

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

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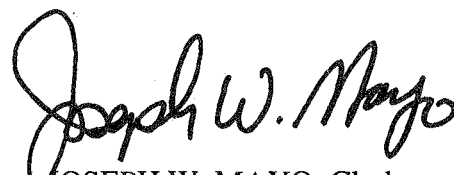
No. 1583

H.P. 1127

House of Representatives, March 18, 1997

An Act to Establish the Uniform Anatomical Gift Act.

Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative TAYLOR of Cumberland.

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

2

UNIFORM COMMENT

4

PREFATORY NOTE

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The Uniform Anatomical Gift Act was promulgated in 1968. It has been adopted in all 50 states and the District of Columbia. In the prefatory note it was observed:

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"... if utilization of bodies and parts of bodies is to be effectuated, a number of competing interests in a dead body must be harmonized, and several troublesome legal questions must be answered. Both the common law and the present statutory picture is one of confusion, diversity, and inadequacy. The Uniform Anatomical Gift Act herewith presented by the National Conference of Commissioners on Uniform State Laws carefully weighs the numerous conflicting interests and legal problems. Wherever adopted it will encourage the making of anatomical gifts, thus facilitating therapy involving such procedures. It will provide a useful and uniform legal environment throughout the country for this new frontier of modern medicine."

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The contemporary significance of the Uniform Anatomical Gift Act has been recently assessed by the Hastings Center; in the Preface to its Report of the project on organ transplantation, "Ethical, Legal and Policy Issues Pertaining to Solid Organ Procurement" (October, 1985), it is stated:

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"The issue of transplantation remained quiescent for many years. It was only with the successes occasioned by the introduction of powerful new immunosuppressive drugs such as Cyclosporine and improvements in surgical techniques for transplanting organs and tissues in the past few years that the issue of organ procurement was brought back into the center stage of public policy concern. Enhancements in the capacity to perform transplants increased the demand for solid organs. It has become apparent that the public policy instituted in 1969 [by promulgation of the Uniform Anatomical Gift Act in 1968] is not producing a sufficient supply of organs to meet the current or projected demand for them."

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A 1985 Gallup Poll commissioned by the American Council on Transplantation reported that 93 percent of Americans surveyed

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2 knew about organ transplantation and, of these, 75 percent
3 approved of the concept of organ donation. Although a large
4 majority approves of organ donation, only 27 percent indicate
5 that they would be very likely to donate their own organs, and
6 only 17 percent have actually completed donor cards. Of those
7 who were very likely to donate, nearly half have not told family
8 members of their wish, even though family permission is usually
9 requested before an organ is removed. (Report of the Task Force
10 on Organ Transplantation pursuant to the 1984 National Organ
11 Transplant Act -- P.L. 98-507 -- "Organ Transplantation: Issues
12 and Recommendations" (April 1986)).

13
14 The inadequacies in the present system of encouraging
15 voluntary donation of organs were enumerated in the Hastings
16 Center Report:

17 "The key problems that hinder organ donation include:

- 18 1. Failure of persons to sign written directives.
- 19 2. Failure of police and emergency personnel to
20 locate written directives at accident sites.
- 21 3. Uncertainty on the part of the public about
22 circumstances and timing of organ recovery.
- 23 4. Failure on the part of medical personnel to
24 recover organs on the basis of written directives.
- 25 5. Failure to systematically approach family
26 members concerning donation.
- 27 6. Inefficiency on the part of some organ
28 procurement agencies in obtaining referrals of donors.
- 29 7. High wastage rates on the part of some organ
30 procurement agencies in failing to place donated organs.
- 31 8. Failure to communicate the pronouncement of
32 death to next of kin.
- 33 9. Failure to obtain adequate informed consent
34 from family members."

35
36 State and federal legislation have addressed several of
37 these problems. For example, a majority of states have enacted a
38 variety of "required request" laws that require hospital
39 administrators to discuss with next of kin the option of
40 donating, or requesting the donation of, the organs of a
41 decedent. Congress enacted the National Organ Transplant Act in
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1984 prohibiting the purchase of organs in interstate commerce and providing grants to organ procurement agencies and a national organ-sharing system. The Act also provides for appointment of a Task Force on Organ Transplantation to conduct a comprehensive examination of organ donation and procurement, organ sharing within the United States, access by patients to donor organs and transplant procedures, diffusion and adoption of organ transplant technology, and future directions in research. The Task Force submitted a report in April 1986 entitled "Organ Transplantation: Issues and Recommendations." Among the findings:

"An overriding problem common to all organ transplantation programs as well as to the well-established programs in tissue banking (for corneal, skin and bone transplantation) is the serious gap between the need for the organs and tissues and the supply of donors. Despite substantial support for transplantation and a general willingness to donate organs and tissues after death, the demand far exceeds the supply. At any one time, there are an estimated 8,000 to 10,000 people waiting for a donor organ to become available."

Citing a recommendation of the Task Force, the bill for the reconciliation of the 1987 budget amended the Social Security Act to require that hospitals, as a condition to receiving Medicare or Medicaid after October 1, 1987, establish written protocols "for the identification of potential organ donors that [make families] ... aware of the option of organ or tissue donation and their option to decline." (P.L. 99-509 § 9318).

Several amendments to the Uniform Act have been made since it was promulgated in 1968. In 1980, the NCCUSL voted to make optional the language that previously required the donor card to be signed "in the presence of two witnesses who must sign the document in his presence." Amendments have been made by several states authorizing individuals other than doctors to remove eyes and to address specific emerging problems. As a result, the objective of the 1968 Uniform Act has been eroded, i.e., "When generally adopted, even if the place of death, or the residence of the donor, or the place of use of the gift occurs in a state other than that of the execution of the gift, uncertainty as to the applicable law will be eliminated and all parties will be protected."

In 1984, the Executive Committee of NCCUSL approved the appointment of a study committee, and then in 1985 of a drafting committee, to propose amendments to the Uniform Anatomical Gift Act. The Committee has consulted with individuals and national

2 organizations involved in organ procurement about possible
changes in the generic provisions of the Uniform Act and to
4 solicit comments and suggestions. A first draft of proposed
amendments to the Uniform Act was considered at the annual
meeting of NCCUSL in 1986.

