much comment about this section. Points included (1) should it be here at all; (2) is it appropriate to have criminal penalties in the act; (3) why limited to transplantation and therapy. Also, check NOTA language. Here is the exact language of 42 USC 274(e):

(a) Prohibition

It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.

(b) Penalties

Any person who violates subsection (a) of this section shall be fined not more than \$50,000 or imprisoned not more than five years, or both.

(c) Definitions

For purposes of subsection (a) of this section:

(1) The term "human organ" means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.

(2) The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.