

D R A F T
FOR DISCUSSION ONLY

REVISED
UNIFORM ANATOMICAL GIFT ACT (200_)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For April 2006 Drafting Committee Meeting

WITH PREFATORY NOTE AND COMMENTS

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ON UNIFORM STATE LAWS

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REVISED UNIFORM ANATOMICAL GIFT ACT

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1 **UNIFORM ANATOMICAL GIFT ACT (200_)**

2 Prefatory Note

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

9
10 The first event was the development in the late 60s of the first set of neurological criteria
11 for determining death. These criteria allowed persons to be declared dead upon the cessation of
12 all brain activity. Ultimately these criteria, together with the historic measure of determining
13 death by cessation of circulation and respiration, were incorporated into Section 1 of the
14 Uniform Determination of Death Act providing that: “An individual who has sustained either (1)
15 irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all
16 functions of the entire brain, including the brain stem, is dead.”

17
18 Then, shortly following Dr. Christian Barnard’s successful transplant of a heart in
19 November 1967, this Conference adopted the first Uniform Anatomical Gift Act and it did it
20 with only one reading in the summer of 1968. In short order, the 1967 Act was uniformly
21 adopted by every jurisdiction. The most significant contribution of the ‘68 Act was to create a
22 right to donate organs, eyes, and tissue. This right was not legally recognized at common law
23 because of a reluctance to find property rights in human bodies or human remains. By creating
24 the right to make an anatomical gift, individuals became empowered to donate their parts or their
25 loved one’s parts to save or improve the lives of others.

26
27 The last event was the development of immunosuppressive drugs which prevented organ
28 recipients from rejecting transplanted organs. This permitted many more successful organ
29 transplants, thus contributing to the rapid growth in the demand for organs and the need for
30 changes in the law to facilitate the making of anatomical gifts.

31
32 In 1987, a revised Uniform Anatomical Gift Act was promulgated to address changes in
33 circumstances and in practice. However, only twenty-six (26) jurisdictions enacted the 1987
34 revision. Consequently, there is significant non-uniformity between states with the 1968 Act and
35 those with the 1987 revisions. Furthermore, neither anatomical gift act comports with changes in
36 federal law adopted subsequent to the 1987 Act relating to the role of hospitals and procurement
37 organizations in securing organs for transplantation.

38
39 Both the two previous anatomical gift acts as well as this [act] adhere to the so-called
40 “opt in” principle as its default rule. Thus, an individual becomes a donor only if the donor or
41 someone acting on the donor’s behalf affirmatively makes an anatomical gift. The system
42 universally adopted in this country is contrary to that adopted in many other developed countries,

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

7
8 This [act] is limited in scope to donations from deceased donors as a result of gifts made
9 before or after their deaths. Although recently there has been a significant increase in so-called
10 “living donations” where a living donor immediately donates an organ (typically kidney or a
11 section of a liver) to a recipient, donations by living donors are not treated in this [act], as
12 distinct and difficult legal issues are raised by living donations.

13
14 A majority of potential donors are candidates for donation of eye or tissue but only a
15 small percentage of potential donors die under circumstances that permit an anatomical gift of an
16 organ. To procure an anatomical gift for transplantation, therapy, research, or education, a donor
17 or potential donor must be declared dead (see Uniform Determination of Death Act), and
18 generally the donor’s body must be kept on life support systems until the parts are procured.
19 Pursuant to federal law, when the death of a donor or a potential donor is imminent or death
20 occurs, a procurement organization, or a designee, is notified, and it begins to develop a medical
21 and family history to determine whether the dying or deceased person is a medically suitable
22 donor. If the dying or deceased person is a medically suitable donor, the organization checks for
23 evidence of a donation, if not otherwise known, and seeks, when necessary, consent to donation
24 from authorized persons. If a donation can be secured for organs, the organ procurement
25 organization obtains from the Organ Procurement and Transplantation Network (“OPTN”) a
26 prioritized list of potential recipients from the national organ waiting list and takes the necessary
27 steps to see that the organ finds its way to the recipient. If eye or tissues are donated, the
28 appropriate procurement organization procures the eye and tissue and takes the necessary steps
29 to screen, test, process, store, or distribute the eye or other tissue as required for transplantation,
30 therapy, research or education. All must be done expeditiously.

31
32 As of August 15, 2005, there were 89,094 individuals on the waiting list for organs of
33 which 62,685 need a kidney and 17,457 a liver, with the remaining individuals waiting for a
34 pancreas, kidney and pancreas, heart, lung, or intestine. There are in excess of 25,000 eye and
35 tissue donors annually and in excess of 1,000,000 tissue and eye transplants annually. While
36 donations of eye and tissue are presently nearly adequate, the need for eye and tissue transplants
37 increases every year. (WILL UPDATE)

38
39 Recent technological innovations have increased the types of organs that can be
40 transplanted, the demand for organs, and the range of individuals that can donate or receive an
41 organ, thereby increasing the numbers of organs available each year and the number of
42 transplantations that occur each year. Nonetheless, the number of deaths for lack of available
43 organs also has increased. While the Commissioners are under no illusion that any anatomical
44 gift act can fully supply the need for organs, they do believe that any change that could increase

1 the supply of organs and thus saves lives is an improvement. This is all the more true because in
2 recent years the shortage in the supply has been partially made up by the significant increase in
3 the number of living donors who have donated organs for transplantation. While gifts of organs
4 from living donors are laudable and often medically desirable from the recipient's perspective,
5 obtaining organs from living donors place those donors at risk.
6

7 Transplantation occurs across state boundaries and requires speed and efficiency. Thus,
8 uniformity of state law is highly desirable. Furthermore, the decision to be a donor is a highly
9 personal decision of great generosity and deserves the highest respect from the law. Because
10 current state anatomical gift laws are out of harmony with both federal procurement and
11 allocation policies and do not fully respect the autonomy interests of donors, there is a need to
12 harmonize state law with federal policy as well as to improve the manner in which anatomical
13 gifts can be made and respected.
14

15 The following summary highlights how this [act] attempts to accomplish these goals.
16

17 Section 4 authorizes individuals to make anatomical gifts of their bodies or parts. It also
18 permits certain persons, other than donors, to make an anatomical gift on behalf of a donor
19 during the donor's lifetime. The expanded list includes agents acting under a health-care power
20 of attorney or other record, parents of donors under age 18, and guardians. The section also
21 recognizes that it is appropriate that minors who can apply for a license be empowered to make
22 anatomical gifts, subject, in limited circumstances, to the right of their parents to revoke that gift.
23

24 Section 5 recognizes that since the adoption of the prior anatomical gift acts some states
25 and many private organizations have created donor registries for the purpose of making
26 anatomical gifts. Thus, in addition to evidencing a gift on a donor card or license, this [act]
27 allows for the making of anatomical gifts on donor registries. It also permits oral gifts under
28 limited circumstances.
29

30 Section 6 permits anatomical gifts to be amended or revoked by the execution of a later-
31 dated record or by inconsistent documents of gifts. It also permits revocation by destruction of a
32 document of gift and, under limited circumstances, permits oral revocations.
33

34 Section 7 permits an individual to sign a refusal that bars all other persons from making
35 an anatomical gift of the individual's body or parts. The refusal generally can be made by a
36 signed record, a statement or symbol on a license if the license permits the making of a refusal,
37 or in limited circumstances, orally. By permitting refusals, this [act] recognizes the autonomy
38 interest of an individual either to be or not to be a donor.
39

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

1 donation decision. This [act] intentionally dis-empowers families from making or refusing to
2 make anatomical gifts in contravention of a donor’s wishes. Thus, under the strengthened
3 language of this [act] if a donor had made an anatomical gift, there is no reason to seek consent
4 from a donor’s family as they have no ability to give it legally. Of course, that would not bar, nor
5 should it bar, a procurement organization from advising the donor’s family of the donor’s
6 express wishes but that conversation should be focused more on what procedures will be
7 followed to carry out the donor’s wishes rather than on seeking approval of the donation.
8

9 Section 9 expands the list of persons who can make an anatomical gift following a
10 decedent’s death where the decedent was neither a donor nor had signed a refusal. The expanded
11 list includes persons acting as agents at the decedent’s death, grandchildren, and close friends.
12

13 Section 10 makes no significant changes from prior law.
14

15 Section 11 is designed to harmonize this [act] with federal law, particularly with respect
16 to organs. The National Organ Transplant Act created the nationwide Organ Procurement and
17 Transplantation Network (“OPTN”) to facilitate the nationwide, equitable distribution of organs.
18 The United Network Organ Sharing (“UNOS”) operates the OPTN under contract with the U.S.
19 Department of Health and Human Services. When an organ donor dies, the donor’s organs,
20 barring the rare instance of a donation to a named individual, are recovered by the organ
21 procurement organization for the service area in which the donor dies, as custodian of the
22 organs, to be allocated by it either locally, regionally, or nationally in accordance with allocation
23 policies established by the OPTN. For eyes, tissue, and whole body donations, donees can be the
24 appropriate procurement organization, or a hospital, accredited medical or dental school, college,
25 university, or other person participating in education or research.
26

27 Prior law did not specifically provide who the donee of a part was when the document of
28 gift merely expressed a “general intent” to be an “organ donor.” This type of designation is
29 common on licenses and many donor cards. Section 11 provides that for such general statements
30 only the donor’s parts are the subject of the anatomical gift and then only for transplantation,
31 therapy, research or education. Additionally organs are recovered by an organ procurement
32 organization as the custodian while eyes are donated to the eye bank and tissue to the tissue
33 bank. A general statement of intent to be an organ donor does not result in the making of an
34 anatomical gift of the whole body for research or education. More specific language is required
35 to make such a gift.
36

37 This [act] provides that custody of a decedent’s body if there is no donee, or custody of
38 decedent’s parts not used by a donee for transplantation, therapy, research or education, vests in
39 the “person under obligation to dispose of the body.” Typically that person will be someone in
40 the decedent’s family as determined by other law or by the terms of the document of gift.
41

42 Section 11(g) prohibits acceptance of an anatomical gift if the donee or custodian knows
43 that the gift was not validly made. For this purpose, however, if the donee or custodian knows
44 that an anatomical gift was made on a document of gift, the donee or custodian is also deemed to

1 know of a refusal to make a gift if there is a refusal on the same document of gift. Again,
2 nothing in the [act] requires a license or donor registry to have a section to record refusals.
3

4 Lastly, Section 11(h) makes the obvious explicit by providing that organs passing to a
5 custodian as a result of an anatomical gift are allocated by the custodian in accordance with
6 federal laws and policies. Nothing in this [act] affects the allocation of parts by any person acting
7 under federal laws relating to the allocation of parts for transplantation.
8

9 Section 12 permits a reasonable search by an emergency responder or hospital in order to
10 determine if an individual has made or has refused to make an anatomical gift. It also requires
11 persons with access to the motor vehicle registry to make a similar search.
12