6
8 The sequence of sections in the original Act has been
changed, to combine the concept of "persons who may make an
10 anatomical gift" (original Section 2), "manner of making
anatomical gifts" (original Section 4), and "amendment or
12 revocation of the gift" (original Section 6). The authorization
of gifts by next of kin or a guardian of the person contained in
Section 2 of the original Act is Section 3 [Me. cite section
14 2944] of the amended Act. Several subsections of the original
Act have been shifted to accommodate change in title and
16 sequential arrangement of sections of the Act as amended. These
changes are noted in the Comments. The scope of the Act
18 continues to be limited to procurement. It does not cover
processing except for a provision requiring coordination of
20 procurement and utilization between hospitals and procurement
organizations (Section 9 [Me. cite section 2950]). It does not
22 cover distribution except for a provision prohibiting sale or
purchase (Section 10 [Me. cite section 2951]).

24
26 The proposed amendments simplify the manner of making an
anatomical gift and require that the intentions of a donor be
28 followed. For example, no witnesses are required on the document
of gift (Section 2(b) [Me. cite section 2943, subsection 2]) and
consent of next of kin after death is not required if the donor
30 has made an anatomical gift (Section 2(h) [Me. cite section 2943,
subsection 8]). The identification of actual donors is
32 facilitated by a duty to search for a document of gift (Section
5(c) [Me. cite section 2946, subsection 3]) and of potential
34 donors by the provisions for routine inquiry (Section 5(a) [Me.
cite section 2946, subsection 1]) and required request (Section
36 5(b) [Me. cite section 2946, subsection 2]). A gift of one
organ, e.g., eyes, is not a limitation on the gift of other
38 organs after death, in the absence of contrary indication by the
decedent (Section 2(j) [Me. cite section 2943, subsection 10]).
40 The right to refuse to make an anatomical gift and the manner of
expressing the refusal are specified (Section 2(i) [Me. cite
42 section 2943, subsection 9]). Revocation by a donor of an
anatomical gift that has been made is effective without
44 communication of the revocation to a specified donee (Section
2(f) [Me. cite section 2943, subsection 6]). Hospitals have been
46 substituted for attending physicians as donees of anatomical
gifts (Section 6(b) [Me. cite section 2947, subsection 2]), and
48 they are required to establish agreements or affiliations with
other hospitals and procurement organizations in the region to
50 coordinate the procurement and utilization of anatomical gifts

2 (Section 9 [Me. cite section 2950]). If a request for an
3 anatomical gift has been made for transplant or therapy by a
4 person specified in the Act and if there is no contrary
5 indication by the decedent or known objection by the next of kin
6 to an anatomical gift, the medical examiner or local public
7 health official may authorize release and removal of a part
8 subject to specific requirements (Section 4(a) and (b) [Me. cite
9 section 2945, subsections 1 and 2]). The categories of persons
10 that may remove anatomical parts are expanded to include eye
11 enucleators and certain technicians (Section 8(c) [Me. cite
12 section 2949, subsection 3]). The sale or purchase of parts is
13 prohibited (Section 10 [Me. cite section 2951]). Persons who
14 act, or attempt to act, in good faith in accordance with the
15 terms of the Act are not liable in any civil action or criminal
16 proceeding. The categories of persons covered by this exemption
17 are specified (Section 11(c) [Me. cite section 2952, subsection
18 3]).

19
20 The growing promise of transplantation was described in the
21 Hastings Center Report:

22 "It is now possible to transplant vital organs
23 such as hearts, livers and kidneys. Efforts are
24 currently underway to perfect the transplantation of
25 the heart and lung together, the pancreas and the small
26 bowel. Post-mortem donors of these vital organs must
27 have sustained brain death under circumstances in which
28 their respiration and circulation can be supported
29 artificially.

30
31 "Other human tissue such as corneas, bone and
32 inner ear parts and skin can be utilized to restore
33 important biological functions. These tissues may be
34 removed some time after circulation and respiration
35 have ceased. The cornea, for example, remains suitable
36 for removal for transplantation for approximately six
37 hours after the donor's heart has stopped beating."

38
39 **Sec. 1. 22 MRSA c. 710**, as amended, is repealed.

40
41 **Sec. 2. 22 MRSA c. 710-B** is enacted to read:

42
43 **CHAPTER 710-B**

44
45 **UNIFORM ANATOMICAL GIFT ACT OF 1987**

46
47 **§2941. Short title**

48
49 This Act may be known and cited as the "Uniform Anatomical
50 Gift Act of 1987."

2 **§2942. Definitions**

4 As used in this Act, unless the context otherwise indicates,
6 the following terms have the following meanings.

8 **1. Anatomical gift.** "Anatomical gift" means a donation of
all or part of a human body to take effect upon or after death.

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

12 **3. Document of gift.** "Document of gift" means a card, a
14 statement attached to or imprinted on a motor vehicle operator's
or chauffeur's license, a will or other writing used to make an
16 anatomical gift.

18 **4. Donor.** "Donor" means an individual who makes an
anatomical gift of all or part of the individual's body.

20 **5. Hospital.** "Hospital" means a facility licensed,
22 accredited or approved as a hospital under the law of any state
or a facility operated as a hospital by the Federal Government, a
24 state or a subdivision of a state.

26 **6. Part.** "Part" means an organ, tissue, eye, bone, artery,
blood, fluid or other portion of a human body.

28 **7. Person.** "Person" means an individual, corporation,
30 business trust, estate, trust, partnership, joint venture,
association, government, governmental subdivision or agency or
32 any other legal or commercial entity.

34 **8. Physician or surgeon.** "Physician" or "surgeon" means an
individual licensed or otherwise authorized to practice medicine
36 and surgery or osteopathy and surgery under the laws of any state.

38 **9. Procurement organization.** "Procurement organization"
means a person licensed, accredited or approved under the laws of
40 any state for procurement, distribution or storage of human
bodies or parts.

42 **10. State.** "State" means a state, territory or possession
44 of the United States, the District of Columbia or the
Commonwealth of Puerto Rico.

46
48 **UNIFORM COMMENT**

2 This is Section 1 of the original Act. Definitions (1) [Me.
3 cite subsection 1] "Anatomical Gift" and (3) [Me. cite subsection
4 3] "Document of Gift" have been added to reduce the length and
complexity of operative provisions of the Act.

