

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1215

S. P. 349

In Senate, March 5, 1969

Referred to the Committee on Judiciary. Sent down for concurrence and 1,000 ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Berry of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Creating the Uniform Anatomical Gift Act.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 22, c. 710, additional. Title 22 of the Revised Statutes is amended by adding a new chapter 710, to read as follows:

CHAPTER 710

UNIFORM ANATOMICAL GIFT ACT

§ 2901. Definitions

1. Bank or storage facility. "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

2. Decedent. "Decedent" means a deceased individual and includes a stillborn infant or fetus.

3. Donor. "Donor" means an individual who makes a gift of all or part of his body.

4. Hospital. "Hospital" means a hospital licensed, accredited or approved under the laws of any state and includes a hospital operated by the United States Government, a state or a subdivision thereof, although not required to be licensed under state laws.

5. Part. "Part" includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and "part" includes "parts."

6. Person. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate trust, partnership or association or any other legal entity.

7. Physician or surgeon. "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

8. State. "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

§ 2902. Persons who may execute an anatomical gift

1. Individuals. Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purposes specified in section 2903, the gift to take effect upon death.

2. Others. Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent, or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purposes specified in section 2903:

- A. The spouse;
- B. An adult son or daughter;
- C. Either parent;
- D. An adult brother or sister;
- E. A guardian of the person of the decedent at the time of his death;
- F. Any other person authorized or under obligation to dispose of the body.

3. Notice to donee. If the donee has actual notice of contrary indications by the decedent, or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection 2 may make the gift after death or immediately before death.

4. Examination. A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

5. Rights. The rights of the donee created by the gift are paramount to the rights of others except as provided by section 2907, subsection 4.

§ 2903. Persons who may become donees, and purposes for which anatomical gifts may be made

The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

1. Medical. Any hospital, surgeon or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

2. School. Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy; or

3. Storage facility. Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

4. Specified individuals. Any specified individual for therapy or transplantation needed by him.

§ 2904. Manner of executing anatomical gifts

1. Will. A gift of all or part of the body under section 2902, subsection 1, may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

2. Other documents. A gift of all or part of the body under section 2902, subsection 1, may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor, in the presence of 2 witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence, and in the presence of 2 witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

3. Donee. The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

4. Designee. Notwithstanding section 2907, subsection 2, the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation, or if the designee is not available the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

5. How made. Any gift by a person designated in section 2902, subsection 2, shall be made by a document signed by him, or made by his telegraphic, recorded telephonic or other recorded message.

§ 2905. Delivery of document of gift

If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon

or after the donor's death, the person in possession shall produce the document for examination.

§ 2906. Amendment or revocation of the gift

1. Amendment. If the will, card or other document or executed copy thereof has been delivered to a specified donee, the donor may amend or revoke the gift by:

- A. The execution and delivery to the donee of a signed statement; or
- B. An oral statement made in the presence of 2 persons and communicated to the donee; or
- C. A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or
- D. A signed card or document found on his person or in his effects.

2. Revocation. Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection 1 or by destruction, cancellation or mutilation of the document and all executed copies thereof.

3. Other methods. Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection 1.

§ 2907. Rights and duties at death

1. Accepted or rejected. The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin or other persons under obligation to dispose of the body.

2. Time of death. The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part.

3. Good faith. A person who acts in good faith in accord with the terms of this chapter, or under the anatomical gift laws of another state, or a foreign country, is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

4. Application. This chapter is subject to the laws of this State prescribing powers and duties with respect to autopsies.

§ 2908. Uniformity of interpretation

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 2909. Short title

This chapter may be cited as the Uniform Anatomical Gift Act.