13 Section 14 also has been redrafted to accord with federal law and particularly the federal
14 rules relating to the identification of potential organ, tissue, and eye donors. The federal rules
15 require hospitals to notify an organ procurement organization or third party designated by the
16 organ procurement organization of an individual whose death is imminent or who has died in the
17 hospital to increase donation opportunity, and thus, transplantation. See 42 CFR § 482.45,
18 Medicare and Medicaid Programs: Conditions of Participation: Identification of Potential Organ,
19 Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data). The
20 right of the procurement organization to inspect a patient's medical records does not violate
21 HIPAA See 45 CFR § 164.512(h) ("A covered entity may use or disclose protected health
22 information to organ procurement organizations or other entities engaged in the procurement,
23 banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating
24 organ, eye or tissue donation and transplantation.")
25

26 Section 14(i) tracks prior law and is designed to assure that no conflict of interest exists
27 for a patient's treating physician where that physician is also treating another individual whom
28 may be in need of a transplant. Some surveys have suggested that a small segment of the
29 population believes that a patient who might die without proper medical attention may not be
30 treated in order that the patient's organs can be used for another. While there is absolutely no
31 evidence that this has ever occurred in this country, this section was included to address some
32 public misperceptions by making clear that it should not be able to happen legally.
33

34 Section 16, relating to sales of parts, is essentially unchanged from prior law.
35

36 Section 18 was included in this [act] to facilitate interstate recognition of documents of
37 gifts.
38

39 Section 19 authorizes an appropriate state agency to either establish or contract for the
40 establishment of a donor registry. While the [act] does not specify in great detail what could or
41 should be on the registry, it does mandate that if a registry is created it meet certain minimum
42 requirements. First, the registry must provide a centralized, electronic database that allows a
43 person by a signed record to cause a statement or symbol to be entered in the registry that the
44 person is a donor. Second, the registry must be directly accessible to all procurement

1 organizations even though only one of them is the contractee with the state. Lastly, the registry
2 must be directly accessible on a 24-hour, 7 day a week basis. Nothing in Section 20 would
3 prohibit the creation of a donor registry independent of the state.
4

5 Section 20 creates a default rule to adjust the tension that otherwise would exist between
6 preserving a donor's parts to assure their suitability for transplantation, therapy, research, or
7 education and the expression of an intent by the donor in either a declaration or health-care
8 power not to have the donor's life prolonged by use of life support systems. The rule under this
9 act is that life support should be administered if necessary to preserve the parts and the
10 opportunity to make an anatomical gift. Of course, an individual could expressly otherwise
11 provide in the declaration or health care power.
12

13 Section 22 represents a complete revision of the relationship of the [coroner][medical
14 examiner] to the anatomical gift process. Prior law permitted the [coroner][medical examiner]
15 under limited circumstances to make anatomical gifts of the eyes of a decedent in the
16 [coroner's][medical examiner's] possession. In light of a series of Section 1983 actions in which
17 the [coroner][medical examiner]'s actions were deemed to violate the property rights of
18 surviving family members, *see, e.g., Brotherton v. Cleveland*, 923 F.2d 477 (6th Cir. 1991), the
19 Commissioners decided to delete the provision. In lieu thereof, a series of new provisions have
20 been included relating to the relationship between the [coroner][medical examiner] and the
21 procurement organizations. The intent of these provisions is to encourage meaningful
22 cooperation between these groups in hopes of increasing the number of anatomical gifts.
23 Importantly, the section does not permit a [coroner][medical examiner] to make an anatomical
24 gift. Rather, parts from a decedent can be the subject of an anatomical gift only if an anatomical
25 gift was made under Section 4 or Section 9 of this [act].

1 (7) “Donee” means a person to which an anatomical gift has been made under
2 Section 12. The term does not include a custodian.

3 (8) “Donor” means an individual whose body or part is the subject of an
4 anatomical gift.

5 (9) “Donor registry” means a database on which a donor, by a record signed by
6 the donor, may make, amend, or revoke an anatomical gift.

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

10 (11) “Hospital” means a facility licensed, accredited, or approved as a hospital
11 under the law of any state or a facility operated as a hospital by the United States government, a
12 state, or a subdivision of a state. The term includes an emergency care facility.

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

14 (13) “License” means a license or permit to operate a motorized vehicle without
15 regard to whether the licensee or permittee must be accompanied by another individual when
16 operating the vehicle. The term includes an identification card issued by the [state department of
17 motor vehicles].

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

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

22 (16) “Person” means an individual, corporation, business trust, estate, trust,

1 partnership, limited liability company, association, joint venture, public corporation, government
2 or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

3 (17) “Physician” means an individual authorized to practice medicine [or
4 osteopathy] under the law of any state.

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

7 (19) “Prospective donor” means an individual who is:

8 (i) dead or near death;

9 (ii) neither a donor nor an individual who has made a refusal under
10 Section 7, and

11 (iii) has been determined by a procurement organization to have a part that
12 could be medically suitable for transplantation, therapy, research, or education.

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

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

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

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

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

1 (A) to execute or adopt a tangible symbol; or
2 (B) to attach or logically associate an electronic symbol, sound, or process
3 to or with a record.

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

7 (26) “Technician” means an individual who is qualified and trained by an
8 organization that is licensed, accredited, or regulated under federal or state law to remove or
9 process a body part. The term includes an enucleator.

10 (27) “Tissue” means a part other than an organ or an eye. The term does not mean
11 blood unless the blood is donated for research or educational purposes.

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

15 **Comment**

16 Under Section 4 of this [act] an individual may make an anatomical gift of the
17 individual’s parts. In addition designated other persons may make an anatomical gift of the
18 individual’s organs. One of these persons is an “agent” of that individual (paragraph (1)). An
19 agent, as defined in paragraph (1), may be so empowered in one of two ways. The first is by a
20 designation under a power of attorney for health care. This statute, independent of any other law,
21 empowers the agent acting under a power of attorney for health care to make an anatomical gift
22 on behalf of a principal. Therefore, it is not necessary that states adopting this [act] amend their
23 power of attorney for health care statutes to specifically empower agents to make anatomical
24 gifts on behalf of principals as this [act] empowers them to make such gifts. On the other hand, a
25 state may choose to do so in order that all of the agent’s powers, including the power to make an
26 anatomical gift, can be located in one comprehensive statute. Even though this [act] enables the
27 agent acting under a power of attorney for health-care to make an anatomical gift, if the principal
28 in that power denies the agent that authority, the agent is not empowered to make an anatomical
29 gift on behalf of the principal. See Section 4(b).

1
2 An agent also may be designated by a record, other than a power of attorney for health
3 care, that authorizes the agent to make an anatomical gift. This would permit individuals who
4 wish to empower different persons to make health care decisions and anatomical gift decisions to
5 do so. In light of the definition of record, this authority also could be expressed in a financial
6 power of attorney.
7

8 This [act], in common with both the '68 and '87 versions, only applies to an "anatomical
9 gift" that take effect after death. See paragraph (2). Thus, an "anatomical gift" would not include
10 a gift of an organ from a living donor to another living individual.
11

12 "Custodian" (paragraph (3)) means an organ procurement organization (paragraph (14))
13 or a transplant hospital authorized by federal law to procure or transplant organs. When organs
14 are removed from a donor for transplantation into a recipient, custody of the organ first passes to
15 the organ procurement organization or transplant hospital. The custodian is not an owner. Rather
16 the custodian takes possession of the organ for a variety of purposes all of which are designed to
17 assure that the organ finds its way to the proper recipient determined by the organ allocation
18 policies of the OPTN.
19

20 "Decedent" (paragraph (4)) is defined as it was under prior versions of this [act] to
21 include both stillborns and fetuses. Under other law fetuses can be used for research. See, 42
22 U.S.C. § 289g-1 & 289g-2; 42 CFR § 46.201. By including them in the definition of "decedent,"
23 this [act] assures that the parents are in a position to make a donation of the stillborn or fetus for
24 appropriate and lawful purposes.
25

26 "Disinterested witness" (paragraph (5)) means an individual other than those listed in the
27 paragraph. Under Sections 5 and 6 anatomical gifts may be made or revoked. Under Section 7 a
28 person may also make or revoke a refusal. In most circumstances these acts must be evidenced
29 by a record. However, in limited circumstances they can be evidenced by oral statements to at
30 least two witnesses. In those circumstances at least one of the witnesses must be a disinterested
31 witness.
32

33 A "document of gift" (paragraph (6)) includes a donor card or any other record. It also
34 includes a license (paragraph (13)) and a donor registry (paragraph (9)) on which an anatomical
35 gift has been made in accordance with Section 5. While a donor card is a record, the reference to
36 donor card has been specifically retained because of the wide acceptance of that concept in our
37 culture. Prior versions of this act also expressly referred to a will in the definition of a document
38 of gift. The omission in this [act] of a will in the definition of a document of gift does not mean a
39 will is not a document of gift. Rather, the "will" is subsumed in the word "record." Where there
40 is a need in this [act] to specially treat wills as documents of gift, the will is singled out from
41 other documents of gift.
42

43 A statement or symbol on a license or registry is the document of gift; it is not merely an
44 expression of intent to make a gift. Therefore, where there is such a statement or symbol, no

1 other document of gift other than the signed record authorizing the statement or symbol to be
2 recorded on the license or registry is necessary to evidence the making of an anatomical gift.
3 Potential donors utilizing records other than a license or registry to make an anatomical gift
4 should be strongly encouraged to make their gifts by license or registry, as gifts on a license or
5 registry are more likely to be discovered when the donor is dead or near death.
6

7 Under Section 5(b)(2) an anatomical gift can be made by a donor authorizing the person
8 maintaining a donor registry to include on the registry a statement or symbol that the donor has
9 made an anatomical gift. By adding a “donor registry” as a device for making an anatomical
10 gift, this [act] recognizes the increasing use of donor registries to make anatomical gifts. The use
11 of donor registries was not contemplated at the time either the ‘68 or ‘87 versions of this act
12 were adopted. Today, however, they have assumed increased importance in the anatomical gift
13 world and in time may come to dominate how anatomical gifts are made. While the format of
14 donor registries differ, generally they allow for the making of an anatomical gift of one or more
15 parts and permit that gift to be made over the internet. No known registry provides for a refusal
16 to make an anatomical gift and this [act] does not require that they do so. The person who
17 maintains a registry may, if it chooses, follow up an electronic registration by sending the donor
18 a card to sign. However, that is not legally required by this [act] to make an effective gift unless
19 the gift on the registry was not made by a signed record.
20

21 “Donor” (paragraph (8)) means the individual whose body or part is the subject of an
22 anatomical gift. Thus, an individual who signs a donor card or causes a symbol to be placed on a
23 license evidencing an anatomical gift is a donor even though the part donated will not be taken
24 from the donor until the donor dies. Likewise, if the family of a decedent who did not make an
25 anatomical gift during life donates a part of the decedent, that decedent is a donor. Thus “donor”
26 may in some cases refer to a living individual who made an anatomical gift to take effect in the
27 future or on whose behalf an anatomical gift was made, or a decedent whose body or part is the
28 subject of an anatomical gift. Anatomical gifts by a donor, as well as amendments, revocations,
29 and refusals, can trump the ability of others to make or revoke anatomical gifts on behalf of the
30 donor. See Section 8.
31