6 In subsection (2) [Me. cite subsection 2] the committee
7 decided it was unnecessary to expand the definition of "decedent"
8 to include the definition of death contained in the Uniform
Determination of Death Act. That Act provides:

10 "An individual who has sustained either irreversible
12 cessation of circulatory and respiratory functions or
14 irreversible cessation of all functions of the entire
16 brain, including the brain stem, is dead. A
determination of death must be made in accordance with
accepted medical standards."

18 Almost all states have similar definitions either by statute or
19 appellate court decisions.

20 The Report to Congress of the Task Force appointed under the
22 1984 National Organ Transplant Act (P.L. 98-507) recommends:

24 "... that the Uniform Determination of Death Act be
26 enacted by the legislatures of states that have not
28 adopted this or a similar act. ... that each state
30 medical association develop and adopt model hospital
32 policies and protocols for the determination of death
based upon irreversible cessation of brain function
that will be available to guide hospitals in developing
and implementing institutional policies and protocols
concerning brain death."

34 In subsections (5) and (12) [no Me. cite], the individuals
36 authorized to remove a part have been expanded to include
enucleators for eyes and technicians. Satisfactory completion of
38 a prescribed course of training and experience is a prerequisite
to certification of these nonphysician specialists. The type of
40 certification and the person making it are bracketed. It may be
42 done by a professional peer group organization, an organ
procurement organization, agency or association, or by a hospital
or state agency.

44 In subsection (10) [Me. cite subsection 9], "procurement
46 organization" has been substituted for "bank or storage facility"
and the function has been expanded to include procurement and
48 distribution to reflect the diffusion of function, i.e.,
procurement, distribution or storage, and of objective, i.e.,
50 organs, tissues, eyes, bones, skin, fluids, etc. In the case of
solid or visceral organs, they must be removed while bodily

2 functions of the decedent are sustained with life support
3 systems. If solid or visceral organs are not involved, life
4 support systems are not required, although there are time limits
5 following death within which removal must be completed, e.g., six
6 hours in the case of eyes.

8 **MAINE COMMENT**

10 The definitions of "enucleator" and "technician" are not
11 included in the Maine Act because the State does not license or
12 certify those categories of professionals separately.

14 **§2943. Making, amending, revoking and refusing to make**
16 **anatomical gifts by individual**

18 **1. Individual authority.** An individual who is at least 16
19 years of age may:

20 **A. Make an anatomical gift for any of the purposes stated**
22 **in section 2947, subsection 1;**

24 **B. Limit an anatomical gift to one or more of those**
25 **purposes; or**

26 **C. Refuse to make an anatomical gift.**

28 **2. Document of gift.** An anatomical gift may be made only
30 by a document of gift signed by the donor. If the donor can not
31 sign, the document of gift must be signed by another individual
32 and by 2 witnesses, all of whom have signed at the direction and
33 in the presence of the donor and of each other, and state that
34 the document of gift has been so signed.

36 **3. Attached to or imprinted on license.** If a document of
37 gift is attached to or imprinted on a donor's driver's or
38 chauffeur's license, the document of gift must comply with
39 subsection 2. Revocation, suspension, expiration or cancellation
40 of the license does not invalidate the anatomical gift.

42 **4. Designation of physician or surgeon.** A document of gift
43 may designate a particular physician or surgeon to carry out the
44 appropriate procedures. In the absence of a designation or if
45 the designee is not available, the donee or other person
46 authorized to accept the anatomical gift may employ or authorize
47 any physician, surgeon, technician or enucleator to carry out the
48 appropriate procedures.

2 5. Anatomical gift by will. An anatomical gift by will
takes effect upon the death of the testator, whether or not the
4 will is probated. If, after the death of the testator, the will
is declared invalid for testamentary purposes, the validity of
the anatomical gift is unaffected.

6 6. Amendment or revocation of document of gift. A donor
8 may amend or revoke an anatomical gift not made by will only by:

10 A. A signed statement;

12 B. An oral statement made in the presence of 2 individuals;

14 C. Any form of communication during a terminal illness or
injury addressed to a physician or surgeon; or

16 D. The delivery of a signed statement to a specified donee
18 to whom a document of gift had been delivered.

20 7. Amendment or revocation of gift by will. The donor of
an anatomical gift made by will may amend or revoke the gift in
22 the manner provided for amendment or revocation of wills, as
provided in subsection 6.

24 8. Irrevocable after death; no consent or concurrence
26 required. An anatomical gift that is not revoked by the donor
before death is irrevocable and does not require the consent or
28 concurrence of any person after the donor's death.

30 9. Refusal to make anatomical gift. An individual may
refuse to make an anatomical gift of the individual's body or
32 part by:

34 A. A signed statement made in the same manner as a document
of gift;

36 B. A written statement attached to or imprinted on a
38 donor's driver's or chauffeur's license;

40 C. Any other written statement used to identify the
individual as refusing to make an anatomical gift; or

42 D. During a terminal illness or injury, an oral statement
44 or other form of communication.

46 10. Gift not refusal or limitation. In the absence of
contrary indications by the donor, an anatomical gift of a part
48 is neither a refusal to give other parts nor a limitation on an
anatomical gift under section 2944 or on a removal or release of
50 other parts under section 2945.

2 e.g., eyes, the limitation must be stated clearly, i.e.,
"transplantation only," "eyes only."

4 Subsection (b) [Me. cite subsection 2] incorporates the
6 provisions of Section 4(b) of the original Act. Section 4(a) of
the original Act has been relocated to subsection (e) [Me. cite
8 subsection 5] to reflect the change from using wills to choosing
other forms of documents of gift to make anatomical gifts.

10 The requirement of two witnesses signing a donor card or
12 other document of gift has been deleted to simplify the making of
anatomical gifts. Self authentication of a document of gift by a
14 donor who cannot sign relieves the donee of the duty to search
for the witnesses upon death of the donor.

16 In the original Act there were several forms included in the
Comments with this admonition:

18 "As the Uniform Act becomes widely accepted it will
20 prove helpful if the forms by which gifts are made are
similar in each of the participating states. Such forms
22 should be as simple and understandable as possible."

24 The forms in these Comments are suggested for the 1987 Act.

26 ANATOMICAL GIFT BY A LIVING DONOR

28 Pursuant to the Anatomical Gift Act, upon my death, I hereby
give (check boxes applicable):

- 30 1. [] Any needed organs, tissues, or parts;
32 2. [] The following organs, tissues, or parts
only _____;
34 3. [] For the following purposes only

36 (transplant-therapy-research-education)

38 _____
Date of Birth Signature of Donor
40 _____
42 _____
Date Signed Address of Donor

44 INSTRUCTIONS

46 Check box 1 if the gift is unrestricted, i.e., of any organ,
tissue, or part for any purpose specified in the Act; do not
48 check box 2 or box 3. If the gift is restricted to specific
organ(s), tissue(s), or part(s) only, e.g., heart, cornea, etc.,
50 check box 2 and write in the organ or tissue to be given. If the

2 gift is restricted to one or more of the purposes listed, e.g.,
transplant, therapy, etc., check box 3 and write in the purpose
4 for which the gift is made.

6 A gift category included in some forms "of my body for
anatomical study if needed" has not been included. Although a
8 gift of the entire body is authorized by the Act, the exercise of
this option usually requires an agreement with a medical school
10 before a gift is made.

12 A simple form of refusal under the Act could provide:

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

18 _____
Date of Birth Signature of Declarant

20 _____
Date of Signing Address of Declarant

22 Subsection (c) [Me. cite subsection 3] incorporates an
24 amendment to the original Act in many states providing that an
anatomical gift may be made by an attachment to the driver's
26 license. The cross reference to subsection (b) [Me. cite
subsection 2] incorporates the concept that a signature is
28 required. A signature on the driver's license or on the card
attached to the driver's license is sufficient. The hospital or
30 other donee may rely on the anatomical gift even though the
license has expired or has been terminated by official act.

32 The following form is suggested for attachment to the
34 driver's license:

36
38 _____
Print or Type Name of Donor

40 Pursuant to the Anatomical Gift Act, upon my death, I hereby
give (check boxes applicable):

- 42 1. [] Any needed organs, tissues, or parts;
44 2. [] The following organs, tissues, or parts
only _____;
46 3. [] For the following purposes only
48 _____;
(transplant-therapy-research-education)

50 Refusal:

2 4. [] I refuse to make any anatomical gift.

4

Signature

6

8

INSTRUCTIONS

10 See Section 2(b) [Me. cite section 2943, subsection 2]
12 Comments. If the applicant for a driver's license refuses to
14 make any anatomical gift, check box 4 only.

14

16 Subsection (d) [Me. cite subsection 4] is Section 4(d) of
18 the original Act.

18

20 Subsection (e) [Me. cite subsection 5] is a restatement of
22 Section 4(a) of the original Act.

20

22 Subsection (f) [Me. cite subsection 6] is a restatement of
24 Section 6(a) and (b) of the original Act.

24

26 Subsection (g) [Me. cite subsection 7] is Section 6(a) of
28 the original Act.

26

28 Subsection (h) [Me. cite subsection 8] states expressly the
30 intention of the original Act that an anatomical gift not revoked
32 by the donor cannot be revoked after the donor's death by any
34 other person. This was explicit in the Comments to the original
36 Act: "Subsection (e) [of Section 2] recognizes and gives legal
effect to the right of the individual to dispose of his own body
without subsequent veto by others." The Hastings Center Report
cited the results of a telephone survey of organ procurement
agencies in the United States in 1983 as follows:

36

38 "... the survey revealed that few transplant centers
40 were willing to procure organs solely on the basis of a
42 donor card or driver's license consent by the
44 deceased. In situations in which family members could
not be located, less than twenty-five percent of the
respondents said they would proceed with organ
procurement despite the presence of a written
directive."

46

This subsection removes any uncertainty.

48

50 Subsection (i) [Me. cite subsection 9] expands the original
Act by providing a method of refusing to make an anatomical
gift. A potential donor has several options. The donor may make

2 an anatomical gift (Section 2(a) [Me. cite section 2943,
3 subsection 1]), may express or imply a contrary indication that
4 an anatomical gift shall not be made (Section 2(j)(k) [Me. cite
5 section 2943, subsections 10 and 11]), or may refuse to make an
6 anatomical gift (Section 2(i) [Me. cite section 2943, subsection
7 9]). Contrary indications may include membership in
8 organizations that do not approve of organ donation, statements
9 or actions by the potential donor that are inconsistent with
10 organ donations, etc. To be effective as a limitation on a gift
11 by next of kin under Section 3 [Me. cite section 2944] or on a
12 release of a part by other persons under Section 4 [Me. cite
13 section 2945], after death, the contrary indications must be
14 known to the persons authorized to act under Sections 3 and 4
15 [Me. cite sections 2944 and 2945]. The option of refusal to make
16 an anatomical gift provided for by subsection (i) [Me. cite
17 subsection 9] is a method of documenting contrary indications
18 that might not be communicated otherwise and therefore not
19 effective as a limitation on next of kin and other persons
20 authorized to give or release a part under Sections 3 and 4 [Me.
21 cite sections 2944 and 2945] of the Act. If the potential donor
22 is unable to speak because of paralysis or other disability, any
23 form of communicating a refusal is sufficient, e.g., responding
24 to a direct inquiry by a nod of the head, squeeze of the hand,
25 blink of eyes, etc.

26 Subsection (j) [Me. cite subsection 10] addresses the
27 problem of donor cards that have been circulated by various
28 organizations and that appear to limit the anatomical gift to
29 only one organ, e.g., eyes, kidneys, etc. This type of card
30 should not be construed as an expression of the intention of the
31 donor to limit the anatomical gift to that organ only, in the
32 absence of a refusal to give other organs or of other contrary
33 indications.

34 Subsection (k) [Me. cite subsection 11] provides that a
35 revocation of an anatomical gift made previously by a donor is
36 neither a refusal to make any anatomical gift nor a contrary
37 indication by the donor that no part shall be given or released
38 for any purpose authorized by the Act. It merely restores the
39 donor to the status of an individual who has neither made nor
40 refused to make an anatomical gift. In the absence of any other
41 action or contrary indication by that individual before death,
42 the next of kin or guardian of the person may make an anatomical
43 gift pursuant to Section 3 [Me. cite section 2944] or the
44 appropriate person may authorize release and removal of a part
45 pursuant to Section 4 [Me. cite section 2945].

48 An amendment of an anatomical gift made previously by the
49 donor, whether the amendment relates to a part or a purpose, is
50 not a refusal nor a limitation on a gift or release of other

2 parts for any purpose specified in the Act. If the amendment is
intended to be a refusal it must be expressed clearly as provided
4 in subsection (i) [Me. cite subsection 9].