32 The concept of a “donor registry” (paragraph (9)) is new to this version of the anatomical
33 gift act. Many states now have donor registries. Most of them are operated by private
34 organizations, such as a procurement organization (paragraph (18)) that operates in the state. A
35 few are actually operated by the state. Section 19 of this [act] authorizes states to either establish
36 or contract for the establishment of a donor registry. Donor registries, along with licenses, are
37 very effective devices to record the making of an anatomical gift. The making of an anatomical
38 gift by these devices assures that the evidence of that gift is always available unlike the
39 traditional donor card which can often be lost. Furthermore, they are easily accessible by
40 procurement organizations following a donor’s death.
41

42 “License” (paragraph(13)) includes both driver’s licenses for which persons age 18 years
43 or older qualify, as well as licenses issued to persons under the age of 18 whether denoted
44 “temporary permit” “permit” or “learner’s permit” or something else. State laws vary widely on

1 how young an individual can be to obtain a limited type of permit when they are under the age of
2 18. For example, it is not uncommon for learner’s permits to be issued to persons age 16. But, in
3 some states licenses or permits can be issued to persons age 14 for the purpose of driving only
4 certain types of motorized vehicles, such as farm equipment. The definition of “license” is broad
5 enough to include all of these. Furthermore, to the extent licenses or permits can be issued only
6 where there is both an age limit and an additional limit which requires the permit holder to be
7 accompanied by an adult, that other limitation is ignored.

8
9 The definition of license ties the license to “motorized vehicles” not, as under prior law,
10 “motor vehicles.” Thus, as suggested above it could apply to teenagers qualifying for permits to
11 operate tractors, which might not otherwise be considered a motor vehicle.

12
13 Under Section 4 if an individual would be entitled to obtain a license because the
14 individual satisfies the age requirement that individual, even though under age 18, can be a
15 donor. Thus, it would not be necessary for an individual under the age of 18 who wanted to be a
16 donor to necessarily reapply for a license when the individual becomes 18. However, if that
17 individual dies under the age of 18, the individual’s parents can revoke the anatomical gift. See,
18 Section 8(g).

19
20 Many states also issue identification cards to persons who otherwise do not qualify for, or
21 do not desire, a driver’s license. These cards are also considered licenses.

22
23 This [act], however, does not mandate that licenses or cards provide space for a notation
24 that the holder is a donor. That mandate, if it exists, is left to other law.

25
26 The definition of “part” (paragraph (16)) while shorter than the definition in the ‘87 Act
27 is functionally the same as all parts of the human body, including bones, and fluids, are
28 encompassed within the definition. The definition, however, excludes the whole body.

29
30 The concept of “reasonably available” (paragraph (20)) is based upon a similar concept
31 in the Uniform Health-Care Decisions Act. A decision to make an anatomical gift, particularly of
32 an organ, by persons, other than the donor, is extremely time sensitive. Life-saving organs may
33 be forfeited if persons with a priority to make a post-death anatomical gift cannot be located to
34 make a decision. Physical presence, however, is not required in order to be “reasonably
35 available.” A person is “reasonably available” as long as the person can be contacted without
36 undue effort. Also, the concept assumes that a person is willing to act in a timely manner to
37 permit the successful recovery of organs. A person who is unwilling to make a decision to either
38 donate or refuse to donate in a timely manner is not considered to be “reasonably available.”

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

1 **Comment**

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

9 Like the predecessor acts, this [act] provides that an individual may make an anatomical
10 gift of that individual's body or part if that individual is at least [18] years of age. This [act],
11 however, expands upon prior law in a number of ways.
12

13 For example, in many states a minor, under limited circumstances, can apply for a
14 driver's license. This minor might wish to be a donor and, as a policy matter, it seems that if the
15 minor is old enough to drive a motorized vehicle the minor also is old enough to make this
16 decision. On the other hand, it also seems appropriate that if the minor donor dies under the age
17 of 18 the minor's parents should be able to revoke that anatomical gift. See Section 8(g).
18 Because the minor's parents cannot revoke the anatomical gift after the minor attains age 18,
19 there is no necessity under this [act] for the minor to confirm that anatomical gift following the
20 minor's eighteenth birthday.
21

22 This section expands prior law in other important respects. It permits anatomical gifts by
23 an emancipated minor and it expressly empowers an anatomical gift to be made on behalf of an
24 individual by that individual's agent or by a parent, if that individual is under the age of [18]
25 [and not emancipated], or a guardian.
26

27 An anatomical gift by an agent, parent, or guardian remains in effect until such time as
28 amended or revoked by an agent, parent, or guardian or the donor on whose behalf that gift was
29 made. For example, if a parent makes an anatomical gift for a minor and the parent does not
30 revoke that gift before the minor is [18] or becomes emancipated, the anatomical gift remains in
31 effect until such time as it is altered by the donor or by the donor's agent or guardian. However,
32 under Section 7, agents, parents, or guardians cannot refuse to make an anatomical gift on behalf
33 of their principals or wards. A refusal can only be made by that individual whose part or body
34 might otherwise have been the subject of an anatomical gift.
35

36 As noted in the comments to the definitions, an agent acting under a health-care power of
37 attorney is authorized merely by that designation to make an anatomical gift on behalf of the
38 principal. If the principal does not wish to authorize the agent to make that decision, the health-
39 care power must include language to expressly negate that authority. On the other hand, if the
40 agent is acting under another record, such as a financial power of attorney, the agent would be
41 empowered to make an anatomical gift only if that authority was expressly conferred in the
42 record.
43

1 **SECTION 5. MANNER OF MAKING ANATOMICAL GIFT BEFORE**
2 **DONOR’S DEATH.**

3 (a) Subject to subsection (b), a person authorized to make an anatomical gift
4 under Section 4 may make an anatomical gift by a [donor] card or other record signed by the
5 person making the anatomical gift. If the person making the anatomical gift cannot sign the
6 [donor] card or other record, the [donor] card or other record must:

7 (1) be signed by an individual acting on the person’s behalf and at the
8 person’s direction;

9 (2) be witnessed by at least two other individuals, at least one of whom is
10 a disinterested witness and both of whom have signed at the request of the person; and

11 (3) state that it has been signed and witnessed as provided in paragraphs
12 (1) and (2).

13 (b) A donor only may make an anatomical gift:

14 (1) subject to subsection (c), by authorizing, in a signed record, the [state
15 department of motor vehicles] to imprint on the donor’s license, [note to committee: or by
16 signing a license containing,] a statement or symbol indicating that the donor has made an
17 anatomical gift.

18 (2) by authorizing, in a signed record, a person that maintains a donor
19 registry to include on the donor registry a statement or symbol that the donor has made an
20 anatomical gift;

21 (3) subject to subsection (d), by a will; or

22 (4) by any form of communication during a terminal illness or injury of

1 the donor addressed to at least two other individuals who are at least [18] years of age and at
2 least one of whom is a disinterested witness.

3 (c) Revocation, suspension, expiration, or cancellation of the donor’s license or
4 card does not invalidate the anatomical gift.

5 (d) An anatomical gift made by will takes effect upon the donor’s death whether
6 or not the will is probated. The invalidation of the will after the donor’s death does not invalidate
7 the anatomical gift.

8 **Comment**

9 The execution formalities associated with the making of an anatomical gift generally
10 remain the same as under the '87 act. However, in addition to the making of an anatomical gift
11 by a [donor] card, will, or state-issued driver’s license, an anatomical gift can also be made on a
12 state-issued identification card or driver’s permits or upon a donor registry. The '87 act required
13 an anatomical gift imprinted on a license to be signed by the donor. This [act] does not expressly
14 require a signature on a license or donor registry, although there must be a signed record
15 authorizing the statement or symbol to be placed on the license or registry. The signed record
16 could be a record on which the donor’s signature is electronic. In some states the license also
17 may be a record meeting the requirements of subsection (a) because the license is signed and
18 contains language similar to the language appearing on the donor card illustrated in these
19 comments.

20
21 Donor registries were not contemplated by the prior versions of this [act]. Since the
22 promulgation of those acts, numerous donor registries have been created under the auspices of
23 the state or private organizations.

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

36

1 Section 5(a) applies to all persons making an anatomical gift under Section 4, subject to
2 subsection (b) which applies only to donors. Thus, guardians, agents, and parents cannot make
3 an anatomical gift for the benefit of a donor using licenses, donor registries or wills. For donors
4 there is, to some extent, an overlap between the two sections as a record includes not only the
5 donor card but also licenses, identification cards, donor registries, and wills.
6

7 Typically an anatomical gift of a part for transplantation or therapy is not made by a will.
8 In fact, donors are ill-advised to make an anatomical gift by will as the terms of the will may not
9 be known in sufficient time to allow for successful recovery of the gifted parts. Clients who
10 make an anatomical gift of their parts by a will should be strongly encouraged to make their
11 wishes known by other means as well. On the other hand, some people donate their bodies to
12 medical science for research or education and they may do so by a will. Subsection (b)(3)
13 provides that, if an anatomical gift is made by will, it takes effect at the donor's death. The gift is
14 valid even though the will is not probated or is declared invalid. See subsection (d).
15

16 While subsection (b)(3) does not expressly contemplate a will being signed for a donor
17 by another, most statutes of wills authorize a will to be signed on behalf of a testator under
18 certain conditions. See Uniform Probate Code § 2-502. Wills meeting those execution
19 formalities can also make an effective anatomical gift.
20

21 Subsection (b)(4), which is new to the anatomical gift act, permits oral gifts by terminally
22 or injured persons if the communication is addressed to at least two witnesses, one of whom is a
23 disinterested witness. Thus the ability to make an oral gift parallels the ability to make oral
24 revocations and refusals.
25

26 A decision was made in drafting this [act] not to include a specific form in the statute for
27 the making of an anatomical gift. Rather, the drafting committee concluded that a suggested
28 form consistent with this [act] be included in these comments. This form follows:
29
30

31 **ANATOMICAL GIFT DONOR CARD**

32
33 Pursuant to the Uniform Anatomical Gift Act, upon my death, I, _____, give
34 (check the applicable box or boxes if more than one box is applicable):
35

36 1. My organs, eyes, and tissue only for transplantation, therapy, research, or
37 education.
38

39 2. My entire body and all of my organs, eyes, and tissue for transplantation, therapy,
40 research, or education.
41

42 3. My body for research and education only.
43

44 4. Only the following parts for transplantation, therapy, research, and education:

1
2 _____
3
4 5. [] Other special instructions:
5
6 _____
7

8 Signed on: [Insert Date]:
9

10 My date of birth is:
11

12 _____
13 Signature
14

15 INSTRUCTIONS

16
17 *Check box 1 only if you wish to donate all of your suitable organs, eyes, or tissue for*
18 *transplantation, therapy, research, or education. If you check box 1, the rest of your body will not be*
19 *used for research and education.*
20

21 *Check box 2 if you are giving your entire body as well as all of your organs, eyes, and tissue*
22 *for transplantation, therapy, research, and education. If you check box 2 all of your suitable organs,*
23 *eyes, and tissue first will be used for transplantation, therapy, research, or education, and the*
24 *remainder of your body will be used for research and education.*
25

26 *Check box 3 if you wish to donate your body for research and education but do not wish to*
27 *donate your organs, eyes, and tissue for transplantation and therapy.*
28

29 *Check boxes 4 and 5, if appropriate, and insert appropriate text in the space provide.*
30

31 *After checking all appropriate boxes and inserting any additionally text, insert in the spaces*
32 *provided the date you signed the form and your date of birth and sign the donor card on the*
33 *signature line.*
34

35 *While this form allows for the making of a gift of the body for research or education, it is*
36 *often advisable that the person making the anatomical gift and the intended donee have reached an*
37 *agreement concerning this gift before the gift is made.*
38

39 SECTION 6. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE 40 THE DONOR'S DEATH.

41 (a) Subject to Section 8, a donor or other person authorized to make an

1 anatomical gift under Section 4 may amend or revoke an anatomical gift, by:

2 (1) a record signed by:

3 (A) the donor;

4 (B) the other person; or

5 (C) subject to subsection (b), another individual acting at the
6 direction of the donor or the other person; or

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

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

10 (1) be witnessed by two or more other individuals:

11 (A) who are at least [18] years of age;

12 (B) at least one of whom is a disinterested witness; and

13 (C) who have signed at the request of the donor or the other
14 person, and

15 (2) state that it has been signed and witnessed as provided in paragraph
16 (1).

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

21 (d) A donor may amend or revoke an anatomical gift that was not made by will by
22 any form of communication during a terminal illness or injury addressed to at least two other

1 individuals who are at least [18] years of age and at least one of whom is a disinterested witness.

2 (e) A donor who makes an anatomical gift by will may amend or revoke the
3 anatomical gift in the manner provided for amendment or revocation of wills or the manner
4 provided in subsection (a)(1).

5 **Comment**

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

17
18 An anatomical gift can be revoked or amended by a record signed by the donor or the
19 other person authorized to make an anatomical gift under Section 4 who made the anatomical
20 gift on the donor's behalf. Additionally, it can be amended or revoked by another individual
21 acting at the direction of the donor or other person so long as the record is witnessed by at least
22 two witnesses who are at least [18] years of age, at least one of whom is disinterested, and the
23 records so states. For example, suppose a minor's parent signs a document of gift donating the
24 minor's organs. The donor may later revoke that gift by a signed record. Under Section 6(a)(2),
25 the donor may also amend or revoke the anatomical gift by a later-dated document of gift that is
26 inconsistent with the earlier document of gift signed by the parent.

27
28 An anatomical gift made by a document of gift can also be revoked by destruction of the
29 document of gift if the destruction is done with the intent to revoke that gift. (Section 6(c)(1)).
30 As a practical matter revocation by destruction will not be possible for anatomical gifts made on
31 a donor registry. A donor wishing to revoke anatomical gifts made on a registry should revise the
32 registry. If an anatomical gift was evidenced by a written document that was destroyed
33 inadvertently and cannot be found, there may be no effective Section 4 anatomical gift because
34 no one may know of the anatomical gift. Inadvertent destruction of donor cards is common. For
35 example, a card may be lost when the donor decides to clean out a wallet or purse. Thus, donors
36 are well advised to make their wishes known on documents of gift with greater permanency,
37 such as a licenses or registries, in order to reduce the risk of inadvertent destruction.

38
39 The ability to make or revoke an anatomical gift is subject to the limitations in Section 8.

1 For example, if a donor makes an anatomical gift of a kidney, all other persons are precluded
2 from making a later anatomical gift of that kidney or revoking that anatomical gift. Therefore,
3 the donor's later-appointed guardian would not be empowered to amend or revoke that
4 anatomical gift.

5
6 An anatomical gift may also be revoked or amended by a donor with a terminal illness or
7 injury by any form of communication that is addressed to at least two individuals over the age of
8 [18]. At least one of the witnesses must be disinterested. If the donor cannot communicate
9 orally, acceptable communication, in addition to a record, could include a movement of the head
10 or eye in response to specific questions.
11

12 **SECTION 7. REFUSAL TO MAKE ANATOMICAL GIFT.**

13 (a) An individual may bar another person from ever making an anatomical gift of
14 that individual's body or part by making a refusal.

15 (b) A refusal must be evidenced by:

16 (1) a record signed by the individual;

17 (2) the individual's will whether or not the will is admitted to probate or
18 invalidated after the individual's death;

19 (3) a record signed by the individual authorizing the [state department of
20 motor vehicles] to imprint on the individual's license a statement or symbol indicating the
21 refusal if the license allows for the making of a refusal; or

22 (4) any form of communication made during the individual's terminal
23 illness or injury addressed to two or more other individuals who are at least [18] years of age and
24 at least one of whom is a disinterested witness.

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

26 (1) in the manner provided in subsection (a);

27 (2) by making an anatomical gift pursuant to Section 5 that is inconsistent

1 with the previous refusal to make that gift; or
2 (3) by the destruction of the record evidencing the refusal with the intent
3 to revoke the refusal.

4 **Comment**

5
6 This section finds its antecedents in prior law. This section, however, applies only to a
7 refusal by an individual of anatomical gifts of that individual’s body or of that individual’s parts.
8 An agent, parent, or guardian cannot make a refusal binding upon any other person. Section 7
9 honors the autonomy of the individual whose body or part might otherwise be the subject of an
10 anatomical gift by empowering the individual to bar others from making a anatomical gift on the
11 individual’s behalf. There is no age limitation for an individual to sign a refusal. Thus, an
12 individual of any age can do so. [Change if committee approves subsection (h).
13

14 Refusals typically are evidenced by a signed record. They can also be evidenced by a
15 symbol or statement on a license issued by the state where there is an opportunity to do so.
16 However, nothing in this [act] should be construed to require licenses to provide space for
17 refusals. Additionally, a refusal can be made by any form of communication by a terminally ill
18 or injured person in the same manner as amendments and revocations. A refusal can be amended
19 or revoked only by the individual making the refusal. The consequence of a refusal is set forth
20 in Section 8.
21

22 Subsection (c) provides for the revocation of a refusal. A refusal may be revoked by a
23 signed record. For example, suppose an individual signs a refusal to be an organ donor under
24 Section 7. Later that individual signs a record stating only “I revoke the refusal.” At this point
25 that individual is neither a donor nor a refuser and upon the individual’s death, an anatomical gift
26 could be made by the person or persons listed in Section 9. On the other hand, suppose the
27 individual who had signed a refusal later executed a document of gift donating “my eyes only.”
28 Here there is an anatomical gift of the eyes and a refusal to be a donor of any other part. This
29 would bar any person from revoking the anatomical gift of the eyes or making a anatomical gift
30 of any other part. Similarly, suppose the individual had signed a refusal and then later obtained a
31 license stating that the individual wanted to be an “organ donor” The license would revoke the
32 refusal to the extent inconsistent with the refusal and there would be an anatomical gift of the
33 donor’s organs, eyes, and tissue. See Section 11(e).
34

35 Section 7 makes no provision for the recording of refusals on a donor registry. If a person
36 operating a donor registry were to provide registrants an opportunity to register a refusal by a
37 signed record, that refusal would be effective under Section 7(a)(1).
38

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

1
2 Pursuant to the Uniform Anatomical Gift Act, I, _____ hereby refuse to
3 make any anatomical gift and bar all other persons from making an anatomical gift of my body or
4 any part.

5
6
7
8 _____
9 Date Signed

Signature of Declarant

10 **SECTION 8. EFFECT OF ANATOMICAL GIFT, AMENDMENT,**
11 **REVOCAION, OR REFUSAL.**

12 (a) Except as otherwise provided in subsection (g), in the absence of contrary
13 indications by the donor, a person, other than a donor, may not make, amend, or revoke an
14 anatomical gift of the donor's body or a part if the donor made an anatomical gift under Section 5
15 or an amendment of an anatomical gift of the donor's body or the part under Section 6.

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

19 (c) An individual's unrevoked refusal to make an anatomical gift of the
20 individual's body or a part under Section 7 bars all other persons from making an anatomical gift
21 of the individual's body or the part in the absence of contrary indications by that individual
22 expressly set forth in the refusal.

23 (d) If a person other than the donor makes an unrevoked anatomical gift of the
24 donor's body or a part under Section 5 or an amendment of an anatomical gift of the donor's
25 body or a part under Section 6, another person may not make, amend, or revoke the anatomical
26 gift of the donor's body or part at a later time under Section 10.

1 (e) A revocation of an anatomical gift of the donor’s body or a part under Section
2 6 by a person other than the donor does not bar another person from making an anatomical gift
3 of the body or a part under Section 5 or 10.

4 (f) In the absence of a contrary indication by the donor or other person authorized
5 to make an anatomical gift under Section 4, an anatomical gift of a part is neither a refusal to
6 give another part nor a limitation on the making of an anatomical gift of another part under
7 Section 10.

8 (g) If a donor dies under [18] years of age and was not an emancipated minor, a
9 parent of the donor who is reasonably available may revoke or amend an anatomical gift of the
10 donor’s body or part.

11 (h) [Note to Committee: If an individual dies under [18] years of age and was not
12 an emancipated minor, a parent of the individual who is reasonable available may revoke the
13 individual’s refusal.

14 **Comment**

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

24 Section 8 is designed to bolster the rule that a donor’s autonomous decisions regarding
25 the making or refusing to make an anatomical gift are honored and not subject to change by
26 others. Section 8 continues the policy of making lifetime donations irrevocable while also taking
27 away from families the ability to consent to, amend, or revoke donations made by donors during
28 their lifetimes. It also prevents families from making donations on behalf of decedents who,
29 while living, had signed a refusal to make an anatomical gift under Section 7 unless there is
30 evidence that the individual signing the refusal did not intend to have that refusal bind others

1 after death. For example, a refusal may bar other persons from making an anatomical gift during
2 the individual's life under Section 5 but not bar family members from making an anatomical gift
3 after the individual dies.

4
5 Section 8 is intended to address the possible tension between a donor's autonomous
6 decision to be a donor or not to be a donor with the interest of surviving family members to make
7 that decision. It addresses this tension by favoring the decision of the donor over the desires of
8 the family. As drafted, the effect of Section 8 is to strip surviving family members of at least one
9 stick in a bundle of property rights they might otherwise have under state law—the right to
10 donate or refuse to donate parts of a deceased donor. This section does not affect property rights
11 families might otherwise have in a decedent's body under other law such as the right to dispose
12 of a decedent's body after the anatomical gift has been made. In fact, language in Section 11(f)
13 confirms the family's right to dispose of the decedent's body after decedent's parts have been
14 removed for transplantation, therapy, research, or education.