6 Revocation or amendment of a previous anatomical gift is
ambiguous. It does not indicate an intention of the donor to
8 refuse to make an anatomical gift. This subsection removes that
ambiguity.

10 **§2944. Making, revoking and objecting to anatomical gifts by**
12 **others**

14 **1. Anatomical gift by others.** Any member of the following
16 classes of persons, in the order of priority listed, may make an
anatomical gift of all or a part of the decedent's body for an
18 authorized purpose, unless the decedent, at the time of death,
has made an unrevoked refusal to make that anatomical gift:

20 A. The spouse of the decedent;

22 B. An adult son or daughter of the decedent;

24 C. Either parent of the decedent;

26 D. An adult brother or sister of the decedent;

28 E. A grandparent of the decedent; and

30 F. A guardian of the person of the decedent at the time of
32 death.

34 **2. Anatomical gift by others not authorized.** An anatomical
gift may not be made by a person listed in subsection 1 if:

36 A. A person in a prior class is available at the time of
38 death to make an anatomical gift;

40 B. The person proposing to make an anatomical gift knows of
a refusal or contrary indications by the decedent; or

42 C. The person proposing to make an anatomical gift knows of
44 an objection to making an anatomical gift by a member of the
person's class or a prior class.

46 **3. Document of gift.** An anatomical gift by a person
48 authorized under subsection 1 must be made by:

50 A. A document of gift signed by the person; or

2 I survive the decedent as [] spouse; [] adult son or
daughter; [] parent; [] adult brother or sister; []
4 grandparent; [] guardian of the person.

6 I hereby give (check boxes applicable):

- 8 [] Any needed organs, tissues, or parts;
[] The following organs, tissues, or parts only
10 _____;
[] For the following purposes only
12 _____.

14 _____
Date

Signature of Survivor

16
18 _____
Address of Survivor

20 INSTRUCTIONS

22 See Section 2(b) [Me. cite section 2943, subsection 2]
24 Comments.

26 As described in the Comments to the original Act, subsection
28 (b) [Me. cite subsection 2]:

30 "... provides for the effect of indicated objections by
the decedent, and differences of view among the
32 survivors. . . . In view of the fact that persons
under 18 years of age are excluded from [Me. cite
34 Section 2] (a) [Me. cite section 2943, subsection 1],
it is especially desirable to cover with care the
36 status of survivors, so younger decedents may be
included."

38 "Knows" is substituted for "actual notice" in subsection (b) [Me.
40 cite subsection 2] and throughout the Act. Knowledge, i.e., what
is known, is a more useful concept than actual notice, i.e., what
42 should be known.

44 Subsection (c) [Me. cite subsection 3] is Section 4(e) of
the original Act with the addition of "other form of
46 communication."

48 Subsection (d) [Me. cite subsection 4] limits the right of
revocation of a gift made by other survivors pursuant to
50 subsection (a) [Me. cite subsection 1]. If there is no prior
knowledge of the revocation by the individual removing the organ

2 or tissue, the revocation is ineffective for any purpose and the
anatomical gift may be procured and utilized as though no
4 attempted revocation had occurred.

6 Subsection (e) [Me. cite subsection 5] is based on the
concept that failure to act is ambiguous. This subsection
8 removes that ambiguity. If a person of a prior class under
subsection (a) [Me. cite subsection 1] is available but does not
10 make a gift, subsection (e) [Me. cite subsection 5] authorizes a
gift by a person of a lower class. If an anatomical gift is not
12 made pursuant to Section 3 [Me. cite section 2944], the
provisions of Section 4 [Me. cite section 2945] apply.

14 **§2945. Authorization by primary or attending physician**

16 1. Release; requirements. The primary or attending
18 physician may release and permit the removal of a part from a
body over which that physician has control, for transplantation
or therapy, if:

20 A. The physician has received a request for the part from a
22 hospital, physician, surgeon or procurement organization;

24 B. The physician has made a reasonable effort, taking into
26 account the useful life of the part, to locate and examine
28 the decedent's medical records and inform persons listed in
section 2944, subsection 1 of their option to make, or
object to making, an anatomical gift;

30 C. The physician does not know of a refusal or contrary
32 indication by the decedent or objection by a person having
priority to act as listed in section 2944, subsection 1;

34 D. The removal will be by a physician or surgeon;

36 E. The removal will not interfere with any autopsy or
38 investigation;

40 F. The removal will be in accordance with accepted medical
standards; and

42 G. Cosmetic restoration will be done, if appropriate.

44 2. Record. A physician releasing and permitting the
46 removal of a part shall maintain a permanent record of the name
of the decedent, the person making the request, the date and
48 purpose of the request, the part requested and the person to whom
it was released.

50

UNIFORM COMMENT

2 Under Section 2(b) of the original Act, the last category of
4 persons authorized to make an anatomical gift "in the absence of
6 actual notice of contrary indications by the decedent or actual
notice of opposition by a member of the same or a prior class"
was:

8 "(6) any other person authorized or under
10 obligation to dispose of the body."

12 This was a residuary authorization, to apply in situations in
14 which an individual did not "give all or any part of his body for
any purpose" and the next of kin or guardian of the person did
not make a gift. This residuary authorization in the original
16 Act has been deleted in the proposed amendments and replaced by
the more limited provisions of new Section 4 [Me. cite section
18 2945].

20 It is a residuary authorization for transplant or
therapeutic purposes only.

22 The Task Force on Organ Transplantation reported that the
24 number of potential donors annually is much smaller than the
estimated one million deaths that occur each year in hospitals in
26 the United States. The Hastings Center Report explained the
uncertainty:

28 "There is no generally accepted figure for the number
30 of persons who die each year in the United States under
circumstances that would allow them to serve as cadaver
32 organ donors. Studies conducted by the Centers for
Disease Control of the U.S. Public Health Service
34 suggest that at least 12,000 [based upon an age range
of brain-dead donors from five to fifty-five years] and
36 perhaps as many as 27,000 [based upon an age range of
brain-dead donors from birth to age sixty-five] deaths
38 which would permit cadaver organ recovery occur each
year in hospitals in the United States. . . . Given
40 the available estimates of the size of the donor pool,
the current system for procuring organs yields
42 somewhere between nine and twenty percent of the
possible pool of donors for various types of organs and
44 tissues."