15
16 Section 8(a) provides that if a donor has made an anatomical gift or has amended an
17 anatomical gift, no other person can make, amend, or revoke that gift. For example, suppose a
18 donor gifts the donor's organs for transplantation by an appropriate document of gift. By virtue
19 of Section 8(a), no other person can alter or revoke that gift. In fact, because all other persons are
20 barred from doing so, they have no legal authority or right to alter or revoke the anatomical gift.
21 This section is subject to the subsection (g) exception allowing for the revocation of an
22 anatomical gift by a donor who dies under the age of 18.

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

33
34 Section 8(c) provides that an individual's refusal to make an anatomical gift of the
35 individual's body or a part bars all others from later making an anatomical gift of the body or
36 that part. Thus, suppose an individual signs a Section 7 refusal. No other person before or after
37 that individual's death has the power to make an anatomical gift for that individual. Of course,
38 such persons are barred only if they know of the refusal. See Section 10(b). This section also
39 honors the autonomy of the individual to refuse to have his body or parts become the subject of
40 an anatomical gift. While this [act], as well as the prior acts, reflects the policy of encouraging
41 anatomical gifts, it also is important to respect the autonomous decisions of individuals not to be
42 donors.

43
44 An individual might sign a Section 7 refusal that is not intended to affect the ability of

1 others to make an anatomical gift following the individual’s death. If that intent is reflected in
2 the refusal, or under Section 7(b) if the refusal were later revoked, then other persons can make
3 an anatomical gift under Section 10. For example, suppose an individual signs a Section 7
4 refusal barring the making of an anatomical gift of the individual’s body and parts. If that person
5 does not revoke the refusal, then neither that individual’s agent or guardian nor any person listed
6 in Section 9 can make an anatomical gift of the individual’s body or part. However, it is possible
7 that an individual might wish to bar the individual’s guardian from making an anatomical gift
8 under Section 5 but not the individual’s family from making a gift under Section 10. If that intent
9 is made clear in the refusal, that intent will be honored. The intent to make only a limited refusal
10 must be set forth expressly in the Section 7 refusal. Extrinsic evidence would not be admissible
11 to establish intent to limit the refusal as subsection (c) provides that a contrary indication be
12 “expressly set forth in the refusal.”
13

14 Sections 8(d) and (e) apply to gifts, amendments, and revocations by persons other than a
15 donor under either Section 5 or 6 of this [act]. These persons cannot make a Section 7 refusal.
16 Generally, the rules here parallel the rules applicable to donors in Section 8(a) and (b). For
17 example, suppose the guardian of an individual makes a donation of that individual’s kidney by
18 signing a document of gift. Later the individual dies. The only individual who could revoke that
19 gift would be the person acting as the individual’s guardian at the individual’s death since all of
20 the other persons listed in Section 9 would be barred from revoking the gift. The guardian’s
21 decision would not affect the ability of the donor, the donor’s agent, or the donor’s guardian
22 from later making, amending, or revoking an anatomical gift or the individual whose body or
23 part was donated from later signing a Section 7 refusal. However, the revocation of an
24 anatomical gift by an agent, parent, or guardian would not prevent the making of an anatomical
25 gift under Section 10. For example, suppose an agent makes an anatomical gift for a donor which
26 the agent revokes prior to the principal’s death. The principal takes no further action to
27 effectuate the anatomical gift and dies survived by a spouse. The spouse could make an
28 anatomical gift because the agent’s revocation of the anatomical gift does not prevent the spouse
29 from making the anatomical gift.
30

31 Section 8(f), consistent with prior law, provides that, absent contrary indications by the
32 person making an anatomical gift, the gift of a part is neither a refusal to give other parts nor a
33 limitation on the making of gifts of other parts. Thus, if a donor makes an anatomical gift of the
34 donor’s kidney, this gift does not bar the donor’s family from later making a gift of the donor’s
35 heart.
36

37 Section 8(g) permits the parents of a child who dies under the age of 18 and who was a
38 donor to revoke that gift. This subsection applies only if the minor dies under the age of [18]. It
39 does not empower the parent of a living minor to revoke that minor’s anatomical gift while the
40 minor is living. In fact, Section 8(a) would actually preclude the parent from revoking the minor
41 child’s anatomical gift. Parents who do not wish their minor child to make an anatomical gift
42 should communicate their desires to that child.
43

1 **SECTION 9. WHO MAY MAKE AN ANATOMICAL GIFT OF DECEDENT'S**
2 **BODY OR PART.**

3 (a) Subject to subsection (b) and Section 10(b), an anatomical gift of decedent's
4 body or part for purposes of transplantation, therapy, research, or education may be made, in the
5 order of priority listed, by any member of the following classes of persons who is reasonably
6 available:

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

9 (2) the spouse of the decedent;

10 (3) adult children of the decedent;

11 (4) parents of the decedent;

12 (5) adult siblings of the decedent;

13 (6) adult grandchildren of the decedent;

14 (7) grandparents of the decedent;

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

16 (9) the persons who were acting as the [guardian] of the person of the
17 decedent at the time of death; 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 subsection (a)(1), (3), (4),
21 (5), (6), (7), (9), or (10) entitled to make an anatomical gift, an anatomical gift may be made by a
22 member of the class unless that member or a potential donee or custodian knows of an objection

1 by another member of the class. If an objection is known, the anatomical gift may be made only
2 by a majority of the members of the class who are reasonably available.

3 **Comment**

4 Section 9 empowers the persons listed in Section 9 after a decedent’s death to make an
5 anatomical gift of the decedent’s body or parts unless they are otherwise barred from doing so
6 under Section 7 or Section 8. The list of persons who can make an anatomical gift on behalf of a
7 decedent is slightly expanded from prior law. This list now includes that individual who at the
8 time of the decedent’s death was acting as an agent of the decedent, adult grandchildren of the
9 decedent, and a close friend of the decedent.

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

19
20 Absent a donation by the decedent or the decedent’s former agent, other persons or
21 classes of person are empowered to make an anatomical gift in the following order: spouse of the
22 decedent; adult children of the decedent; parents of the decedent, adult siblings of the decedent;
23 adult grandchildren of the decedent; grandparents of the decedent; an adult who exhibited
24 “special care and concern for the decedent” and the person who was acting as guardian of the
25 decedent at the time of the decedent’s death. Lastly, “any other person having the authority to
26 dispose of the decedent’s body” can make the decision if no other persons are reasonably
27 available. In those states that recognize domestic partners, the addition of the domestic partner to
28 Section 9(a)(2) would be warranted. In states that do not recognize domestic partners,
29 individuals who wish to be donors should make an anatomical gift before death or designate
30 their domestic partners as agents to give them the first priority under this section.

31
32 To the extent that an individual is concerned that the persons named in Section 9 may
33 not take adequate account of their personal preferences regarding anatomical gifts, the onus is on
34 them to either make or bar the making of an anatomical gift.

35
36 A commonly raised concern regarding whether an anatomical gift might be
37 inconsistent with a decedent’s personal beliefs centers around religion. In *Organ and Tissue*
38 *Donation: A Reference Guide for Clergy, 4th ed., 2000. Cooper ML, Taylor GJ, eds* and
39 reprinted at <http://www.organtransplants.org/understanding/religion>, an analysis was done of the
40 positions and statements of various religions regarding organ donation. While not exhaustive of
41 all religious traditions (it included only the following: African Methodist Episcopal, Amish,

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

14 Under subsection (b), if a member of the class who is reasonably available knows of no
15 objection by any other member of the class and neither the potential donee nor custodian knows
16 of any objection, that class member can make the anatomical gift. Likewise, if a class member
17 knows of any objection by another class member but that other class member is not reasonable
18 available, the class member who is reasonably available can make the gift notwithstanding the
19 known objection of the unavailable member of the class.
20

21 If, on the other hand, the person making the gift, or the potential donee or custodian,
22 knows of an objection by another member of the same class and there are other members of the
23 class who are reasonably available (including the objector, if reasonably available), then a gift
24 can be made only if a majority of the members of the class who are reasonably available make
25 the gift. To illustrate, suppose the decedent is survived by three children. The eldest, who is
26 unaware of the desires of the others, can make an anatomical gift. If the eldest knows that one of
27 the other siblings objects and that sibling is reasonably available, then only a majority of the
28 siblings who are reasonably available can make the gift. If all three are available, two would be
29 required to make the gift; if two are reasonably available, then they must agree; if only one is
30 reasonably available that one can make the gift.
31

32 The objection of a class member who is not reasonably available should not be allowed to
33 override the informed decision of class members who are reasonably available because that
34 absent class member could not have been afforded the opportunity to change his or her mind in
35 light of current circumstances.
36

37 The rule of subsection (b) does not apply to adults who exhibited special care and
38 concern for the decedent. If there is more than one such person, any one of them can make an
39 anatomical gift.
40

41 Reasonably available is not synonymous with physically present. The phrase (defined in
42 Section 2 (paragraph (20)) means able to be contacted without “undue effort and willing to act in
43 a timely manner consistent with existing medical criteria necessary for the making of an
44 anatomical gift.” Thus, a sibling who can be easily contacted by telephone is reasonably

1 available. Section 14(g) imposes on procurement organizations an obligation to make a
2 reasonable search for persons with a priority to make an anatomical gift.
3

4 The concept and definition of “reasonably available” is drawn from lessons learned in the
5 drafting of the Uniform Health-Care Decisions Act and borrows from the language in Section
6 1(14) of that act. The making of an anatomical gift following a decedent’s death is extremely
7 time sensitive, and a decision to donate must be made within a relatively short period of time
8 following death if the organs are to remain viable and human lives are to be saved. In practice,
9 when an anatomical gift of a decedent’s organs was not made prior to death, conversations with
10 family members to consider donation often occur before death but that is not always possible. In
11 accident cases, for example, it can take considerable time to locate all family members. When a
12 decision to donate on behalf of a dying person can be made in advance, the procurement
13 organizations generally will have no difficulty in contacting persons with the priority to make an
14 anatomical gift. However, in other cases locating persons with a higher priority may not be as
15 easy or even possible (although this should be less so in this highly electronic age). For example,
16 a person may be dying as the result of an automobile accident. The procurement organization
17 may have easily contacted the dying person’s adult siblings but their parents are on a cruise. This
18 [act] would allow the siblings to decide if the parents could not be contacted to consider whether
19 to make or refuse to make a donation.
20

21 Under Section 10(b)(2) a person in a subsequent class cannot make an anatomical gift if a
22 person in a prior class is reasonably available to make or to object to the making of an
23 anatomical gift. While a person in a subsequent class is barred from making an anatomical gift if
24 a person in a prior class is reasonably available, no such bar occurs if the person in the
25 subsequent class only knows that a person in a prior class who is not reasonably available
26 objects to the making of an anatomical gift. This is purposeful. The policy choice here is
27 essentially that only persons who are reasonably available can make or object to the making of
28 an anatomical gift. The fact that a person in the same or prior class has objected in the past does
29 not mean that if that person had been reasonably available and had the opportunity to be fully
30 informed of the benefits of making an anatomical gift that the person’s objection would continue.
31

32 **SECTION 10. MANNER OF MAKING OR REVOKING ANATOMICAL GIFT**
33 **OF DECEDENT’S BODY OR PART.**

34 (a) A person authorized to make an anatomical gift under Section 9 may make an
35 anatomical gift by a document of gift signed by the person making the anatomical gift or that
36 person’s oral communication that is recorded or is contemporaneously reduced to a record and
37 signed by the person receiving the oral communication

1 (b) A person or class of persons listed in Section 9 may not make, amend, or
2 revoke an anatomical gift if:

3 (1) the person or class of persons knows that they are barred from making,
4 amending, or revoking an anatomical gift under Section 7 or 8; or

5 (2) at the time of the decedent's death a person in a prior class under
6 Section 9(a)(1) is reasonably available to make or to object to the making of an anatomical gift.