46 In several states, there are statutes authorizing the
medical examiner to remove eyes or corneal tissue under specified
48 circumstances. These statutes are constitutional, Georgia Lions
Eye Bank Inc. v. Lavant, 255 Ga. 60, 335 S.E.2d 127, 129 (1985) -
50 "The protection of the public health is one of the duties

2 devolving upon the State as a sovereign power;" cert. denied 475
U.S. 1084, 106 S.Ct. 1464, 89 L. ed 721 (1986); Florida v.
4 Powell, Fla., 497 So.2d 1188 (1986). There has been a
6 significant increase in the number of corneal tissues available
for transplant as a result of these statutes. For example,
8 before passage of the statute in Georgia in 1978 approximately 25
corneal transplants were performed each year. In 1984, more than
1,000 persons regained their sight through transplants. In
Florida, the increase was from 500 to more than 3,000.

10
12 Section 4 [Me. cite section 2945] applies this statutory
concept to the removal of "any part from a body" for transplant
14 or therapy only. Specific circumstances must exist and
conditions for removal are prescribed. The title of the public
16 official is bracketed to permit each state to designate the
appropriate official. There is a variation among existing
18 statutes in the requirement to inform or seek consent of next of
kin before organs or tissues are removed. In several states,
20 including Georgia and Florida, there is no requirement to inform
or seek consent if the other conditions prescribed by statute are
22 satisfied. In others, information and consent are required.
Subsection (a)(2) [Me. cite subsection 1, paragraph B] seeks to
24 balance societal and family interests, that is, to increase the
size of the donor pool and to give the family the opportunity to
26 make or refuse to make an anatomical gift. The balance in this
subsection is on the side of increasing the size of the donor
28 pool. The duty to search the medical record or to inform next of
kin is limited to "a reasonable effort taking into account the
30 useful life of the part" This reflects a concern expressed
in the Comments to the original Act: "... the very limited time
32 available following death for the successful recovery of such
critical tissues" The time will vary depending upon the
34 part involved. In the case of corneal tissue, the time is within
six hours after death. In the case of organs, the need,
36 availability, and efficacy of life support systems must be
considered. If removal must be immediate and there is no medical
38 or other record and no person specified in Section 3(a) [Me. cite
section 2944, subsection 1] is present, the requirement of
40 subsection (a)(2) [Me. cite subsection 1, paragraph B] is
satisfied.

42 Subsection (b) [no Me. cite] is a companion provision to
subsection (a) [Me. cite subsection 1] to cover similar
44 situations but in cases where the medical examiner is not
authorized to act. Under both subsections, the removal and
46 release is limited to transplant or therapeutic purposes.

48
49
50
MAINE COMMENT

2 The Maine version requires the primary physician or
attending physician to determine whether the specified
4 requirements are met before releasing the body for
transplantation or therapy. Maine practice does not include
6 coroners, local health officials or, in most cases, medical
examiners.

8
10 **§2946. Routine inquiry and required request; search and
notification**

12 **1. Inquiry and request upon admission.** On or before
admission to a hospital, or as soon as possible thereafter, a
14 person designated by the hospital shall ask each patient who is
at least 16 years of age: "Are you an organ or tissue donor?" If
16 the answer is affirmative the person shall request a copy of the
document of gift. If the answer is negative or there is no
18 answer and the attending physician consents, the person
designated shall discuss with the patient the option to make or
20 refuse to make an anatomical gift. The answer to the question,
an available copy of any document of gift or refusal to make an
22 anatomical gift and any other relevant information must be placed
in the patient's medical record.

24 **2. Inquiry and request at or near time of death.** If, at or
near the time of death of a patient, there is no medical record
26 that the patient has made or refused to make an anatomical gift,
the hospital administrator or a representative designated by the
28 administrator shall discuss with the patient the option to make
or refuse to make an anatomical gift and request the making of an
30 anatomical gift pursuant to section 2944, subsection 1. The
request must be made with reasonable discretion and sensitivity
32 to the circumstances of the family. A request is not required if
the gift is not suitable, based upon accepted medical standards,
34 for a purpose specified in section 2947. An entry must be made
in the medical record of the patient stating the name and
36 affiliation of the individual making the request and of the name,
response and relationship to the patient of the person to whom
38 the request was made. The Commissioner of Human Services shall
adopt rules to implement this subsection. The rules are minor
40 technical rules as defined in Title 5, chapter 375, subchapter
42 II-A.

44 **3. Search for documentation.** The following persons shall
make a reasonable search for a document of gift or other
46 information identifying the bearer as a donor or as an individual
who has refused to make an anatomical gift:

2 outpatient, emergency, minor surgery, and similar procedures that
do not require admission to the hospital.

4 Among the major findings of the Hastings Center Report was
the following:

6 "While many Americans believe that signing a donor card
8 or other written directive assures that their wishes
will be respected and acted upon, it does not. . . .
10 Few, if any, organs are donated solely on the basis of
donor cards or written directives. Written directives
12 are only effective if hospital protocols and practices
are designed to discover and act upon the contents of
14 such directives."

16 Subsection (b) [Me. cite subsection 2] is a variation of the
required request concept. All but a few states have passed a
18 variety of required request statutes since 1985. Some specify
that next of kin be informed of the option to give, others that a
20 request to give be made. Federal law requires written protocols
by hospitals participating in Medicare or Medicaid that "assure
22 that families of potential organ donors are made aware of the
option of organ or tissue donation and their option to decline."
24 Subsection (b) requires a discussion of the option and, if there
is no response, a request to make an anatomical gift. No
26 discussion or request is necessary if the medical record
discloses a prior gift or a refusal to make a gift or if the gift
28 would not be suitable according to accepted medical standards.

30 The requirement is imposed on the institution. The title of
the chief executive officer should be substituted for
32 [administrator]. "Representative" is not limited to employees of
the hospital. It may be a doctor, organ procurement specialist,
34 etc.

36 Subsection (c) [Me. cite subsection 3] is based upon the
Uniform Duties to Disabled Persons Act promulgated by NCCUSL in
38 1972. The purpose of that Act is to provide, insofar as
practicable, for a minimum level of duty towards persons in an
40 unconscious state and toward those who are conscious but
otherwise unable to communicate the existence of a condition
42 requiring special treatment.