7 (c) Subject to subsection (d), an anatomical gift by a person authorized under
8 Section 9 may be revoked orally or in a record by any member of a prior class who is reasonably
9 available. If more than one member of the prior class is reasonably available, the anatomical gift
10 may be revoked only if a majority of the reasonably available members object to the making of
11 the anatomical gift or they are equally divided as to whether to make an anatomical gift.

12 (d) A revocation under subsection (c) is effective only if the donee or custodian or
13 the physician or technician removing the part or preparing the recipient knows of the revocation
14 before procedures have begun to remove a part from the donor's body or to prepare the recipient
15 for surgery.

16 **Comment**

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

26
27 No person may make, amend, or revoke an anatomical gift if the person knows that the
28 right to make, amend, or revoke an anatomical gift was barred by Section 7 or Section 8. For

1 purposes of this [act] “knows” is defined to mean actual knowledge. See Section 2(paragraph
2 (12)). This places an onus on individuals wishing to bar the making of an anatomical gift of
3 their parts following their deaths to do so by a record that is easily discoverable or to
4 communicate their wishes to their loved ones.
5

6 A person cannot make an anatomical gift if a person in a prior class is reasonably
7 available to either make or object to the making of an anatomical gift. Section 10(b)(2). The
8 assumption here is that a person in a prior class is reasonably available but has not yet been
9 contacted by a procurement organization. For example, suppose decedent dies but only his
10 grandchildren are physically present at the hospital. Decedent’s children are able to be contacted
11 and therefore are reasonably available. In such case, the grandchildren have no power to make an
12 anatomical gift. (See also Section 14(g) imposing an obligation on a procurement organization
13 to make a reasonable search for all persons having a priority to make an anatomical gift).
14

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

27 This act, unlike prior law, defines “reasonably available.” (Section 2 (paragraph 20)). In
28 light of that definition, if a person with a priority to make, to object to the making of, or to
29 revoke a gift, is “unwilling” to make a decision, that person is deemed *not* to be reasonably
30 available. For example, an individual with a higher priority (spouse) may be unwilling to make a
31 decision preferring it be made by others (children). In this case the spouse, being unwilling to
32 make a decision, is not reasonably available. There is some concern that an unwillingness to
33 make a decision is the equivalent of an objection, or that in treating it as an objection, there is the
34 potential for inappropriate pressure being placed on a grieving relative to make a decision. This
35 concern relates to a potential tension between the goal of anatomical gift acts to increase the
36 supply of parts and the general societal goal of respecting individual autonomy. This [act]
37 reflects a judgment that the potential savings in human life justifies the position that the inability
38 to express a decision is tantamount to not being available to make a decision. This policy choice
39 was supported by the fact that procurement organizations are well-trained to work with family
40 members when seeking an anatomical gift to distinguish between an objection and a true
41 unwillingness to make a decision.
42

43 This section does not prevent a person in a more remote class from making an anatomical
44 gift when that person knows that a person in a prior class who is not reasonably available would

1 object to the gift. That is because the objection of the person in a prior class may be based upon
2 faulty information about the effects of a gift or other concerns that could have been ameliorated
3 had the person in the prior class been reasonably available to discuss the matters with a
4 procurement organization.
5

6 **SECTION 11. PERSONS WHO CAN RECEIVE AN ANATOMICAL GIFT.**

7 (a) In this section “appropriate procurement organization” means in the case of an
8 anatomical gift of an eye, an eye bank, and in the case of an anatomical gift of tissue, a tissue
9 bank.

10 (b) An anatomical gift of a body or part may be made to the following persons as
11 donees:

12 (1) a hospital, accredited medical or dental school, college, university, or
13 any other person for education or research involving the use of human bodies or parts;

14 (2) a named individual designated by the person making the anatomical
15 gift if the named individual is the recipient of the part; or

16 (3) a named eye bank or named tissue bank.

17 (c) An anatomical gift of an organ for transplantation or therapy, other than an
18 anatomical gift made under subsection (b)(2), passes to the custodian.

19 (d) If an anatomical gift is made under Section 5 of one or more specific parts in a
20 document of gift that does not designate a donee described in subsection (b)(1), (2) or (3), the
21 following rules apply:

22 (1) If the part is an eye or tissue, an appropriate procurement organization
23 is the donee.

24 (2) If the part is an organ, the part passes to the custodian.

1 (e) If a document of gift made pursuant to Section 5 specifies only a general intent
2 to make an anatomical gift by words such as “donor”, “organ donor”, or “body donor”, or by a
3 symbol of similar import, the decedent’s parts may be used only for transplantation, therapy,
4 research, or education. In this case, the following rules apply:

5 (1) If the part is an eye or tissue, an appropriate procurement organization
6 is the donee.

7 (2) If the part is an organ, the part passes to the custodian.

8 (f) If there is no donee or custodian of decedent’s body or a part, or the body or
9 part is not used for transplantation, therapy, research, or education, custody of the decedent’s
10 body or part vests in the person under obligation to dispose of the body or part.

11 (g) A donee or custodian may not accept an anatomical gift that it knows was
12 revoked under Section 6 or was not effective under Section 10 or if it knows that the decedent
13 made a refusal under Section 7 which was not revoked. For purposes of this subsection, if the
14 donee or custodian knows that an anatomical gift was made on a document of gift, the donee or
15 custodian is deemed to know of any amendment or revocation of that anatomical gift or any
16 refusal to make an anatomical gift that may be on the same document of gift.

17 (h) If an organ passes to a custodian, the organ shall be allocated by the custodian
18 in accordance with applicable federal law and policies relating to the allocation of organs for
19 transplantation or therapy.

20 **Comment**

21 Section 11 sets forth various rules regarding the person who can receive an anatomical
22 gift. In the case of a whole body donation for research or education, the decedent’s body passes
23 to the hospital or other institution as a donee. In the case of a donation of eye or tissue the part
24 passes to the named eye or tissue bank, or, if none is named, the “appropriate procurement

1 organization” as the donee. In the case of a donation of an organ to a named individual who
2 would be a recipient of the organ, that individual is the donee. Most organs that are the subject
3 of an anatomical gift will pass to a custodian rather than a donee. The custodian, as provided by
4 subsection (h), allocates that organ in accordance with federal laws and policies to a patient on
5 the national organ waiting list.
6

7 By Section 274 of the National Organ Transplant Act in 1984, Congress created the
8 OPTN. See also, 42 CFR §§ 121 *et. seq.* Currently, that Network contracts with United Network
9 Organ Sharing (“UNOS”), a non-profit corporation, to administer the nation-wide allocation of
10 organs for transplantation. UNOS, in turn, has agreements with numerous organ procurement
11 organizations that have specific designated service areas. The organ procurement organizations
12 have primary responsibility to evaluate the medical suitability of organs for transplantation, seek
13 anatomical gifts under Section 9 when the decedent was not a donor at or near death, arrange for
14 the procurement of organs from donors, and cause organs to be allocated and transferred to
15 recipients in accordance with federal regulations and policies adopted by the OPTN.
16

17 To assist in the evaluation of potential donors Federal law also requires hospitals
18 receiving Medicare and Medicaid funding to refer all deaths or near deaths to organ procurement
19 organizations or a third party designated by the organ procurement organization for possible
20 organ, eye, and tissue donation. See 42 CFR § 482.45 (Medicare and Medicaid Programs:
21 Conditions of Participation: Identification of Potential Organ, Tissue, and Eye Donors and
22 Transplant Hospitals’ Provision of Transplant-Related Data). These referral requirements have
23 made the provisions of Section 5 of the 1987 Anatomical Gift Act obsolete and, accordingly,
24 those provisions have been deleted from this [act].
25

26 While this [act] permits donations to a named individual, such donations are exceedingly
27 rare for at least two reasons. Only in rare circumstances would a donor, during the donor’s life,
28 know of an individual who would need an organ, eye, or tissue that would be the subject of an
29 anatomical gift and similarly decedent’s families are generally not likely to know of the identity
30 of such individuals.
31

32 An anatomical gift of a body for research or education can be made to a designated
33 organization. These gifts typically occur as the result of a body donation to a particular
34 institution in the donor’s will or as the result of a prior arrangement between a donor and a
35 particular research or educational institution. In the case of a Section 10 anatomical gift of the
36 entire body, or the portion of the body made after a gift of organs, tissue, and eye, the donee may
37 either be selected by the individual making the gift or by the procurement organization.
38

39 It is common practice, particularly with respect to gifts evidenced by a statement or
40 symbol on the donor’s license, for the donor to indicate nothing more than a general intent to be
41 an organ donor. For example, the driver’s license of a donor may have an X in a box labeled
42 “organ donor” or a heart icon on the license. Section 13(e) expressly provides that if a document
43 of gift specifies only a general intent to be an organ or body donor, such as would occur in the
44 prior example, (1) only the donor’s parts (organs, eyes and tissue) are the subject of the gift. For

1 eye and tissue the donee is the appropriate procurement organization. Organs, on the other hand,
2 are distributed to the custodian to be allocated in accordance with federal law and policies.
3

4 Individuals wishing to donate their entire body for research or education, therefore,
5 would have to do more than merely causing a statement or symbol, such as an “X” in a box
6 labeled “organ donor” or a heart icon to be placed on a license as that statement or symbol
7 evidences nothing more than a general intent to be a “donor.” See Comments to Section 5
8 relating to model donor cards and licenses.
9

10 Under this section and contrary to the existing laws of some states, a statement on a
11 license that the licensee is an “organ donor” is an anatomical gift and not merely evidence of
12 intention to want to be a donor and as such parts can be procured from the donor without the
13 need of a Section 10 gift. Likewise, as an anatomical gift, under Section 8 surviving family
14 members would be barred from revoking the gift.
15

16 Under Sections 11(d) and (e) the “appropriate procurement organization” is the donee of
17 donated eyes and tissue if no specific eye or tissue bank is named as the donee. Other laws,
18 agreements, or custom determine the “appropriate procurement organization.” For example,
19 many hospitals have agreements with specific eye and tissue banks pursuant to which the
20 donated eyes and tissue of patients who die in the hospital pass when the donor has not named a
21 specific eye or tissue bank as the donee. Similar arrangements may exist with coroners, organ
22 procurement organizations, and funeral homes. The variety of such arrangements is such that it
23 was deemed inappropriate for this [act] to further delineate who the donee of eyes and tissue
24 would be, leaving it to these other arrangements to determine the ultimate donee. Of course,
25 donors who wish to specifically direct the donee of eye or tissue can designate a specific eye or
26 tissue bank.
27

28 Section 11(f) provides that, if there is no donee or custodian a decedent’s body or parts,
29 custody of the body or parts vests in the person under obligation to dispose of them For example,
30 if an individual signs a donor card but it is determined that the individual would not be a
31 medically suitable donor, there would be no donee or custodian. This individual’s body would
32 then pass, presumably to the family, for burial. Section 11(f) also provides that if there is a donee
33 or custodian but it is later determined that the body or parts cannot be used for transplantation,
34 therapy, research, or education, custody of the body or parts vests in the person obligated to
35 dispose of the body or part. For example, suppose a donor’s tissue passes to a tissue bank as
36 donee. Later it is determined that the tissue cannot be used for transplantation, therapy, research,
37 or education. Custody of this tissue would pass to the person obligated to dispose of the tissue.
38 This person might actually be the tissue bank under federal policies relating to the disposal of
39 tissue.
40

41 Under the common law, a gift is effectuated by intent, delivery, and acceptance. (But see
42 Section 13(a) regarding delivery). In common with general principles of gift law, an express
43 acceptance of an anatomical gift is not required. However, Section 11(g) provides certain bars on
44 the acceptance of an anatomical gift by a donee or custodian that would trump the “acceptance

1 presumption.” A donee or custodian may not accept an anatomical gift if the donee or custodian
2 knows of a Section 7 refusal. A donee or custodian may not accept an anatomical gift if the
3 donee or custodian knows that a gift once made had been revoked or that a gift under Section 10
4 was not properly made. For example, suppose the custodian of a gift from children knows that
5 the decedent’s spouse is reasonably available and willing to make or refuse to make a gift. The
6 custodian may not accept the purported gift from the children. The knowledge requirement is
7 subject to an imputed knowledge exception in the last sentence of Section 11(g). If the donee or
8 custodian knows of an anatomical gift made on a particular document of gift, the donee or
9 custodian is deemed to have knowledge of any revocation of that gift or later refusal to make a
10 gift on the same document of gift.

11
12 As noted above, federal laws and policies control the allocation of organs among needy
13 recipients. These laws preempt contrary state laws. Thus, it is appropriate that Section 11(h)
14 provides that nothing in the [act] shall be construed to affect the allocation of organs for
15 transplantation.

16
17 **SECTION 12. SEARCH AND NOTIFICATION.**

18 (a) The following persons shall make a reasonable search for a document of gift
19 or other information identifying the individual as a donor or as an individual who made a refusal:

20 (1) a law enforcement officer, firefighter, paramedic, or other emergency
21 rescuer finding the individual whom the searcher reasonably believes is dead or near death; and

22 (2) a hospital, upon the admission or presentation of the individual at or
23 near death, if no other source of the information is immediately available.

24 [(b) If a law enforcement officer or any other person with access the records of
25 the [state department of motor vehicles] finds an individual who is dead or near death, the law
26 enforcement officer or other person shall make a reasonable search of the motor vehicle records
27 to ascertain whether the individual is a donor.]

28 (c)[(b)] If a document of gift or a refusal to make an anatomical gift is located by
29 the search required by subsection (a) [or (b)], and the individual or deceased individual to whom
30 it is related is taken to a hospital, the document of gift or refusal must be sent to the hospital by

1 the person responsible for conducting the search for the document of gift or refusal.

2 (d)[(c)] A person required by this section to search for a document of gift is not
3 subject to criminal or civil liability for failing to discharge the duties imposed by this section but
4 may be subject to administrative sanctions as provided by law other than this act.

5 **Comment**
6

7 Subsection (a) is essentially the same as prior law. Subsection (b) is new. It requires a
8 search of the state motor vehicle records by a law enforcement officer or other person with
9 access to those records who finds an individual who is dead or near death to ascertain whether
10 that person is a donor. Of course, if the officer or other person finds a license on such person
11 indicating the person is a donor, the requirement of this subsection has been met.
12

13 While this section does not require the officer or other person to search for a refusal, if,
14 as a result of a search either a document of gift or a refusal is located, the officer or other person
15 shall send the document of gift or refusal to the same hospital that the individual who is dead or
16 near death is taken.
17

18 **SECTION 13. DELIVERY OF DOCUMENT OF GIFT.**

19 (a) A document of gift need not be delivered during the donor's lifetime to be
20 effective.

21 (b) Upon or after a decedent's death, a person in possession of a document of gift
22 or a refusal to make an anatomical gift with respect to the decedent shall allow a person that is
23 authorized to make or object to the making of an anatomical gift under this [act] or is a potential
24 donee or custodian under Section 12 to examine or copy the document of gift or refusal.

25 **Comment**

26 Section 13(a), in common with prior versions of this act, rejects the common-law
27 principle that a gift requires delivery to be effective. Most anatomical gifts made by a donor
28 during the donor's life are made without any communication between the person making the gift
29 and the donee or custodian and for obvious reasons. First, the donee or custodian is likely
30 unknown. Second, unlike other gifts, anatomical gifts are completely revocable. However, a
31 document of gift or a copy can be delivered to the donee and donors may do so in hopes of

1 expediting the retrieval procedures at their deaths.

2
3 This [act] does not affirmatively require any person in possession of a document of gift or
4 a refusal to come forward at a decedent's death with that information. That requirement would
5 be onerous. On the other hand, a document of gift or a refusal may be in the possession of
6 someone other than the donor. Persons in possession of a document of gift or a refusal shall
7 allow persons who can make or object to the making of an anatomical gift to review and copy
8 such records. They shall also allow potential Section 11 donees or custodians to examine and
9 copy such documents.

10
11 **SECTION 14. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION,**
12 **DONEE, AND CUSTODIAN.**

13 (a) Upon referral by a hospital of an individual at or near death to a procurement
14 organization, the organization shall make, or cause to be made, a reasonable search of any donor
15 registry [and records of the state department of motor vehicles] that it knows exists for the
16 geographical area in which the individual resides to ascertain whether the individual has made an
17 anatomical gift.

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

21 (c) Upon referral by a hospital of an individual at or near death to a procurement
22 organization, the organization may conduct any reasonable examination necessary to ensure the
23 medical suitability of a part that is or could be the subject of an anatomical gift for
24 transplantation, therapy, research, or education from a donor or a prospective donor.

25 (d) At any time after a donor's death, the donee or custodian of an anatomical gift
26 may conduct any reasonable examination necessary to ensure the medical or other suitability of
27 the body or part for its intended purpose.

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

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

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

9 (h) Subject to Section 22, the rights of a donee or custodian of an anatomical gift
10 in the subject of the anatomical gift are superior to rights of others. A donee or custodian may
11 accept or reject an anatomical gift in whole or in part. If a donee accepts an anatomical gift of an
12 entire body, the donee, subject to the terms of the document of gift or this [act], may allow
13 embalming and use of the body in funeral services. If the anatomical gift is of a part, the donee
14 or custodian, upon the death of the decedent and before embalming, shall cause the part to be
15 removed without unnecessary mutilation.

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

19 (j) If an anatomical gift has been made, a technician may remove donated parts
20 from the body of the decedent the technician is qualified and trained to remove.

21 **Comment**

22 This section sets forth a number of obligations of procurement organizations, custodians
23 and donees. When a hospital refers a patient at or near death to a procurement organization

1 Section 14(a) would require that procurement organization to conduct a reasonable search of any
2 donor registry it knows to exist for the geographical area in which that individual resides to
3 determine if that individual is a donor. If, when enacting this act, a state were to adopt bracketed
4 Section 14(b), then subsection (a) should be enacted with the brackets deleted. Section 14(b), if
5 enacted, permits the procurement organization to access motor vehicles records within the state
6 to ascertain whether an individual is a donor.

7
8 If the procurement organization does not have access to the registry or motor vehicle
9 records, it shall cause the search to be made by a procurement organization that does. This might
10 be the case where the registry or motor vehicle records are available only to procurement
11 organizations in the same state in which the registry or records are located.

12
13 Procurement organizations may conduct a reasonable examination to determine the
14 medical suitability of any part for transplantation. This examination includes an examination of
15 the relevant medical records. Section 14(d).

16
17 This section is not inconsistent with Section 164.512(h) of the HIPAA regulations
18 permitting the disclosure without consent of protected health information “to organ procurement
19 organizations or other entities engaged in the procurement, banking, or transplantation of
20 cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and
21 transplantation.”

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

26 **Comment**

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

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SECTION 16. SALE OR PURCHASE OF PARTS PROHIBITED.

(a) Except as otherwise provided in subsection (b), a person that knowingly, for valuable consideration, purchases or sells a part for transplantation or therapy if removal of a part from a donor is intended to occur after the donor’s death commits a [felony] and upon conviction is subject to a fine not exceeding [\$50,000] or imprisonment not exceeding [five] years, or both.

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

Comment

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

SECTION 17. NONLIABILITY.

(a) Subject to subsection (c), a person who acts in accordance with this [act] or with the applicable anatomical gift law of another state [or a foreign country] or attempts in good faith to do so is not liable for the act in a civil, criminal prosecution, or administrative proceeding.

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

(c) Subsection (a) does not apply to a donee or custodian to which a document of gift has been delivered if the donee or custodian knows that the anatomical gift has been revoked

1 or amended or that a refusal to make an anatomical gift has been made pursuant to Section 7 and
2 the actions of the donee or custodian are inconsistent with the revocation, amendment, or refusal.
3 For purposes of this subsection, if the donee or custodian knows that an anatomical gift has been
4 made on a document of gift, the donee or custodian is deemed to know of any amendment or
5 revocation of that anatomical gift or any refusal to make an anatomical gift on the same
6 document of gift.

7 **Comment**

8
9 “Good faith” should be determined as a matter of law.
10

11 **SECTION 18. LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO**
12 **EXECUTION OF DOCUMENT OF GIFT; PRESUMPTION OF VALIDITY.**

13 (a) A document of gift is valid if executed in accordance with:

14 (1) this [act]

15 (2) the laws of the state or country where it was executed; or

16 (3) the laws of the state or country where the person making the

17 anatomical gift was domiciled, has a place of residence, or was a national at the time the
18 document of gift was executed.

19 (b) If a document of gift is valid under this section, the law of this state governs
20 the interpretation of the document of gift.