44 Subsection (d) [Me. cite subsection 4] reflects a conclusion
of The Hastings Center Report:

46 "Donor cards are often not found at accident sites, and
48 even when they are, they are rarely located in hospital
settings when needed."
50

2 This subsection requires that the hospital be notified as
4 soon as a document of gift or refusal is located and that it be
6 sent to the hospital with the individual or the body to which it
8 relates, not taken to the hospital at some later time.
Notification of the hospital of the existence and the contents of
the document will enable the hospital to notify the organ
procurement organization if there is a gift, that there is a
potential donor, and the limitations, if any, of the gift.

10 Subsection (e) [Me. cite subsection 5] incorporates a
12 recommendation of The Task Force Report pursuant to the National
14 Organ Transplant Act of 1984 that "The Commission for Uniform
16 State Laws develop model legislation that requires acute care
18 hospitals to develop an affiliation with an organ procurement
agency and to adopt routine inquiry policies and procedures."
The present draft incorporates this recommendation in Sections 5
and 9 [Me. cite sections 2946 and 2950].

20 Subsection (f) [Me. cite subsection 6] encourages hospital
22 accrediting agencies, law enforcement, and other state agencies
24 that have existing disciplinary procedures to impose sanctions
for failure to discharge the duties imposed by Section 5 [Me.
cite section 2946].

26 **§2947. Persons who may become donees; purposes for which
anatomical gifts may be made**

28 **1. Permitted donees.** The following persons may become
30 donees of anatomical gifts for the purposes stated:

32 **A. A hospital, physician, surgeon or procurement
34 organization, for transplantation, therapy, medical or
dental education, research or advancement of medical or
dental science;**

36 **B. An accredited medical or dental school, college or
38 university for education, research or advancement of medical
or dental science; or**

40 **C. A designated individual for transplantation or therapy
42 needed by that individual.**

44 **2. Designation of donee; acceptance by hospital.** An
46 anatomical gift may be made to a designated donee or without
48 designating a donee. If a donee is not designated or if the
donee is not available or rejects the anatomical gift, the
anatomical gift may be accepted by any hospital.

50 **3. Acceptance prohibited.** If the donee knows of the
decedent's refusal or contrary indications to make an anatomical

2 gift or that an anatomical gift by a member of a class having
4 priority to act is opposed by a member of the same class or a
6 prior class under section 2944, subsection 1, the donee may not
8 accept the anatomical gift.

10 **UNIFORM COMMENT**

12 Subsection (a) [Me. cite subsection 1] is Section 3 of the
14 original Act changed to combine subsections (1) and (3) and to
16 reverse the sequence of purposes for which anatomical gifts may
18 be made, i.e., transplantation followed by therapy rather than
20 education, research, therapy, or transplantation. This
22 emphasizes transplantation as a primary purpose.

24 Subsection (b) [Me. cite subsection 2] is a restatement of
26 Section 4(c) of the original Act which provided that the
28 attending physician would be the donee under specified
30 circumstances. Hospitals are substituted for the attending
32 physician. This will facilitate coordination of procurement and
34 utilization of the gift pursuant to Section 9 [Me. cite section
36 2950].

38 Subsection (c) [Me. cite subsection 3] is substantially
40 Section 2(c) of the original Act. The last sentence has been
42 deleted because it does not apply to donees or purposes.

44 **§2948. Delivery of document of gift**

46 **1. Delivery during lifetime not required.** Delivery of a
48 document of gift during the donor's lifetime is not required for
50 the validity of an anatomical gift.

2. Delivery of donee. If an anatomical gift is made to a
designated donee, the document of gift or a copy may be delivered
to the donee to expedite the appropriate procedures after death.
The document of gift or a copy may be deposited in any hospital,
procurement organization or registry office that accepts it for
safekeeping or for facilitation of procedures after death. On
request of an interested person, upon or after the donor's death,
the person in possession shall allow the interested person to
examine or copy the document of gift.

UNIFORM COMMENT

Subsection (a) [Me. cite subsection 1] is the last sentence
of Section 4(b) of the original Act.

2 Subsection (b) [Me. cite subsection 2] is Section 5 of the
original Act. The Comments to that subsection include the
following:

4
6 "... in the great majority of the states, no provision
is made for filing, recording, or delivery to the
donee. The gift is by implication effective without
8 such formality. ... permissive filing provisions [are
included] to expedite post mortem procedures."

10
12 **§2949. Rights and duties at death**

14 **1. Rights of donee.** Rights of a donee created by an
16 anatomical gift are superior to rights of others except with
respect to autopsies under section 2952, subsection 2. A donee
18 may accept or reject an anatomical gift. If a donee accepts an
anatomical gift of an entire body, the donee, subject to the
20 terms of the gift, may allow embalming and use of the body in
funeral services. If the gift is of a part of a body, the donee,
22 upon the death of the donor and before embalming, shall cause the
part to be removed without unnecessary mutilation. After removal
24 of the part, custody of the remainder of the body vests in the
person under obligation to dispose of the body.

26 **2. Duties of physician or surgeon.** The time of death must
28 be determined by a physician or surgeon who attends the donor at
death or, if none, the physician or surgeon who certifies the
30 death. Neither the physician or surgeon who attends the donor at
death nor the physician or surgeon who determines the time of
32 death may participate in the procedures for removing or
transplanting a part unless the document of gift designates a
34 particular physician or surgeon pursuant to section 2943,
subsection 4.

36 **3. Removal after determination of death.** If there has been
38 an anatomical gift, a physician or surgeon may remove any donated
parts after determination of death by a different physician or
40 surgeon.

42 **UNIFORM COMMENT**

44 In subsection (a) [Me. cite subsection 1] the first sentence
46 is a restatement of Section 2(e) of the original Act. The
remainder of the subsection is Section 7(a) of the original Act.

48 The Comments to the original Act state:

2 "Subsection 2(e) recognizes and gives legal effect to
the right of the individual to dispose of his own body
4 without subsequent veto by others. . . . If the donee
accepts the gift, absolute ownership vests in him. . . .
6 The only restrictions are that the part must be removed
without mutilation and the remainder of the body vests in
the next of kin."

8
10 Subsection (b) [Me. cite subsection 2] is a restatement of
Section 7(b) of the original Act.