21 (c) A person may presume that a document of gift or amendment of an anatomical
22 gift is valid unless that person knows that it was not validly executed or was revoked.

23 **Comment**

24 Section 18 is new to the anatomical gift act. It is designed to accomplish two things.

1 First, it assures that a document of gift valid either in the place where executed or the place
2 where the person making the gift was domiciled, had a residence or was a national would be
3 valid in the state adopting this section. This section tracks like provisions for will, such as
4 Section 2-506 of the Uniform Probate Code.

5
6 More importantly, Section 18(c) provides that a person can presume a document of gift to
7 be valid unless the person has actual knowledge that it was not validly executed or was revoked.
8 For example, if the person knows that the donor had signed a Section 7 refusal but the document
9 of gift was signed by the decedent's spouse following the decedent's death, the person knows
10 that the document of gift was not validly executed.
11

12 SECTION 19. DONOR REGISTRY

13 (a) The [note: insert name of appropriate state agency] may establish or contract
14 for the establishment of a statewide donor registry. The donor registry must:

15 (1) provide a centralized, electronic database that allows a person by a
16 record signed by the person to include on the donor registry a statement or symbol that the
17 person has made an anatomical gift;

18 (2) be directly accessible by all procurement organizations, and

19 (3) be directly accessible seven days a week on a 24-hour basis.

20 (b) A donor registry may not be used for purposes of fundraising.

21 [(c) Information on a donor registry regarding the donation of a part may be
22 disseminated to any procurement organization to assist in the recovery of a part for
23 transplantation, therapy, research, or education.]

24 (d) Information on a donor registry regarding the donation of a part by a specific
25 donor may not be disseminated to persons, other than the donor, unless the decimation is

26 authorized by the donor, this [act], or law other than this [act.]. [*Note to committee:* Are (c) and

27 (d) advisable? They are based on a provision in 72-17-106 of the Montana Code although similar

1 language appears in many state codes]

2 (e) The [note: insert name of appropriate state agency] shall collaborate with the
3 [state department of motor vehicles] in establishing or contracting for the establishment of a
4 statewide donor registry] if the [state department of motor vehicles] allows for the making of an
5 anatomical gift on a license.

6 (f) Nothing in this section shall be construed to prohibit any person from creating
7 a donor registry without the authority of the state.

8 *Legislative Note: Subsection (c) may be deleted if the state department of motor vehicles is the*
9 *agency specified in subsection (a). If the state has statutes mandating the creation of a statewide*
10 *donor registry it need not adopt this section.*

11

12

Comment

13 A donor registry is one of many devices to facilitate the making of anatomical gifts. In
14 time, it may prove to be the most effective way of making anatomical gifts, particularly when the
15 records of the motor vehicle agency and the donor registry can be coordinated to assure a unitary
16 source of donor information. This section is intended primarily to encourage states to facilitate
17 the creation of donor registries operated by the state or by another. This section should not be
18 construed to prohibit otherwise valid anatomical gifts as provided for in Section 4.

19

20 This section does not require states to create a donor registry. Rather it gives states
21 discretion to do so with the proviso that certain minimum requirements be met by the donor
22 registry. In states that have privately operated donor registries, there may be no further need to
23 create another donor registry, although a state might wish to create or contract for the creation of
24 a donor registry that did not meet the minimums set forth in subsection (a).

25

26 SECTION 20. RELATIONSHIP BETWEEN ANATOMICAL GIFT AND

27 DECLARATION OR ADVANCE HEALTH-CARE DIRECTIVE.

28 (a) In this section:

29 (1) "Declaration" means a record signed by the donor specifying the
30 circumstances under which life-sustaining treatment may be withheld or withdrawn.

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

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

6 **Alternative 1**

7 [(b) Unless the declaration or advance health-care care directive of a donor or
8 prospective donor expressly provides to the contrary, life support systems may not be withdrawn
9 from a donor or prospective donor if the continued administration of the life support systems is
10 necessary to assure the medical suitability of a part that may be the subject of an anatomical gift
11 for purposes of transplantation, therapy, research, or education.]

12 **Alternative 2**

13 [(b) Life support systems shall not be withdrawn from a donor or a prospective
14 donor if the continued administration of the life support systems is necessary to assure the
15 medical suitability of a part that can be the subject of an anatomical gift for purposes of
16 transplantation, therapy, research, or education, unless the declaration or advance health-care
17 care directive of a donor or prospective donor expressly provides to the contrary.]

18 **Alternative 3**

19 [(b) Life support systems shall not be withdrawn from a donor or a prospective
20 donor if the continued administration of the life support systems is necessary to assure the
21 medical suitability of a part that can be the subject of an anatomical gift for purposes of
22 transplantation, therapy, research, or education, unless the declaration or advance health-care

1 directive of the donor or prospective donor expressly provides that life support systems should
2 be withdrawn even though the principal is a donor or prospective donor.]

3 **Comment**

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

14 **SECTION 21. COOPERATION BETWEEN [CORONER][MEDICAL**
15 **EXAMINER] AND PROCUREMENT ORGANIZATIONS AND DONEES.**

16 (a) A [coroner] [medical examiner] and a procurement organization or a donee
17 shall collaborate to maximize the opportunity to recover anatomical gifts for the purposes of
18 transplantation, therapy, research, and education.

19 (b) Subject to Section 22, if a [coroner] [medical examiner] receives notice from a
20 procurement organization or a donee or custodian of an anatomical gift that an anatomical gift
21 might be available or was made with respect to a decedent whose body is in the jurisdiction of
22 the [coroner][medical examiner], the [coroner][medical examiner] or designee shall conduct an
23 examination, autopsy, or analysis of the body or the parts in a manner and within a time period
24 compatible with their preservation for the purposes of the anatomical gift.

25 (c) This section does not authorize any person to make an anatomical gift. A part
26 may not be removed from the body of a decedent in the jurisdiction of a [coroner] [medical
27 examiner] for transplantation, therapy, research, or education unless that part is the subject of an

1 anatomical gift. The body of a decedent within the jurisdiction of the [coroner] [medical
2 examiner] may not be delivered to a donee for research or education unless the body is the
3 subject of an anatomical gift.

4 **Comment**

5 This section includes a number of provisions designed to allow for the cooperation of
6 procurement organizations and [coroners] [medical examiners] in obtaining bodies and parts that
7 otherwise are the subject of an anatomical gift. Unlike prior law, this section does not empower
8 [coroners] [medical examiners] to make anatomical gift of the body or parts of a decedent.
9

10 **SECTION 22. FACILITATION OF ANATOMICAL GIFT FROM DECEDENT**

11 **WHOSE BODY IS UNDER JURISDICTION OF [CORONER][MEDICAL EXAMINER].**

12 For the purposes of facilitating an anatomical gift of the body or part of a decedent whose body
13 is under the jurisdiction of the [coroner][medical examiner]:

14 (1) Upon request of a procurement organization, a [coroner] [medical examiner]
15 shall release to the procurement organization the name, contact information, available medical
16 and social history, and autopsy results relating to the decedent's death unless the
17 [coroner][medical examiner] reasonably believes the release will interfere with an [examination
18 or investigation][autopsy][civil litigation or criminal prosecution]. [Note to Committee:
19 Alternative to the "if clause": unless the [coroner] [medical examiner] can show that the release
20 will interfere with an [examination or investigation][autopsy][civil litigation or criminal
21 prosecution]];

22 (2) The [coroner][medical examiner] may review all, medical records, laboratory
23 test results, x-rays, other diagnostic results, and other information that any person possesses
24 about the decedent which the [coroner] [medical examiner] determines may be relevant to an

1 examination, autopsy, or analysis of the decedent's body or part.

2 (3) A person that has any information requested by a [coroner] [medical
3 examiner] pursuant to paragraph (2) shall provide that information as expeditiously as possible
4 to allow the [coroner] [medical examiner] to conduct the investigation into the decedent's cause
5 of death and to complete the examination, autopsy, or analysis of the decedent's body or part
6 within a time period compatible with the preservation of parts for purposes of transplantation,
7 therapy, research, or education.

8 (4) If an anatomical gift has been made of the decedent's part and an autopsy is
9 not required, or the [coroner] [medical examiner] determines that an autopsy is required but that
10 the recovery of the part will not interfere with the autopsy, the [coroner] [medical examiner] and
11 procurement organization shall collaborate in the timely removal of the part from a decedent for
12 purposes of transplantation, therapy, research, or education.

13 (5) If an anatomical gift of a part from the decedent has been or might be made,
14 but the [coroner] [medical examiner] initially believes that the recovery of the part by the
15 procurement organization could interfere with the investigation into the decedent's cause of
16 death, the [coroner] [medical examiner] or designee shall attend the removal procedure for the
17 part before making a final determination not to allow the procurement organization to recover
18 the part for transplantation, therapy, research, or education.

19 (6) At the removal procedure under paragraph (5), the [coroner] [medical
20 examiner] or designee may allow recovery by the procurement organization to proceed, request a
21 biopsy, or, if the [coroner][medical examiner] or designee reasonably believes that the part may
22 be involved in determining the decedent's cause of death, deny recovery by the procurement

1 organization. If the [coroner] [medical examiner] or designee denies recovery, the
2 [coroner][medical examiner] or designee shall explain in a record the reasons for not allowing
3 recovery of the part, include those reasons in the records of the [coroner] [medical examiner],
4 and provide a copy of the reasons to the procurement organization.

5 (7) If the [coroner][medical examiner] or designee allows recovery of the part
6 under paragraph (6), the procurement organization shall cause the person who removes the part
7 to provide the [coroner][medical examiner] with a record describing the condition of the part and
8 any other observations that would assist in the [examination or investigation][autopsy].

9 (8) If a [coroner] [medical examiner] or designee is required to be present at an
10 autopsy under paragraph (5), the procurement organization requesting the recovery of the part
11 shall reimburse the [coroner] [medical examiner] or designee, upon request, for the direct costs
12 incurred in complying with paragraph (5).

13 *Legislative Note: Section 22 could be incorporated into the provisions of a state's code where*
14 *the provisions relating to a [coroner][medical examiner] are codified rather than included in*
15 *this [act]. If codified in that manner, the definitions in Section 2, paragraphs (10), (15), (19),*
16 *and (27) also should be included.*
17

18 **SECTION 23. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
19 applying and construing this uniform act, consideration must be given to the need to promote
20 uniformity of the law with respect to its subject matter among states that enact it.

21 **SECTION 24. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
22 **NATIONAL COMMERCE ACT.** This act modifies, limits, and supersedes the Electronic
23 Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et. seq.) but does not
24 modify, limit, or supersede Section 101(a) of that act (15 U.S. C. Section 7001) or authorize

1 electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C.
2 Section 7003(b)).

3 **SECTION 25. REPEALS.** The following acts and parts of acts are repealed:

4 (1)

5 (2)

6 (3)

7 **SECTION 26. EFFECTIVE DATE.** This [act] takes effect ____.