12 The Comments to that original subsection include the
following:

14
16 "... because time is short following death for a
transplant to be successful, the transplant team needs
to remove the critical organ as soon as possible.
18 Hence there is a possible conflict of interest between
the attending physician and the transplant team, and
20 accordingly subsection (b) excludes the attending
physician from any part in the transplant procedures.
22 . . . However, the language of the provision does not
prevent the donor's attending physician from
24 communicating with the transplant team or other
relevant donees. This communication is essential to
26 permit the transfer of important knowledge concerning
the donor"

28
30 **MAINE COMMENT**

32 Because Maine law does not recognize "enucleators" or
"technicians," a physician or surgeon, other than the physician
34 or surgeon who attended the death or determined the time of
death, may remove any donated parts.

36
38 **§2950. Coordination of procurement and use**

40 Each hospital in this State, after consultation with other
hospitals and procurement organizations, shall establish
42 agreements or affiliations for coordination of procurement and
use of human bodies and parts.

44
46 **UNIFORM COMMENT**

48 Among the recommendations of the Task Force pursuant to the
1984 National Organ Transplant Act, was the following:

50

2 "The Joint Commission on the Accreditation of Hospitals
develop a standard that requires all acute care
4 hospitals to both have an affiliation with an organ
procurement agency and have formal policies and
6 procedures for identifying potential organ and tissue
donors and providing next of kin with appropriate
opportunities for donation."

8
10 The failure of a hospital to establish the agreements or
affiliations specified in this section will not affect gifts made
12 to the hospital or gifts by patients in the hospital.

14 **§2951. Sale or purchase of parts prohibited**

16 **1. Purchase or sale prohibited.** A person may not
18 knowingly, for valuable consideration, purchase or sell a part
for transplantation or therapy, if removal of the part is
intended to occur after the death of the decedent.

20 **2. Valuable consideration.** Valuable consideration does not
22 include reasonable payment for the removal, processing, disposal,
preservation, quality control, storage, transportation or
24 implantation of a part.

26 **3. Violation.** A person who violates this section is guilty
28 of a Class C crime.

30 **UNIFORM COMMENT**

32 The report of the Task Force pursuant to the 1984 National
Organ Transplant Act recommended that states pass laws
34 prohibiting "the sale of organs from cadavers or living donors
within their boundaries."

36 This section is not limited to donors. It applies to any
38 person and to both purchases and sales for transplantation or
therapy. It does not cover the sale by living donors if removal
40 is intended to occur before death.

42 A major finding of the Hastings Center Report is:

44 "Altruism and a desire to benefit other members of the
community are important moral reasons which motivate
46 many to donate. Any perception on the part of the
public that transplantation unfairly benefits those
48 outside the community, those who are wealthy enough to
afford transplantation, or that it is undertaken
50 primarily with an eye toward profit rather than therapy

will severely imperil the moral foundations, and thus the efficacy of the system."

§2952. Examination, autopsy, liability

1. Reasonable examination. An anatomical gift authorizes any reasonable examination necessary to ensure medical acceptability of the gift for the purposes intended.

2. Autopsies. The provisions of this Act are subject to the laws of this State governing autopsies.

3. Good faith. A hospital, physician, surgeon or other 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 that act in a civil action or criminal proceeding.

4. Resulting injury or damage. An individual who makes an anatomical gift pursuant to section 2943 or 2944 and the individual's estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift.

UNIFORM COMMENT

Subsection (a) [Me. cite subsection 1] is Section 2(d) of the original Act.

The purpose of this subsection was explained in a Comment to the original Act:

"[It] is added at the suggestion of members of the medical profession who regard a post mortem examination, to the extent necessary to ascertain freedom from disease that might cause injury to the new host for transplanted parts, as essential to good medical practice."

Subsection (b) [Me. cite subsection 2] is a restatement of Section 7(d) of the original Act. The Comments to the original Act gave the reason for this subsection:

"[It] is necessary to preclude the frustration of the important medical examiners' duties in cases of death by suspected crime or violence. However, since such cases often can provide transplants of value to living persons, it may prove desirable in many if not most states to reexamine and amend the medical examiner statutes to authorize and direct medical examiners to expedite their autopsy

2 procedures in cases in which the public interest will not
suffer."

4 In 1986 the Task Force on Organ Transplantation made a similar
recommendation:

6 "To enact laws that would encourage coroners and
8 medical examiners to give permission for organ and
tissue procurement from cadavers under their
10 jurisdiction."

12 Subsection (c) [Me. cite subsection 3] is a restatement of
Section 7(c) of the original Act. It provided in part that "a
14 person who acts in good faith" Concern was expressed that
the term person was not sufficiently descriptive and may be
16 construed to exclude hospitals and individuals. The present
provision is more explicit. "Attempts to act in good faith" has
18 also been added to the subsection.

20 Subsection (d) [Me. cite subsection 4] provides for
limitation of liability for the benefit of the individual making
22 a gift under the Act and that individual's estate. Some states
have amended the uniform act by describing an anatomical gift as
24 a service and not a sale or disclaiming any warranty of the part
that is given. Similar provisions are found in statutes relating
26 to blood banks.

28 **§2953. Transitional provisions**

30 This Act applies to a document of gift, revocation or
32 refusal to make an anatomical gift signed by the donor or a
person authorized to make or object to making an anatomical gift
34 before, on or after the effective date of this Act.

36 **§2954. Uniformity of application and construction**

38 This Act must be applied and construed to effectuate its
39 general purpose to make uniform the law with respect to the
40 subject of this Act among states enacting it.

42 **Sec. 3. 29-A MRSA §1402-A, sub-§1**, as enacted by PL 1995, c.
43 32, §4, is amended to read:

44 **1. Statement on anatomical gifts.** A licensee may make a
45 statement expressing the licensee's willingness to make an
46 anatomical gift under Title 22, chapter 710 710-B by affixing an
47 organ donor decal provided by the Secretary of State to the back
of the license.
50

Sec. 4. Effective date. This Act takes effect January 1, 1998.

2

4

SUMMARY

6

This bill replaces the existing Uniform Anatomical Gift Act with the Uniform Anatomical Gift Act adopted by the National Conference of Commissioners on Uniform State Laws in 1987. The bill includes a uniform prefatory note and uniform comments explaining every section.

10

12

Existing Maine law allows a person who is 16 years of age or older to agree to make an anatomical gift. This bill retains 16 years of age as the age of consent to an anatomical gift.

14